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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                                   |
|-----------------------|---|-----------------------------------|
| STATE OF IDAHO,       | ) |                                   |
|                       | ) | NO. 47248-2019                    |
| Plaintiff-Respondent, | ) |                                   |
|                       | ) | Kootenai County Case No. CR28-19- |
| v.                    | ) | 3157                              |
|                       | ) |                                   |
| RONNIE RAY McFADDEN,  | ) |                                   |
|                       | ) | RESPONDENT’S BRIEF                |
| Defendant-Appellant.  | ) |                                   |
| _____                 | ) |                                   |

Has McFadden failed to show that the district court abused its discretion when it denied McFadden’s motion to reduce his sentences of seven years with three years fixed for burglary and five years with two years fixed for unlawful possession of a firearm?

ARGUMENT

McFadden Has Failed Show That The District Court Abused Its Discretion

A. Introduction

Ronnie Ray McFadden broke into several boathouses and boats and stole several items. (PSI p. 18 (citations to the PSI are to the confidential documents electronic file).) He was found in possession of many of the stolen items and a handgun. (Id.) The state charged him with five

counts of burglary, one count of unlawful possession of a handgun, and two counts of petit theft. (R., pp. 119-21.) The state also charged a persistent violator enhancement. (R., p. 122.)

The parties entered a plea agreement whereby McFadden pled guilty to one count of burglary and one count of unlawful possession of a firearm and the state dismissed the remaining counts and the enhancement. (R., pp. 125-127.) The district court imposed consecutive sentences of seven years with three years fixed for burglary and five years with two years fixed for unlawful possession of a firearm. (R., pp. 142-44.)

McFadden moved for a reduction of his sentences. (R., pp. 152-53.) McFadden requested that the district court retain jurisdiction or that his sentences be ordered to run concurrently instead of consecutively. (Id; Tr., p. 35, L. 11 – 40, L. 10.) The district court denied the motion. (R., p. 174; Tr., p. 42, L. 1 – p. 43, L. 21.) McFadden filed a notice of appeal timely from the denial of his Rule 35 motion. (R., pp. 178-81.)

On appeal McFadden argues the district court abused its discretion when it denied his Rule 35 motion because he presented new information in the form of his statements of remorse and claims of having made progress since entry of judgment and because the district court “failed to give proper consideration to the mitigating factors.” (Appellant’s brief, pp. 3-5.) The record does not support McFadden’s argument because it shows he did not present new information showing his original sentence to be excessive.

#### B. Standard Of Review

The denial of a Rule 35 motion for reduction of sentence is reviewed for an abuse of discretion. State v. Dabney, 159 Idaho 790, \_\_\_, 367 P.3d 185, 193 (2016). In conducting a review of the grant or denial of a Rule 35 request for leniency, the appellate court applies the same criteria used for determining the reasonableness of the original sentence. State v. Anderson, 163 Idaho

513, 517, 415 P.3d 381, 385 (Ct. App. 2015). A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution. State v. Schiermeier, 165 Idaho 447, \_\_\_, 447 P.3d 895, 902 (2019); Anderson, 163 Idaho at 517, 415 P.3d at 385 (citing State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982)). The appellate court “will not review a defendant's underlying sentence for excessiveness when the defendant has appealed only the grant or denial of his Rule 35 motion unless the motion was supported by new evidence tending to show that the original sentence was excessive.” State v. Carter, 157 Idaho 900, 903, 341 P.3d 1269, 1272 (Ct. App. 2014) (citing State v. Farwell, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007); State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)).

C. McFadden Has Shown No Abuse Of The District Court’s Discretion

After hearing McFadden’s testimony in support of his Rule 35 motion, the district court stated it had not heard anything that convinced it “that the sentencing decision ... should be changed.” (Tr., p. 42, Ls. 1-8.) The district court found that it had imposed the original sentence “based on all of the factors” for sentencing, giving special regard to McFadden’s “significant criminal history.” (Tr., p. 42, Ls. 8-20.) It recognized McFadden’s “success in the past” as both a mitigator and an aggravator. (Tr., p. 42, Ls. 20-24.) It considered the crime, which happened at McFadden’s workplace, to be a breach of trust. (Tr., p. 42, L. 25 – p. 43, L. 10.) The fact that McFadden was armed and attempted to hide his crime was also concerning. (Tr., p. 43, Ls. 11-14.) The sentence was one that “follows [McFadden’s] conduct.” (Tr., p. 43, Ls. 15-21.)

The record supports the district court’s reasoning and result. McFadden does have a lengthy and significant criminal history. (PSI, pp. 19-24.) The burglaries and thefts did occur where McFadden worked. (PSI, p. 18.) More importantly, the district court did apply the correct

legal standards at sentencing and imposed a reasonable sentence under those standards. (Tr., p. 23, L. 9 – p. 28, L. 7.)

McFadden argues he presented “new and additional information” in the form of his statement in support, which, in combination with mitigating factors he presented at sentencing, shows the district court abused its discretion. (Appellant’s brief, pp. 3-5.) McFadden’s statement, however, was not new information. McFadden expressed remorse in his statement (Tr., p. 35, L. 25 – p. 36, L. 2), but he also expressed remorse at sentencing (Tr., p. 22, Ls. 4-17; PSI, p. 19). He expressed a desire to immediately start rehabilitation programs (Tr., p. 36, Ls. 2-19), but also expressed this desire at sentencing (Tr., p. 22, L. 8 – p. 23, L. 5). The district court concluded that nothing was presented that convinced it that the sentences should be changed. (Tr., p. 42, Ls. 4-8.) McFadden has failed to show that his statement made that determination an abuse of 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

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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