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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47447-2019
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR28-18-17828
v.)	
)	
CHANCE TYLER WYNACHT,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Chance Tyler Wynacht pleaded guilty to felony attempted strangulation. The district court imposed a unified sentence of ten years, with five years fixed. Mr. Wynacht filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. On appeal, Mr. Wynacht asserts the district court abused its discretion when it denied his Rule 35 motion.

Statement of the Facts & Course of Proceedings

Dakota Bassett reported to Coeur d'Alene Police Department officers that she had been in an intimate dating relationship with Mr. Wynacht for about a month, and that one night,

Mr. Wynacht had threatened to kill her and then himself, attempted to strangle her multiple times, and threatened her with a knife. (See Presentence Report (*hereinafter*, PSI), pp.16-17, 46-48.)¹ The State charged Mr. Wynacht by Information with five counts of felony attempted strangulation, each with a persistent violator sentencing enhancement; one count of felony burglary, with use of a deadly weapon in the commission of a felony sentencing and persistent violator sentencing enhancements; and one count of felony aggravated assault with use of a deadly weapon and persistent violator sentencing enhancements. (R., pp.62-66.)²

Pursuant to a plea agreement, Mr. Wynacht agreed to plead guilty by way of an *Alford* plea³ to one count of attempted strangulation, and the State agreed to dismiss the other counts and the sentencing enhancements. (See Tr. 12/21/18, p.4, Ls.10-23.)⁴ The district court accepted Mr. Wynacht's *Alford* plea. (Tr. 12/21/18, p.8, Ls.15-17.)

At the time of the incident here, Mr. Wynacht was on probation in two previous cases, Kootenai County Case Nos. CR-2015-3273 and CR-2016-18636, and the parties also agreed he would admit to "corresponding probation violations" in the previous cases. (See PSI, pp.18-19; Tr. 12/21/18, p.43, Ls.16-19; Conf. Docs., p.1.)⁵ For the probation violations in those cases, the district court (with a different presiding judge) subsequently sentenced Mr. Wynacht to a period

¹ All citations to "PSI" refer to the 116-page PDF version of the Presentence Report and its attachments filed in Mr. Wynacht's previous appeal, No. 46871-2019. The Idaho Supreme Court has ordered that the record in this appeal be augmented to include the record and transcripts from No. 46871-2019. (Limited R., p.11.)

² All citations to "R." refer to the Clerk's Record filed in No. 46871-2019.

³ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

⁴ The transcript for the December 21, 2018, change of plea hearing was filed in No. 46871-2019.

⁵ All citations to "Conf. Docs." refer to the 23-page PDF version of the Documents in Aid of Rule 35 Motion, filed under seal. (See Limited R., p.15.)

of retained jurisdiction, following which he would enter into and complete the Good Samaritan Program.⁶ (*See* PSI, p.19; Tr. 3/1/19, p.53, Ls.5-9; Conf. Docs., p.1.)⁷

After his sentencing in the two previous cases, during the sentencing hearing for this case, Mr. Wynacht recommended the district court consider retaining jurisdiction. (*See* Tr. 3/1/19, p.16, Ls.20-22, p.18, Ls.4-10.) Defense counsel suggested the district court could require Mr. Wynacht to perform well during the retained jurisdiction, engage in the Anger Rehabilitation Therapy program while there, and then go through the Good Samaritan inpatient program afterwards. (Tr. 3/1/19, p.17, Ls.2-9.) The State recommended the district court consider imposing a unified sentence of fifteen years, with six years fixed. (Tr. 3/1/19, p.14, Ls.10-12.) The district court imposed a unified sentence of ten years, with five years fixed. (R., pp.84-89.)

Mr. Wynacht appealed, and the Idaho Court of Appeals affirmed his conviction and sentence in an unpublished opinion. (R., pp.90-94; Limited R., pp.29-30.)

Meanwhile, Mr. Wynacht filed a Memorandum for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support. (Limited R., pp.12-14.) Mr. Wynacht asked the district court to “give him credit for 338 days that he’s been incarcerated, to place him onto a period of probation, and to require that he complete the Good Samaritan program.” (Tr. 9/30/19, p.12, Ls.18-22.) After a hearing, the district court denied the Rule 35 motion. (Limited R., pp.23-24. *See generally* Tr. 9/30/19.)

