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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47234-2019
Plaintiff-Respondent,	)	
	)	Ada County Case No. CR01-19-5838
v.	)	
	)	
SEAN ANDREW	)	RESPONDENT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

Has Sean Andrew failed to show that the district court abused its discretion when it imposed consecutive, unified sentences of five years, with two years determinate for intimidation of a witness, and five years, with zero years determinate for another charge of intimidation of a witness, and denied Andrew’s Rule 35 motion?

ARGUMENT

Andrew Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

Sean and Deborah Andrew were arguing in their residence when Deborah called the Boise City Police. (PSI, p.141 (page citations to electronic file named “Conf.Docs.-Andrew.pdf”).) Deborah reported that Andrew was throwing things off the walls and destroying everything in their

house as he was coming down off of methamphetamine. (PSI, p.141.) Deborah indicated that Andrew threw beer all over the house, and that he was armed with knives. (PSI, p.141.) She stated that Andrew said he was going to kill himself by overdosing on heroin. (PSI, p.141.) Upon arriving at the Andrew residence, Deborah told officers that she and Andrew had been arguing. (PSI, p.141.) When Deborah put her hand up as Andrew approached her, he head butted her hand. (PSI, p.141.) Andrew then threw beer on the floor and retrieved a hammer. (PSI, p.141.) Andrew physically threatened Deborah with the hammer. (PSI, p.141.) Andrew did not strike Deborah, but instead hit a wall, door and drawer with the hammer before leaving the residence. (PSI, p.141.) He then broke his truck window to get inside the vehicle and left the property. (PSI, p.141.)

Andrew texted Deborah about the custody of their dog, and stated he was going to commit suicide. (PSI, p.141.) Neighbors then approached officers and showed them texts from Andrew, stating he was going to commit suicide by cop if he was stopped and that he was not going back to prison. (PSI, p.141.) Officers attempted to locate Andrew, and advised other officers of his status for safety purposes. (PSI, p.141.) When officers later returned to the residence, a female exited the trailer. (PSI, p.141.) Officers asked her if she was Deborah Andrew, but she did not answer. (PSI, p.141.) She was also asked if Sean Andrew was inside the trailer, but she did not answer. (PSI, p.141.) As she was entering a vehicle, she informed officers that Andrew was not going down without a fight, then drove away. (PSI, p.141.) She was later identified as Deborah Andrew. (PSI, p.141.) Officers knocked on the door of the trailer, and identified themselves. (PSI, p.142.) Andrew told them he was not going to jail, and officers advised they needed to talk to him about the incident. (PSI, p.142.) Andrew opened the door and was placed under arrest for aggravated assault. (PSI, p.142.)

Deborah later told police a revised version of the altercation with Andrew that largely exonerated him. (PSI, p.142.) Investigators reviewed Andrew's recorded phone calls and found he was communicating with Kristin Harvey, then having Ms. Harvey relay messages to Deborah. (PSI, p.142.) Ms. Harvey set up a time for Deborah to be present when Andrew called, and to communicate through speaker phone. (PSI, p.142.) In calls to Ms. Harvey, Andrew indicated that he wished Deborah knew that if she changed her story, or refused to cooperate, his charges would be dropped. (PSI, p.142.) Andrew also told Ms. Harvey that Darcy Ballenbrock, witness to the instant offense, needed to make herself unavailable to testify, or say that she did not know what happened that day. (PSI, p.143.) A no contact order between Andrew and Deborah was served on Andrew. (PSI, p.143.)

The state charged Andrew with felony aggravated assault, two counts of felony intimidation of a witness, felony use of a deadly weapon during the commission of a crime, and misdemeanor violation of a no contact order with a persistent violator enhancement. (R., pp.21-23.) Andrew pleaded guilty to the two counts of felony intimidation of a witness, and the state agreed to dismiss all other charges. (R., pp.44-51.) The district court accepted Andrew's plea, and imposed consecutive sentences of five years, with two years determinate for count two, and five years, with zero years determinate for count three. (R., pp.52-53.)

