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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 Case Nos.
	)	CR03-19-1932, CR-2011-15753,
	)	CR-2016-3729 & CR-2017-1719
GERALD TROY ALDOUS	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Gerald Troy Aldous failed to show that the district court abused its discretion by imposing a sentence of ten years, with four years determinative for felony driving under the influence, and denying his Rule 35 motions seeking reductions of prior sentences?

ARGUMENT

Aldous Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

In 2011, police responded to a head-on collision where the driver of a Nissan Altima, Gerald Troy Aldous, had fled the scene. (47381 PSI, p.9 (citations to electronic file named “47381

Appeal-Confidential Documents-PSI Volume 1.pdf”). Aldous was located on railroad tracks near a park. (47381 PSI, p.9.) Authorities detained Aldous and returned him to the scene of the collision. (47381 PSI, p.9.) Aldous denied his involvement in the collision, and claimed that he was walking home from Club 91. (47381 PSI, p.9.) Authorities advised him that the driver of the other car had given a description of the driver of the Nissan Altima, and that he fit the description, but Aldous maintained that he had been drinking at Club 91 before he began walking home. (47381 PSI, p.9.) Aldous had blood on his shorts, a small cut on his left hand, a small cut on his nose, and he was barefoot. (47381 PSI, p.9.) Authorities found Aldous’ shoes on the floorboard of the Nissan Altima and gave them to him. (47381 PSI, p.9.) Aldous again stated he was not driving the vehicle, then took a breath test, which twice provided samples of .225. (47381 PSI, p.9.)

Under case number CR-2011-15753, the state charged Aldous with felony driving under the influence of alcohol. (47381 R., pp.70-73.) Aldous pleaded guilty and the district court sentenced him to five years, with two years determinate and placed Aldous on probation. (47381 R., pp.81-86, 91-99.)

Early January of 2016, William Benning reported to Pocatello Police that his debit card had been stolen, and that the card had been used throughout the Pocatello and Chubbuck areas without his permission. (47382 PSI, p.5 (page citations to electronic file named “47382 Appeal – Confidential Documents PSI Volume 1.pdf”).) William indicated that he was an Idaho State University student, and noticed the fraudulent transactions while he was home in Alaska during Winter break. (47382 PSI, p.5.) William stated that the unauthorized transactions occurred at Walmart, Maverik Store, the Buckle, Da Vi Nails, and KJ’s Convenience Store. (47382 PSI, p.5.) William reported the charges to his bank and they instructed him to contact the police. (47382

PSI, p.5.) Authorities contacted the manager of the Maverik Country Store, Bobbie Walker. (47382 PSI, p.5.) Bobbie was able to locate two transactions for \$20 and \$2.11. (47382 PSI, p.5.) Both transactions were completed by the same male, who Bobbie was able to identify as Aldous. (47382 PSI, p.5.) Another two transactions were completed at Walmart by a male and were caught on video surveillance. (47382 PSI, p.5.)

Authorities contacted Aldous at the Bannock County Jail, where he was incarcerated. (47382 PSI, p.5.) They questioned Aldous about the use of the stolen debit card, and Aldous reported that his friend, Hollie Fransen, had contacted him and told him that a guy owed her some money and that she wanted to purchase a television and gaming system for her children for Christmas. (47382 PSI, p.5.) Aldous stated that Hollie asked him to help her, and that Hollie said the man who owed her money had given her his credit card to use, so he could pay off his debt. (47382 PSI, p.5.) Aldous indicated to authorities that he did use the card at several stores to purchase gas, alcohol, a television, and a gaming system. (47382 PSI, p.5.) He said he was with Hollie when she purchased several items at the Buckle in the mall, and that he did not believe Hollie would have him use a stolen credit card. (47382 PSI, p.5.) Two days later, authorities contacted the Buckle manager, who then went through her surveillance video and recognized Aldous as the individual using William's credit card. (47382 PSI, p.5.) Aldous was also seen with a female, believed to be Hollie. (47382 PSI, p.5.) The Buckle manager said that Aldous told her his name was Troy Benning, and noted that Aldous was not allowed to purchase the items they selected and they were put on layaway because she felt the transaction was suspicious. (47382 PSI, p.5.) She also stated that Aldous came back into the store several times throughout the day in an effort to pick up the layaway items. (47382 PSI, p.5.)

Under case number CR-2016-3729, the state charged Aldous with two counts of criminal possession of a financial transaction card, and one count of grand theft. (47382 R., pp.19-21.) The state dismissed count two, criminal possession of a financial transaction card, and count three, grand theft. (47382 R., pp.61-63.) Aldous pleaded guilty to count one, criminal possession of a financial transaction card, and the district court sentenced him to five years, with two years determinate and retained jurisdiction. (47382 R., pp.74-80, 87-89.)

