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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 47277-2019 & 47278-2019
Plaintiff-Respondent,)	
)	BANNOCK COUNTY NOS. CR-2016-16181
v.)	& CR-2018-8812
)	
DANA PAUL RUTHERFORD,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In these consolidated appeals, Dana Paul Rutherford appeals from the district court's orders denying his Idaho Criminal Rule (*hereinafter*, Rule) 35 motions for reduction of his sentences. He asserts that the district court abused its discretion by denying the motions.

Statement of the Facts & Course of Proceedings

In docket number 47277, Mr. Rutherford pleaded guilty to possession of a controlled substance, methamphetamine, and the district court imposed a unified sentence of five years, with two years determinate, and the court retained jurisdiction. (R., no. 47277, p.152.) In docket

number 47278, Mr. Rutherford pleaded guilty to possession of a controlled substance, methamphetamine, and the district court imposed a unified sentence of six years, with three years determinate, and the district court retained jurisdiction. (R., no. 47278, p.40.) The district court subsequently relinquished jurisdiction in both cases without holding a hearing. (R., no. 47277, p.156; no. 47278, p.54.) Mr. Rutherford filed Rule 35 motions in both cases, which were denied. (R., no. 47277, p.159, 177.; no. 47278, p.56; 74.) He appealed from the orders denying his Rule 35 motion. (R., no. 47277, p.179; no.47278, p.76.) He asserts that the district court abused its discretion by denying his Rule 35 motions.

ISSUE

Did the district court abuse its discretion when it denied Mr. Rutherford's Rule 35 motions?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Denied Mr. Rutherford's Rule 35 Motions

An order denying a motion for reduction of a sentence under Rule 35 is reviewed for an abuse of discretion. If the sentence is found to be reasonable at the time of pronouncement, the defendant must then show that it is excessive in view of the additional information presented with the motion for reduction. *State v. Hillman*, 143 Idaho 295, 296 (Ct. App. 2006)

In this case, the district court relinquished jurisdiction based solely on the Addendum to the Presentence Investigation Report (*hereinafter*, APSI). (R., no. 47277, p.156.) The APSI recommended that the court relinquish jurisdiction in large part because Mr. Rutherford had allegedly been in a fight. (APSI, p.2.) Specifically, it alleged,

[Mr. Rutherford] received a Class B DOR for physically striking another offender. There were witnesses that saw him confront another offender in the dayroom and strike him on the side of the head causing the other offender to spill

his coffee. Another offender told Mr. Rutherford to not treat the guy he just struck that way; the other offender and Mr. Rutherford ended up going to the bathroom where witnesses saw Mr. Rutherford throw the first punch. The offender he was fighting with slammed him on the floor, which left Mr. Rutherford unconscious. Mr. Rutherford pled not guilty at his DOR hearing but was found guilty by the Disciplinary Hearing Officer.

(APSI, pp.5-6.) Mr. Rutherford disputed this account in his Rule 35 motion. (R., no. 47277, p.160.) Mr. Rutherford stated that he did confront another inmate about his treatment of a third inmate, but denied fighting with him. (R., no. 47277, p.160.)

Further, Mr. Rutherford explained,

On another occasion, the Defendant had toothpaste and denture cream placed in his shoes and found a note with a profane statement on it on his bed. He recognized the writing as that of inmate Nash. When he confronted inmate Nash, he claimed it was not meant for the Defendant and someone else must have put it there. After some discussion, the two shook hands at which point, inmate Brumfield yelled to inmate Nash stating "Fuck that. Hit him Nash." When inmate Nash did not do so, inmate Brumfield struck out at the Defendant who blocked the punch. The Defendant then told him that he better stay away from the Defendant. The Defendant left. Shortly thereafter, the Defendant returned to the bathroom area to clean the toothpaste and denture cream out of his boots. When he was at the sink, inmate Brumfield grabbed him from behind and body slammed him to the floor. The Defendant struck his temple on the concrete floor and was knocked unconscious. He learned later that other inmates were cleaning up the blood in the shower and concealing his body as he lay there. He was unconscious for over an hour before guards discovered him. He had to be taken by medical helicopter to a hospital. His injuries were severe and continue to cause issues for him.

(R., no. 47277, p.160.) According to Mr. Rutherford, "the facility put the inmates on lockdown and the inmates subject to a group punishment. The Defendant learned later from inmates that were present, that they were told that they would continue to be subjected to a group punishment until statements were given that the Defendant had been involved in fighting." (R., no. 47277, pp.160-61.) It was Mr. Rutherford's belief that the Department was concerned about being held liable for his injuries and for its failure to provide adequate supervision and medical attention

and therefore it coerced other inmates into stating that he had been fighting. (R., no. 47277, p.161.)

Apart from contesting the fight allegations, Mr. Rutherford informed the court that he was actively engaged in his treatment and that his

homework assignments were always well done, he was highly skilled at doing the skill steps for the given skills, was able to recognize risk thinking, and in the group was able to use new thinking to change his behavior. In addition to his own treatment, the Defendant was volunteering to assist with different tasks at the facility, including assisting in setting up classrooms and cleaning up after classes were complete.

(R., no. 47277, pp.159-60.) He was also active in assisting and mentoring other inmates.

(R., no. 47277, p.160.)

In his motion, Mr. Rutherford requested that the court reconsider its decision to relinquish jurisdiction and to suspend the sentences and place Mr. Rutherford on probation.

(R., no. 47277, p.169.) Alternatively, at the hearing, counsel requested that the court reduce the determinate portions of the sentences to one or two years. (Tr., p.6, Ls.19-21.) Considering the information presented in support of the Rule 35 motions, Mr. Rutherford submits that the district court abused its discretion by the motions.

CONCLUSION

Mr. Rutherford respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new Rule 35 hearing.

DATED this 10th day of February, 2020.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th 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
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JMC/eas