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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 47329-2019, 47381-2019,
)	47382-2019 & 47383-2019
)	
v.)	BANNOCK COUNTY
)	NOS. CR03-19-1932, CR-2011-15753,
)	CR-2016-3729 & CR-2017-1719
GERALD TROY ALDOUS,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Gerald Troy Aldous pled guilty to a 2019 charge of felony DUI and admitted violating his probation in three other cases. At a combined sentencing and disposition hearing, the district court sentenced Mr. Aldous for the DUI to ten years, with four years fixed, and revoked his probation in the three other cases, without probation or retained jurisdiction. The district court denied Mr. Aldous’s subsequent Idaho Criminal Rule 35 motions (“Rule 35 motion”) for reduction of his sentences, filed in all four cases. In each of his cases, which are now

consolidated, Mr. Aldous filed a Notice of Appeal that is timely from the denial of the Rule 35 motion.

On appeal, Mr. Aldous claims the district court abused its discretion by imposing an excessive sentence in his 2019 DUI case and by denying his subsequent Rule 35 motion for a reduction of that sentence. Additionally, Mr. Aldous asserts the district court abused its discretion when it denied the Rule 35 motions in his other three cases, mindful of the holding in *State v. Huffman*, 144 Idaho 201, 203 (2007), that in presenting a Rule 35 motion, “defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court,” and that he presented additional information in connection with his 2019 DUI case, only.

Statement of the Facts and Course of Proceedings

In February of 2019, after attending the funeral of a good friend who died by suicide, Mr. Aldous had several drinks and on his way home, he was stopped for speeding and arrested for DUI. (PSI, pp.5-6.)¹ At that time, Mr. Aldous was on probation in three cases, including two felony DUI’s.² The State charged him with felony DUI (“2019 DUI”) and being a persistent violator (R., pp.40-44),³ and filed motions seeking to revoke his probation in Mr. Aldous’s other cases. (*See* Appeal No.47381 R., p.224; Appeal No.47382 R., p.176; Appeal No.47383 R., p.139.)

¹ Citations to the Presentence Investigation Report use the designation “PSI” and will include the page numbers associated with the 44-page electronic file named “Confidential Documents-PSI, filed in Appeal No. 47329-2019 (Bannock County Case No. CR03-19-1932.)

² Bannock County Case Nos. CR-2011-15753 (DUI); CR-2016-3729 (criminal possession of a financial transaction card); and CR-2017-1719 (DUI).

³ Except as otherwise designated, citations to record (“R.”) are to the Record in the 2019 DUI case, Appeal No. 47329-2019 (Bannock County Case No. CR03-19-1932).

Pursuant to the terms of a plea agreement, Mr. Aldous pled guilty to the 2019 DUI and admitted violating his probation in his other three cases; in exchange, the State agreed to dismiss its persistent violator allegation and to recommend retained jurisdiction. (R., pp.69, 74; Tr., p.2, L.14 – p.6, L.25.)

At the sentencing and disposition hearing, Mr. Aldous asked to be placed back on probation with additional alcohol and mental health treatment. (Tr., p.24, Ls.18-20.) Both the State and the presentence investigator recommended retained jurisdiction. (Tr., p.25, Ls.3-17; PSI, p.22.) The district court disregarded the recommendations. Instead, the court revoked Mr. Aldous's probation in all three previous cases and ordered the original underlying sentences executed. (Tr., p.33, L.14 – p.34, L.11.) In the new 2019 DUI case, the district court imposed a ten-year prison term, with four years fixed. (R., p.95; Tr., p.34, Ls.12-15.)

Mr. Aldous subsequently filed motions seeking leniency under Idaho Criminal Rule 35 ("Rule 35") in all four of his cases. (Appeal No. 47381 R., p.275; Appeal No. 47382 R., p.228; Appeal No. 47383 R., p.190.) At his Rule 35 hearing, Mr. Aldous asked the district court to reconsider the four-year fixed term of his sentence the 2019 DUI case, and informed the court that due to the length of that period, he was not currently eligible for the treatment offered at the in the prison. (Tr., p.38, Ls.1-22.) He asked the court to reduce that fixed portion to allow him to have treatment sooner. (Tr., p.38, Ls.16-22.) The State objected. (Tr., p.38, L.25 – p.39, L.13.) The district court denied the motions. (Tr., p.42, L.11.)

In each of his four cases, Mr. Aldous filed a Notice of Appeal that is timely from the denial of the Rule 35 motion. *See* I.A.R. 14(a). (Appeal No. 47381 R., p.280; Appeal No. 47382 R., p.233; Appeal No. 47383 R., p.195.) This Court consolidated those appeals. (*See* Order Consolidating Appeals For All Purposes, dated September 30, 3019.)

ISSUE

Did the district court abuse its discretion by imposing an excessive sentence in Mr. Aldous's 2019 DUI case, and by denying Mr. Aldous's Rule 35 motions for reduction of sentence in all four cases?

ARGUMENT

The District Court Abused Its Discretion By Imposing An Excessive Sentence In Mr. Aldous's 2019 DUI Case, And By Denying Mr. Aldous's Rule 35 Motion For Reduction Of Sentence In All Four Cases

A. Introduction

Mr. Aldous's ten-year sentence, with four years fixed, in his 2019 DUI case is excessive and unreasonable under the circumstances, especially in light of the fact that the fixed portion delays needed treatment that Mr. Aldous could otherwise receive at the prison. The district court's imposition of the sentence and denial of the Rule 35 motion represent an abuse of discretion.

