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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47160-2019
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR28-18-5631
)	
CHARLES CLIFFORD BROWN,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Brown failed to show that the district court abused its sentencing discretion when it denied his motion to reduce his sentence of 15 years with four years determinate for delivery of methamphetamine?

ARGUMENT

Brown Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Brown pled guilty to delivery of methamphetamine and the district court imposed a unified sentence of 15 years, with four years fixed. (46660 R., pp.77-79.) His sentence was affirmed on

appeal. State v., Brown, Docket No. 46660 (Idaho Ct. App., Feb. 18, 2019) (unpublished) (R., pp. 73-74).

Brown filed a motion for reduction of sentence. (R., pp. 11-18.) The district court denied the motion. (R., p. 71.) It did so based on the horrible facts of this case (Brown's delivery of drugs contributed to the death of the person he delivered to and her two children when she drove into a lake while under the influence) and the need to protect society. (Tr., p. 14, L. 5 – p. 15, L. 12.) Brown filed a timely notice of appeal. (R., pp. 75-78.)

On appeal Brown argues the district court abused its discretion in light of letters of support from friends, Brown's testimony that he was addressing his mental health and drug abuse issues, and his cooperation with the police during the investigation that led to this conviction. (Appellant's brief, pp. 4-6.) Review of the record shows no abuse of discretion.

B. Standard Of Review

“If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Brown Has Shown No Abuse Of The District Court's Discretion

“When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Brown’s presentation in support of his motion was not “new information.” Brown submitted letters from friends (R., pp. 13-18), his own testimony of rehabilitative steps taken post-sentencing (Tr., p. 6, L. 22 – p. 11, L. 22), and argument by counsel regarding Brown’s cooperation with the initial investigation of the deaths of the woman to whom he delivered and her children (Tr., p. 13, L. 19 – p. 14, L. 4). He could have submitted the letters at sentencing, his actions in prison are not indicative of anything the district court was not aware of at the time of sentencing (compare, e.g., Tr., p. 11, Ls. 1-10 (intent to participate in Good Samaritan program) with 46660 PSI, p. 12 (Brown in Good Samaritan program at time of sentencing), and the argument by counsel regarding cooperation is based on evidence that was before the district court at sentencing.

Even if new, the evidence shows no abuse of discretion. Brown has a long criminal history that dates back to at least 1990 and includes two felony convictions, 19 misdemeanor convictions and, at the time of sentencing, pending charges for robbery and misdemeanor battery. (46660 PSI, pp.4-10.) Rehabilitative efforts during this decades-long span of criminality have proved fruitless. (46660 PSI, pp.4-11, 15-16.) The district court reasonably decided that parole eligibility after four years was appropriate. (46660 Tr., p. 40, L. 23 – p. 46, L. 23.) The evidence presented in support of the Rule 35 motion does not change that calculus.

The district court’s determination that Brown should not be eligible for parole until after serving four years, and that eleven years thereafter was an appropriate period of indeterminate

time, is supported by the tragic facts of this case and the need to protect society. Brown has failed to show an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court's denial of Brown's Rule 35 request for leniency.

DATED this 8th day of January, 2020.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of January, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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