⁶ In No. CR-2015-3273, Mr. Wynacht had been convicted of burglary, with an underlying unified sentence of four years, with two years fixed. (*See* PSI, p.4; Conf. Docs., p.1.) In No. CR-2016-18636, he had been convicted of aggravated driving under the influence, with an underlying unified sentence of six years, with three years fixed. (*See* PSI, p.4; Conf. Docs., p.1.)

⁷ The transcript of the March 1, 2019 sentencing hearing was filed in No. 46871-2019.

Mr. Wynacht filed a Notice of Appeal timely from the district court's Order Denying Defendant's Rule 35 Motion. (Limited R., pp.25-28.)

ISSUE

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

ARGUMENT

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

Mr. Wynacht asserts that the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence, in view of the new and/or additional information presented in support of the 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) (citation omitted). "The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion." *Id.* "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* "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.*

Mr. Wynacht asserts his sentence is excessive in view of the new and/or additional information presented in support of the Rule 35 motion. For example, Mr. Wynacht performed well on his retained jurisdiction "rider" in the two previous cases. On that rider, Mr. Wynacht participated in Thinking for a Change and Aggression Replacement Training programs. (*See*

Conf. Docs., pp.2-3.) Rider program staff reported, “He came to class prepared and was a positive member through the duration of th[ese] classes.” (Conf. Docs., p.3.) Mr. Wynacht was receptive to the materials, could identify how the skills he learned could help him on release, and was often one of the first to volunteer to complete role plays. (Conf. Docs., p.3.) Further, he maintained a positive attitude, actively engaged in group discussions and activities in a pro-social way, and was receptive to feedback. (Conf. Docs., p.3.) Rider program staff wrote: “Based off of his in-class assignments and assigned practice work, it appears that Mr. Wynacht genuinely understood the material presented to him. He could successfully use replacement thoughts, feelings and actions to reduce risk. Based off classroom conduct, it appears that Mr. Wynacht would be a good candidate for community supervision.” (Conf. Docs., p.3.)

Additionally, Mr. Wynacht “did not receive any disciplinary actions,” and he “also did not receive any written or verbal warnings.” (Conf. Docs., p.3.) He also completed the first three steps of Alcoholics Anonymous over 26 hours, the first three steps of Narcotics Anonymous over 22 hours, and the Alternatives to Violence Project program over 20 hours. (Conf. Docs., p.4.) Rider program staff wrote, “Mr. Wynacht has gone above and beyond to keep himself busy with healthy activities and has done so in a pro-social way.” (Conf. Docs., p.4.) Moreover, “As evidenced by his ability to complete all required programming and remain free of disciplinary action, it appears that Mr. Wynacht has been able to successfully use skills learned in programming and apply it to his life while in a secure facility.” (Conf. Docs., p.4.)

Thus, rider program staff recommended the district court in the two previous cases consider placing Mr. Wynacht on probation. (See Conf. Docs., p.5.) They wrote, “Mr. Wynacht has demonstrated amenability to treatment as evidenced by completing all required programming, gaining an increased insight into his behaviors, and applying the skills he has

learned into his daily living while at ISCI.” (Conf. Docs., p.5.) Rider program staff concluded, “We feel that Mr. Wynacht is a viable candidate for community supervision and therefore we respectfully recommend that the court consider granting him probation.” (Conf. Docs., p.5.)

Further, at the Rule 35 motion hearing, John Padula, an employee with Good Samaritan, testified that Mr. Wynacht had been admitted into the program. (Tr. 9/30/19, p.4, L.24 – p.5, L.10.) The program would involve sixty days of inpatient treatment, and six months of outpatient treatment. (Tr. 9/30/19, p.5, Ls.16-21.) As part of the program, Mr. Wynacht would be required to continue abstaining from alcohol and drug use. (Tr. 9/30/19, p.6, Ls.3-6.) The program would also include faith-based treatment and a support system. (Tr. 9/30/19, p.6, Ls.7-18.) During cross-examination, Mr. Padula indicated the Good Samaritan program would treat “Drug, alcohol, character. Any life issues.” (Tr. 9/30/19, p.7, Ls.11-14.)