Also in 2016, a probation officer reported that Aldous had violated his probation by using alcohol on numerous occasions, possessed a firearm in his residence during a home visit, and that he had been involved in a violent incident while drinking where he was battered severely. (47381 R., pp.103-05.) The probation officer said that Aldous was cited with domestic battery, but that the charge was amended to a lesser charge and he was placed on supervised misdemeanor probation. (47381 R., p.104.) Aldous then continued drinking alcohol while on both probations, and began using other drugs, such as methamphetamine and adderall. (47381 R., p.104.) Aldous served ninety days in the Bannock County jail for violating his misdemeanor probation, and upon his release, probation and parole staff observed Aldous drinking alcohol in a local bar. (47381 R., p.104.) Authorities received reports that Aldous was not staying at his reported residence, and he had been charged with three new felonies under case number CR-2016-3729, which he did not report to his probation officer. (47381 R., p.104.) The district court revoked Aldous' probation and executed the underlying sentence of five years, with two years determinate and retained jurisdiction. (47381 R., pp.126-128.) Two days later, the district court readmitted Aldous to probation in both cases, with the stipulation that he complete inpatient treatment at the Walker Center. (47381 R., pp.132-133; 47382 R., pp.93-95.)

In 2017, Pocatello Police responded to a report that Aldous was highly intoxicated and pounding on his ex-girlfriend's door. (47383 PSI, p.5 (page citations to electronic file named "47383 Appeal-PSI Volume 1.pdf").) Authorities located Aldous standing on Jamie Johansen's porch. (47383 PSI, p.5.) Aldous appeared to be struggling to maintain his balance, and authorities went to speak with Jamie. (47383 PSI, p.5.) Jamie stated that she ended their relationship that day, and that she had texted Aldous, stating she did not want anything to do with him. (47383 PSI, p.5.) One hour after the text was sent, Aldous showed up on her porch, highly intoxicated and angry. (47383 PSI, p.5.) Authorities then spoke with Aldous and asked him why he went to Jamie's residence after she had told him not to. (47383 PSI, p.5.) Aldous stated he wanted to get his belongings and alleged that he did not receive a text from Jamie. (47383 PSI, p.5.) As an officer spoke with Aldous, he noticed the odor of an intoxicating substance emanating from Aldous. (47383 PSI, p.5.) Aldous admitted to consuming at least three sixteen-ounce beers. (47383 PSI, p.5.) Aldous failed to complete the standardized field sobriety test in a satisfactory manner, and he was placed under arrest for suspicion of driving under the influence. (47383 PSI, p.5.) Authorities transported Aldous to the Pocatello Police Department for further testing, but he refused to provide evidentiary breath samples. (47383 PSI, p.5.) Authorities obtained a search warrant for a blood draw from Aldous, and he was transported to a medical center where the blood draw was executed. (47383 PSI, p.5.)

Under case number CR-2017-1719, the state charged Aldous with one count of driving under the influence of alcohol and a persistent violator enhancement. (47383 R., pp.86-91.) Aldous pleaded guilty to driving under the influence of alcohol, a repeated offense, and the state dropped the persistent violator enhancement. (47383 R., pp.108-114, 117-122.) The district court

sentenced Aldous to seven years, with three years determinate and placed him on probation for four years. (47383 R., pp.130-132.)

In 2019, a Bannock County Sheriff's deputy stopped Aldous for driving eighty-five miles per hour in a sixty-five miles per hour zone. (47329 PSI, p.5 (citations to electronic file named "47329 Appeal –Confidential Documents PSI Volume 1.pdf").) Authorities contacted Aldous and noted that his eyes were very glassy and bloodshot. (47329 PSI, p.5.) The deputy could also smell the odor of an alcoholic beverage coming from the vehicle, and from Aldous as he spoke. (47329 PSI, p.5.) A records check showed that Aldous' driver's license was suspended from a previous DUI, and another deputy began a DUI investigation. (47329 PSI, p.5.) Aldous failed the field sobriety test and submitted two breath tests, which results were .252 and .240. (47329 PSI, p.5.) Authorities booked Aldous into the Bannock County Jail for felony DUI and misdemeanor driving without privileges. (47329 PSI, p.5.)

Under case number CR03-19-1932, the state charge Aldous with driving under the influence of alcohol, with a persistent violator enhancement. (47329 R., pp.40-45.) Aldous pleaded guilty to driving under the influence, and the state agreed to dismiss the persistent violator enhancement. (47329 R., pp.69-80.) The district court sentenced him to ten years, with four years determinate. (47329 R., pp.95-97.) The district court then revoked Aldous' probations in CR-2011-15753, CR-2016-3729 and CR-2017-1719. (47381 R., pp.269-270; 47382 R., pp.222-223; 47383 R., pp.184-185.) Aldous filed Rule 35 motions in all four cases, and the district court denied all requests of leniency. (47329 R., pp.99-100, 104; 47381 R., pp.273-274, 278; 47382 R., pp.226-227, 231; 47383 R., pp.188-189, 193.)

