

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

11-27-2019

### State v. McFadden Appellant's Brief Dckt. 47248

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. McFadden Appellant's Brief Dckt. 47248" (2019). *Not Reported*. 6242.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/6242](https://digitalcommons.law.uidaho.edu/not_reported/6242)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender  
I.S.B. #7259  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47248-2019
Plaintiff-Respondent,	)	
	)	KOOTENAI COUNTY NO. CR28-19-3157
v.	)	
	)	
RONNIE RAY MCFADDEN,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Ronnie Ray McFadden appeals from the district court's Order Denying Defendant's Rule 35 Motion. Mr. McFadden was sentenced to consecutive, unified sentences of seven years, with three years fixed, and five years, with three years fixed, for his burglary and unlawful possession of a firearm convictions. He asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence.

Statement of the Facts & Course of Proceedings

On March 21, 2019, an Information was filed charging Mr. McFadden with five counts of burglary, unlawful possession of a firearm, two counts of petit theft, and a persistent violator

enhancement. (R., pp.119-22.) He entered a guilty plea to one count of burglary and the unlawful possession of a firearm charge and was sentenced to consecutive, unified sentences of seven years, with three years fixed, and five years, with three years fixed. (R., pp.142-44.)

Mr. McFadden filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support timely from the Judgment. (R., pp.152-53.) Following a hearing, the district court denied the motion. (R., pp.171-72, 174.) Mr. McFadden filed a Notice of Appeal.<sup>1</sup> (R., pp.161-63.)

### ISSUE

Did the district court abuse its discretion when it denied Mr. McFadden's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. McFadden's Rule 35 Motion For A Reduction Of Sentence

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* (citing *Lopez*, 106 Idaho at 450).

The Idaho Supreme Court has held that, "[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing

---

<sup>1</sup> The Notice of Appeal was timely filed from an earlier restitution order. (R., pp.152-53.)

the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). In order to show an abuse of discretion, Mr. McFadden must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). “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 (2007).

Appellate courts use a four-part test for determining whether a district court abused its discretion: 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. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018). Mr. McFadden asserts that the district court failed to give proper weight and consideration to the new information provided in support of his Rule 35 motion and the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

Mr. McFadden provided new and additional information in support of his Rule 35 motion. Specifically, he read a letter to the district court stating that:

I'm sorry for the crimes I've committed, and I want to pay back to the community for what I have done. I have tried to better myself since I got down here. I have two points, which makes me minimum security, but with the amount of time I have, I'm on a hold. I have Substance Abuse class and Thinking for a Change class to do, but I can't start them yet because of the amount of years I have. But I have a certificate for Computer Literacy already, and I'm going to go through advanced computer courses, also.

I've also started to learn Spanish and taking courses through the chapel. And I have put ten applications in for jobs, I just can't get to go to a work camp yet because of the amount of years I have.

So, Your Honor, I pray and ask you to please grant me a rider, and if you won't do that, to run my two charges together. Then I can start my two classes and I can go to Givens Hall or another work camp, please.

Thank you, Your Honor. Please give me a chance to prove myself. God bless you.

(Tr., p.35, L.25 – p.26, L.21.)

Additionally, he asserts that the district court failed to give proper consideration to the mitigating factors present in Mr. McFadden's case. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). Mr. McFadden has a history of using the controlled substances including methamphetamine, marijuana, and ecstasy. (PSI, p.29.)<sup>2</sup> He recognizes that substance abuse has caused him problems and he wants to stop using. (PSI, pp.29-30.) It was recommended that he participate in Level 2.1 Intensive Outpatient Services. (PSI, p.31.) He has also expressed a strong desire to return to N.A. meetings. (PSI, p.31.)

Furthermore, in *State v. Shideler*, 103 Idaho 593, 594 (1982), the Idaho Supreme Court noted that family and friend support were factors that should be considered in the Court's decision as to what is an appropriate sentence. Mr. McFadden has the support of his finance and his friends. He supplied the district court with letters of support from his finance, Ronie Sennett, and friends, Rebecca Lynn St. Andre and Brian Fener. (R., pp.131-34.)

---

<sup>2</sup> For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as "PSI" and referenced pages will correspond with the electronic page numbers contained in this file.

Moreover, Mr. McFadden has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, “In light of Alberts’ expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Id.* 121 Idaho at 209. Mr. McFadden has expressed his remorse for committing the instant offense both in his presentence investigation and at the sentencing hearing. (PSI, p.19; Tr., p.22, L.2 – p.23, L.5.)

Based upon the new and additional information presented with his Rule 35 motion and the mitigating factors present in his case, Mr. McFadden asserts that the district court abused its discretion in denying his Rule 35 motion. He asserts that had the district court given proper weight and consideration to his progress while incarcerated, history of substance abuse, willingness to complete treatment, friend and family support, and remorse, it would have granted the Rule 35 motion and reduced his sentence.

#### CONCLUSION

Mr. McFadden respectfully requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 27<sup>th</sup> day of November, 2019.

/s/ Elizabeth Ann Allred  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of November, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

EAA/eas