Andrew filed a Motion for Reconsideration of Sentence pursuant to I.C.R. 35(b). (R., p.63.) Andrew's Motion for Reconsideration was denied by the district court. (Augmentation: Order Denying Motion for Reconsideration.)

On appeal, Andrew argues that the district court abused its discretion by "imposing an excessive sentence upon him," and "when it denied [his] Rule 35 motion for a reduction of sentence." (Appellant's brief, p.5 (capitalization altered).) Andrew has failed to show that the

district court abused its discretion by imposing consecutive sentences of five years, with two years determinate and five years, with zero years determinate, and denying his Rule 35 Motion.

B. Standard Of Review

“An appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion.” State v. Schiermeier, 165 Idaho 447, \_\_\_, 447 P.3d 895, 899 (2019) (citations omitted). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case. Id. at \_\_\_, 447 P.3d at 902. “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion.” Id. “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2019) (citation omitted).

“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. Andrew Has Shown No Abuse Of The District Court's Discretion

The sentences imposed are within the statutory limits of I.C. § 18-2604. The district court considered the “Toohill factors, and the nature of the offense; the character of the offender; any mitigating or aggravating factors; fulfilling the objectives of protecting society and achieving deterrence, rehabilitation or retribution,” and “the criteria for sentencing pursuant to Idaho Code 19-2521.” (Tr., p.58, Ls.2-11) Due to Andrew’s LSI score of thirty-seven; the fact his current and previous crimes involved victims; his extensive criminal history; and his noncompliance with community supervision and treatment for mental health conditions and substance abuse, the district court concluded that Andrew “present[s] a danger to other members of the public.” (Tr., p.59, Ls.2-13.) The district court stated it’s “not sure [Andrew] correctly perceive[s] everything that happened with both with the charge that was dismissed and with [his] comments on the phone calls,” and that “[Andrew] completely minimized [his] conduct in [his] statements to the Court.” (Tr., p.58, Ls.12-18, p.60, Ls.12-14.)

Andrew contends that his substance abuse issues and professed acceptance of responsibility are mitigating factors showing an abuse of discretion. (Appellant’s brief, pp.4-5.) Andrew’s argument does not show an abuse of discretion. As shown above, the district court found these factors to be aggravating because Andrew was not addressing his substance abuse issues effectively in the community and was in fact minimizing his conduct rather than accepting responsibility. The accumulation of Andrew’s offenses, lack of success on community supervision, high risk to recidivate, and the seriousness of the instant offense merited the sentenced imposed by the district court.

Additionally, Andrew contends that “the district court failed to give proper weight and consideration to the new or additional information supplied in support of his Rule 35 motion.”

(Appellant’s brief, p.6.) The new information submitted in conjunction with his Rule 35 motion was that “Andrew has not been a disciplinary problem while he has been in prison.” (Aug., p.2.) Andrew’s argument does not show an abuse of discretion. The district court stated “the imposition of the consecutive sentences is appropriate after having considered the Defendant’s criminal history, need for rehabilitation and the danger he presents to society without completing certain programming before being released in to the community.” (Aug., p.7.) The district court found that Andrew “failed to provide any new or additional information that would cause this Court to modify its consideration and application of the *Toohill* criteria to grant him a more lenient sentence.” (Aug., p.7.) The sentence imposed is lawful, and in no way was excessive or unreasonable when originally imposed, or in light of his conduct while incarcerated.

Andrew’s criminal history, inability to complete treatment within the community, risk to reoffend, and seriousness of the instant offense, show that Andrew presents a risk to society. The district court contemplated the facts in this case, and the record shows that the mitigating factors did not merit a lesser sentence that that imposed, or a modification of the imposed sentences pursuant to a Rule 35 motion. Andrew has failed to show that the district court abused its discretion.

#### CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 19th day of February, 2020.

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

ZACHARI S. HALLETT  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of February, 2020, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen  
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