On appeal, Aldous argues that the district court abused its discretion by "imposing an excessive sentence in his 2019 DUI case and by denying his subsequent Rule 35 motion," and

when it “denied the Rule 35 motions in his other three cases.” (Appellant’s brief, p.2.) Aldous’ has failed to show that the district court abused its discretion by imposing a sentence of ten years, with four years determinate, and denying his Rule 35 motions.

B. Standard Of Review

“Appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion.” State v. Schiermeier, 165 Idaho 447, \_\_\_, 447 P.3d 895, 899 (2019) (internal quotations and citations omitted). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case. Id. at \_\_\_, 447 P.3d at 902. “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion.” Id. (internal quotations omitted). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2019) (citation omitted).

“If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “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.” State v.

Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Aldous Has Shown No Abuse Of The District Court's Discretion

The sentence imposed is within the statutory limits of I.C. § 18-8004. After granting many opportunities of probation, the district court told Aldous that he's "hanging fire on three felony DUIs since 2011." (47329 Tr., p.28, L.21.) The district court stated that in the previous probation violations Aldous "got a chance to go to the Walker Center" so and Aldous had already been given a second chance. (47329 Tr., p.28, L.22 – p.29, L.3.) The district court then addressed his third case and stated that Aldous was "placed on probation to Wood Court, even though there was a retained jurisdiction recommendation there." (47329 Tr., p.29, Ls.6-8.) The district court noted that Aldous was terminated from the Wood Court for the 2019 DUI offense, that he's done the SHARE, that he has done Redford substance abuse and alcohol counseling, that he's done inpatient treatment, and that he's done intensive outpatient with Gateway. (Tr., p.29, Ls.9-13.) The district court stated that Aldous' "LSI says [he's] a high risk to reoffend. It's a 33. [His] GAIN, after all this treatment, all these attempts at treatment, is calling for Level 2 intensive outpatient treatment." (47329 Tr., p.29, Ls.15-20.) The district court expressed its empathy to Aldous' depression and his situation. (47329 Tr., p.29, Ls.21-23.)

The district court then analyzed the nature of the current offense of the 2019 DUI. The district court stated that "it wasn't a couple drinks. [Aldous'] blood alcohol content was almost three times the legal limit. It wasn't just speeding . . . It wasn't a bad decision on one day. It's multiple bad decisions: 2011, 2016, 2017, and here again on this one." (47329 Tr., p.30, Ls.3-8.) The district court stated that after two years in the Wood Court program, Aldous "learned absolutely nothing." (47329 Tr., p.30, Ls.9-11.) The district court commended Aldous for his

employment, but stated that he let down his employer, his family, and himself. (47329 Tr., p.30, Ls.12-19.) The district court stated that deterrence was an “important part of this because probation has not been a deterrence,” and that “some of [Aldous’] punishment’s been deferred over the years.” (47329 Tr., p.31, Ls.1-9.) The district court stated that Aldous is “in need of correctional treatment that can provide most effectively for [him] in an institution. The lesser sentence will depreciate the seriousness of [his] crime.” (47329 Tr., p.31, Ls.18-21.)

Aldous contends that the mitigating factors—substance abuse issues, temporary sobriety, employment, death of friends, the moving of his boss and mental health counselor, and mental health disorders—show an abuse of discretion. (Appellant’s brief, pp.5-7.) Aldous’ argument does not show an abuse of discretion. Aldous’ repeated noncompliance with the stipulations of his probations and extensive criminal history shows that the sentence imposed is reasonable. The district court granted Aldous numerous opportunities to prove he was amenable to treatment outside of incarceration. Each time, Aldous showed that he is incapable of treatment in the community, and that incarceration is the only deterrence to his criminal behavior. Aldous’ extensive criminal history and LSI score justify the sentence imposed in the 2019 DUI case. (47329 PSI, pp.6-10, 21.)

In his Rule 35 motions, Aldous requested that the district court reconsider his sentences. (47329 R., pp.99-100; 47381 R., pp.273-274; 47382 R., pp.226-227; 47383 R., pp.188-189.) The district court’s decision to deny his Rule 35 motions is supported by the record. Aldous failed to comply with the terms of his community treatments, and he has shown that probation is not a deterrence to his criminal behavior. The district court granted Aldous many opportunities to avoid imprisonment, and he continued to violate the law and his probations.

The offenses of driving under the influence and criminal possession of a financial transaction card are serious and detrimental to the community. Aldous had his opportunities to prove that lesser sentences were reasonable options for the district court, but he repeatedly showed that probation is not proper deterrence to his criminal behavior. Aldous having been on three different probations, and choosing to drive while under the influence of alcohol shows that he does not respect the law, or sentences imposed in his three prior cases he was on probation for. Aldous failed to show that a lesser sentence than those imposed is the only reasonable option. Aldous has failed to show that the district court abused its discretion by imposing a sentence of ten years, with four years determinate, and denying his Rule 35 motions.

#### CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 10th day of June, 2020.

/s/ Kenneth K. Jorgensen  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of June, 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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