B. Standards Of Review

The appellate court reviews the district court's sentencing decisions for an abuse of discretion. *State v. Miller*, 151 Idaho 826, 834 (2011). The relevant, multi-tiered inquiry asks: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion; (3) acted consistently with the legal standards applicable; and (4) whether the trial court reached its decision by an exercise of reason. *State v. Le Veque*, 164 Idaho 110, 112 (2018). Where, as in the present case, the defendant challenges his sentence as excessively harsh, the appellate court conducts 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. *State v. Miller*, 151 Idaho 828, 834 (2011). An abuse of discretion occurs if the district court imposed a sentence that is unreasonable, and thus excessive,

“under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “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.” *Miller*, 151 Idaho at 834. When reviewing the length of a sentence, the Court considers the entire sentence. *State v. Oliver*, 144 Idaho 722 (2007).

In addition to these considerations, where a defendant’s mental condition is a significant issue, “Idaho Code Section 19-2523 requires that the sentencing judge also weigh that mental condition as a sentencing consideration.” *Miller*, 151 Idaho at 834. Although a defendant’s mental health is only one of the factors that must be considered and weighed by the court at sentencing, the record must show the court adequately considered the substance of the factors when it imposed the sentence. *Id.* at 836; *Strand*, 137 Idaho at 461.

A motion made pursuant to Rule 35 is essentially a plea for leniency, and its grant or denial is a matter within the discretion of the district court. *See State v. Knighton*, 143 Idaho 318, 319 (2006). In 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 motion. *Huffman*, 144 Idaho at 203. In reviewing the grant or denial of a Rule 35 motion, the appellate court considers the entire record and applies the same criteria used for determining the reasonableness of the original sentence. *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014).

C. The District Court Erred By Imposing An Excessive Sentence Of Ten Years, With Four Years Fixed, For DUI, And By Denying Mr. Aldous’s Rule 35 Motion For Reduction

Mr. Aldous was [REDACTED] at the time of sentencing for this offense. (PSI, p.22.) He had battled his alcoholism for years, but had been making real progress in his recovery. (Tr.,

p.20, L.23 – p.21, L.2.) He had been sober for over a year and almost finished the Bannock County Wood Court program. (PSI, pp.12, 17.) He was an exceptional worker and held a good job as a supervisor at a steel company, and he was supporting his children and raising his granddaughter. (PSI, pp.12, 16-17; Tr., p.20, L.23 – p.21, L.2.)

Sadly, Mr. Aldous had recently lost two close friends to suicide, both of them fellow Wood Court participants. He was anxious and grieving at the time of the offense. (Tr., p.22, Ls.14-24.) To compound matters, the two most significant persons to his recovery-support structure – his boss and his mental health counselor – had moved away. (PSI, pp.6-7, 20-21.) He had also just stopped taking his mental health medications. (PSI, p.6.) It was at this very low point, on the night of his friend’s funeral, that Mr. Aldous made the mistake of going into a bar and drinking. He made a terrible mistake and has expressed his remorse, recognizing the harm his actions have caused his family, his employer, and his sponsor. (Tr., p.27, Ls.8-22.) He also admitted his need to ask for and accept help. (Tr., p.28, Ls.2-5.)

More help for Mr. Aldous is what was recommended in the GAIN evaluation; more help to address his drinking problem and his mental health issues. (PSI, pp.38, 42.) As noted throughout the PSI, Mr. Aldous has struggled with drinking for years. (PSI, pp.9, 7-20.) He also has worked hard to overcome his alcohol addiction, completing outpatient and residential treatment programs. (PSI, p.25; *see also* Appeal No.47329 “Appeal – Letter.”) He had been sober for more than a year prior to the instant relapse. (PSI, p.25.) Despite his setbacks, including the instant offense, Mr. Aldous’s goal of staying sober is within his reach.

Mr. Aldous also has a documented history of mental health conditions, including diagnoses in 2009 of PTSD, Anxiety, and Depression. (PSI, pp.17-19.) He was participating in mental health counselling while participating in the Wood Court Program, and was prescribed

mental health medications; regrettably, he stopped taking his medications, resulting in severe anxiety, two months before he committed the instant offense. (PSI, p.18.)

Mr. Aldous knows that none of the above excuses his conduct. However, all of these circumstances should be taken into account, and if properly considered, demonstrate that that the district court imposed an excessive sentence for the 2019 DUI, representing an abuse of the district court's sentencing discretion. The unreasonableness of the sentence is underscored by the fact, brought up at his Rule 35 hearing, that the length of the fixed portion renders Mr. Aldous ineligible for programming and treatment for several years. (Tr., p.38, Ls.16-22.) This Court should vacate the sentence in Mr. Aldous 2019 DUI case, and remand the case with instructions that the district court consider reducing the length of the fixed term.

D. The District Court Abused Its Discretion By Denying The Rule 35 Motions In The Three Other Cases

Mr. Aldous also filed Rule 35 motions in each of his three probation cases. (*See* Appeal No. 47381 R., p.280; Appeal No. 47382 R., p.233; Appeal No. 47383 R. p.195.) Mr. Aldous asserts the district court abused its discretion when it denied his motions, mindful that *Huffman* precludes review where a defendant's Rule 35 motion presented the district court with no new or additional information to show the sentence is excessive, 144 Idaho at 203, and of the fact he provided information that shows only that his 2019 DUI case was excessive (*see* Tr., p.38, Ls.1-22).

CONCLUSION

Mr. Aldous respectfully requests that, in his 2019 DUI case, this Court vacate his sentence and the order denying his Rule 35 motion; that in his three probation cases, it vacate the orders denying his Rule 35 motions; and that all four cases be remanded to the district court for resentencing.

DATED this 18th day of February, 2020.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th 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

KAC/eas