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# State v. Erickson Appellant's Brief Dckt. 47269

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO,<br><br>Plaintiff-Respondent,<br><br>v.<br><br>JORDAN AVERY ERICKSON,<br><br>Defendant-Appellant. | NO. 47269-2019<br><br>KOOTENAI COUNTY NO. CR28-19-4042<br><br>APPELLANT'S BRIEF |

## STATEMENT OF THE CASE

### Nature of the Case

Jordan Avery Erickson appeals from the district court's Sentencing Disposition and Notice of Appeal. Mr. Erickson was sentenced to unified sentences of five years fixed, for battery with the intent to commit robbery, and twenty years, with five years fixed, for conspiracy with intent to commit robbery. He asserts that the district court abused its discretion when it failed to give proper consideration to the mitigating factors present in his case. Additionally, he asserts that the district court abused its discretion in denying his Rule 35 motion for a reduction of sentence.

Statement of the Facts & Course of Proceedings

On March 13, 2019, an Indictment was filed charging Mr. Erickson with battery with the intent to commit robbery and conspiracy to commit robbery. (R., pp.10-12.) The charges were the result of a report to police that Mr. Fruechtl had been beaten and robbed by three masked men. (PSI, p.27.)[1] The police identified Mr. Erickson and his two co-defendants, Mr. Mullen-Huber and Mr. Jones, as the suspects. (PSI, p.27.) Mr. Erickson entered not guilty pleas and the case was set for trial. (R., p.35.)

The State filed a Motion for Joinder requesting that Mr. Erickson's and Mr. Jones's, a co-defendant, cases be consolidated. (R., p.21.) Despite objection, the cases were joined.[2] (R., pp.50-58.) The cases proceeded to trial. (R., pp.141-175, 215-217.) The jury found Mr. Erickson guilty of both charges. (R., p.177.)

At sentencing, the State recommended unified sentences of fifteen years, with eight years fixed, to be served concurrently. (Tr., p.523, Ls.20-23.) Defense counsel requested that the district court retain jurisdiction and impose sentences with no more than five years fixed. (Tr., p.527, L.11 – p.528, L.7.) The district court imposed unified sentences of five years fixed, for battery with the intent to commit robbery, and twenty years, with five years fixed, for

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[1] 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.

[2] In the order granting the Motion for Joinder, the district court specifically noted that: "Neither Erickson nor Jones have made a confession which has been brought to the attention of the Court. Neither Erickson nor Jones have made a statement which has been brought to the attention of this court. . . . If, between now and trial, it comes to light that either Erickson or Jones have made a confession which implicates the other, or a statement which implicates the other, there may be a *Bruton* [*v. United States*, 391 U.S. 123 (1970)] issue. However, at present no such issue has been brought to the Court's attention." (R., p.57.) During trial, statements from both Mr. Erickson and Mr. Jones which implicated the other were presented. (Tr., p.29, L.11 – p.251, L.20.) Although counsel objected on hearsay grounds, neither counsel made a motion for mistrial based on *Bruton* and a violation of the Sixth Amendment right to confrontation.

conspiracy with intent to commit robbery, to be served concurrently. (R., pp.225-26.) Mr. Erickson filed a Notice of Appeal timely from the district court's Sentencing Disposition and Notice of Appeal. (R., pp.15-17.) He also filed a timely Rule 35 motion. (Augmentation: Motion for Modification of Sentence Pursuant to I.C.R. 35(b).)[3] The motion was denied. (Augmentation: Order Denying I.C.R. 35 Motion and Notice of Right to Appeal.)

## ISSUES

I. Did the district court abuse its discretion when sentencing Mr. Erickson?

II. Did the district court abuse its discretion when it denied Mr. Erickson's Rule 35 Motion?

## ARGUMENT

### I.

### The District Court Abused Its Discretion When Sentencing Mr. Erickson

Mr. Erickson asserts that, given any view of the facts, his unified sentences of five years fixed, for battery with the intent to commit robbery, and twenty years, with five years fixed, for conspiracy with intent to commit robbery, to be served concurrently, are excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

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 the sentence.'" *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho

[3] A Motion to Augment was filed contemporaneously with this Appellant's Brief.

573, 577 (1979)). Mr. Erickson does not allege that his sentences exceed the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Erickson must show that in light of the governing criteria, the sentences were 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)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo,* 136 Idaho 138 (2001)).