Also, letters from Mr. Wynacht’s family showed he had their support. Jennifer Wynacht, Mr. Wynacht’s sister, wrote: “I have noticed a tremendous change in Chance Wynacht. Chance is back to being the man I’ve known my entire life. The loving, selfless, brave, strong and caring man I grew up with.” (Conf. Docs., p.12.) She saw the Good Samaritan program “as giving Chance a second shot at life.” (Conf. Docs., p.12.) Ms. Wynacht stated: “After seeing him complete his workshops, I’ve come to see that he is trying. Trying harder than he ever has before to be a better and wiser man.” (Conf. Docs., p.12.) She wrote, “The classes have helped him overcome his anger.” (Conf. Docs., p.12.) According to Ms. Wynacht, Mr. Wynacht “acknowledges the things he has done wrong, and he wishes to make amends.” (Conf. Docs., p.12.) Mr. Wynacht “has chosen to better himself, and to make an effort in not only his life but the lives of loved ones as well. He has chosen to be the father his daughter deserves.” (Conf. Docs., p.13.)

Further, Ms. Wynaht wrote: “There is one thing that has changed that I want to stress more than anything. The change being that he says I love you constantly. He went from feeling unloved, unwanted, and insecure to realizing he is worth it.” (Conf. Docs., p.13.) She stated that Mr. Wynaht “has a family willing to stand by his side always.” (Conf. Docs., p.13.) Ms. Wynaht just wanted “my brother back. This is what I feel like is his last chance to finally be able to take his life back.” (Conf. Docs., p.13.) She finished her letter by stating, “I just want my brother back . . . I know that if given the opportunity he can prove he has grown to be a better man.” (Conf. Docs., p.13 (ellipsis in original).)

Coy Almond, engaged to Ms. Wynaht, also wrote a letter in support. (*See* Conf. Docs., pp.15-16.) He wrote that Mr. Wynaht “is a respectable, kind, strong, intelligent, and selfless person.” (Conf. Docs., p.15.) Mr. Almond loved “to see the improvement that Chance is showing. He is doing great in all his classes and it shows. He handles his anger really well and is more aware of his own feelings.” (Conf. Docs., p.15.) Per Mr. Almond, Mr. Wynaht “is making sure he goes to all his classes, he is doing something he loves to keep his mind focused, and he has surrounded himself with people that love him.” (Conf. Docs., p.15.) Mr. Almond further wrote that in their phone calls with Mr. Wynaht, “he never stops talking about his daughter and saying that he can’t wait to be [a part] of her life. He does all that he can do to support her as well as be there for her as she grows up.” (Conf. Docs., p.15.) Mr. Almond also wanted Mr. Wynaht to “get into the [G]ood Samaritan program and get the helps he needs. The classes he has been taking and the . . . Good Samaritan program will highlight and show how much improvement he has made.” (Conf. Docs, p.16.)

Significantly, Dakota Bassett, “the victim to the defendant,” provided a letter supporting Mr. Wynaht. (Conf. Docs., p.23.) Ms. Bassett wrote: “The incident that happened between

Chance and I left me completely shocked! It was so out of line coming from Chance. I never would've expected that sort of violence to ever happen with him.” (Conf. Docs., p.23.) She also stated, “I have been speaking with Chance almost every single day since he was sent away to the prison in Boise.” According to Ms. Bassett, “When we first started talking on the phone and emailing each other he would always mention how he wanted to get help and wanted to change to do good things in his life while he is still young and to be able to be a good role model to his daughter who is now four months old.” (Conf. Docs., p.23.)

Moreover, Ms. Bassett wrote. “He finally was able to finish some courses from the classes he has taken and it has truly helped him out with just taking those few classes that he did and getting the help that he needed.” (Conf. Docs., p.23.) Mr. Wynaht “sounds so much more positive about what his future holds for himself and actually opens up about his problems instead of bottling everything in for so long.” (Conf. Docs., p.23.) Ms. Bassett also reported that Mr. Wynaht “has finally been able to learn ways to cope with his anger,” and he “has apologized to me repeatedly about how truly sorry he is for making a decision that would impact the rest of his life.” (Conf. Docs., p.23.) He had told her multiple times “how he is well aware that this crime is something he can't ever take back and is very serious.” (Conf. Docs., p.23.) Ms. Bassett concluded, “I strongly believe if Chance was given one last shot to make things right he will continue to keep making great decisions.” (Conf. Docs., p.23.)

Mr. Wynaht's sentence is excessive in view of the above new and/or additional information presented in support of the Rule 35 motion. Thus, the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence.

CONCLUSION

For the above reasons, Mr. Wynacht respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 6th day of January, 2020.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of January, 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

BPM/eas