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. Erickson asserts that the district court failed to give proper consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

Specifically, he asserts that the district court failed to give proper consideration to his youthful age. Mr. Erickson was only [redacted] at the time of his sentencing. (PSI, p.25.) Young age is one of many circumstances that a district court should consider in fashioning appropriate sentences. *State v. Dunnagan*, 101 Idaho 125, 126 (1980); *State v. Caudill*, 109 Idaho 222, 224 (1985).

Further, Mr. Erickson is a first time felony offender. "The courts have long recognized that the first offender should be accorded more lenient treatment than the habitual criminal. In

addition to considerations of humanity, justice and mercy, the object is to encourage and foster the rehabilitation of one who has for the first time fallen into error, and whose character for crime has not become fixed." *State v. Owen*, 73 Idaho 394, 402 (1953) *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971)). Although Mr. Erickson has two misdemeanor convictions, the instant offenses are his first felony charges and convictions. (PSI, pp.28-29.)

Additionally, Mr. Erickson has accepted responsibility for committing the instant offenses. 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. Although he waited until the sentencing hearing to express his remorse, Mr. Erickson stated that:

> Um, from the beginning of school I was – I never really fit in with anybody. I was – like Mr. Nixon said, I was always somebody that would do whatever I could to fit in with everybody, whether it be staying out late, getting in trouble with my parents, or whether it be running around with bad kids at school. Um, as I started growing up, I found closer friends that accepted me for who I was and, um, they brought me into their family, made me feel at home. They, um, treated me like I was actually somebody, and uh, I – I feel terribly sorry for the victim, uh, Mr. Fruechtl, and, um, all – all I can really say is that I'm sorry, that I was under peer pressure, and, um, that I just wanted to fit in like everybody else did.
>
> Um, in my PSI it also says that I never touched drugs. Um, I – I smoked marijuana from when I was fourteen up to – 'til I got arrested, but any other drugs I never really touched until Nolan moved in the beginning of January and middle of January. When Nolan moved in I – I felt like I had to appear to him as somebody that he could respect as well, so I – I would do anything that he wanted me to, and I, uh – I just wanted his respect as much as anybody else's, and, uh, I realize now that this is my mistake and I shouldn't have done that, and um, I – yeah, I feel terrible for it, and then, um, if I may talk to the victim, Mr. Fruechtl?
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> . . .

> Well, I've know you since probably sixth grade, and, um, all I can say is I'm sorry. Like I said, I wanted to fit in and I wanted Nolan to, uh, take me as somebody he could trust, and hope you see that. If there's anything I could do to repay you or anything, just tell me or tell somebody to get a hold of me, and I'll do my best, and, um, to your mother, uh, I believe your name's Ms. Kelso? I also apologize. . . . I apologize to you as well for putting your son through this.

(Tr., p.529, L.14 – p.53, L.3.)

Based upon the above mitigating factors, Mr. Erickson asserts that the district court abused its discretion by imposing excessive sentences upon him. He asserts that had the district court properly considered his youthful age, status as a first time felony offender, and remorse, it would have crafted less severe sentences.

II.

The District Court Abused Its Discretion When It Denied Mr. Erickson's Rule 35 Motion

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). "If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.* (citing *State v. Hernandez*, 121 Idaho 114 (Ct. App. 1991)). "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).

Mr. Erickson asserts that the district court failed to give proper consideration to the new or additional information supplied in support of his Rule 35 motion and, as a result, did not reach its decision by an exercise of reason. In the Rule 35 motion, Mr. Erickson informed the district court that he has learned his lesson and "is young with no prior experience in the felony court system and now fully understands how a negative, flippant attitude can dramatically impact a presentence investigation report and the recommendations that follow and is respectfully requesting this Court grant him some leniency." (Augmentation: Motion for Modification of Sentence Pursuant to I.C.R. 35(b), p.2.) He also noted that his co-defendant, Mr. Mullen-Huber, who was noted by the district court as being more culpable than Mr. Erickson (Tr., p.533, Ls.12-15), received a less severe sentence, with a sentence satisfaction date five years earlier than Mr. Erickson. (Augmentation: Motion for Modification of Sentence Pursuant to I.C.R. 35(b), attachment B.)

He asserts that in light of this additional information and the mitigating factors mentioned in section I, which need not be repeated, but are incorporated by reference, the district court abused its discretion in denying his Rule 35 motion.

## CONCLUSION

Mr. Erickson respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 21st day of February, 2020

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

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
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/s/ Kylie M. Fourtner
KYLIE M. FOURTNER
Administrative Assistant

EAA/kmf