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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47452-2019
)	
v.)	ADA COUNTY NO. CR-FE-2013-14066
)	
SHANE ERNEST PEREZ,)	
)	
Defendant-Appellant.)	APPELLANT’S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Shane Perez pled guilty to felony domestic battery. He received a unified sentence of ten years, with three years fixed. After Mr. Perez admitted to a second probation violation, the district court revoked Mr. Perez’s probation. Mr. Perez asserts that the district court abused its discretion by denying his Idaho Criminal Rule 35 (“Rule 35”) motion to reduce his sentence.

Statement of the Facts & Course of Proceedings

In 2014, Shane Perez pled guilty to felony domestic battery after an altercation with his girlfriend left her with an abrasion on her hip. (R., p.146.) Pursuant to a plea agreement,

Mr. Perez entered an *Alford* plea to one count of felony domestic battery. (R., pp.149-51.) The district court sentenced Mr. Perez to a unified sentence of ten years, with one and a half years fixed, but suspended the sentence and placed Mr. Perez on probation for five years. (R., pp.161, 166-72.)

In 2015, a motion for probation violation was filed which alleged that Mr. Perez was charged with misdemeanor DUI, failed to comply with relationship restrictions, consumed alcohol, and refused to provide a breath sample. (PSI, pp.27-60.) Mr. Perez admitted to violating one of the terms and conditions of his probation, and the remaining allegations were dismissed, pursuant to an agreement. (R., p.189.) The district court revoked Mr. Perez's probation, but retained jurisdiction. (R., pp.192-95.) After a successful rider, the district court placed Mr. Perez on probation for five years. (R., pp.199-208.)

In 2018, Mr. Perez was again accused of violating his probation. (R., pp.244-87.) The State alleged that he violated his probation by being charged with felony domestic violence; failing to maintain full-time employment; failing to report truthfully to his probation officer; consuming alcoholic beverages; and failing to pay costs, fines, fees, and restitution. (R., p.245.) Mr. Perez admitted to violating some of the terms and conditions of his probation and the remaining allegations were dismissed. (8/12/19 Tr., p.6, Ls.15-24; p.11, L.9 – p.12, L.5; R., p.299.)

At the disposition hearing, Mr. Perez's counsel asked the court to reduce the sentence. (8/12/19 Tr., p.19, L.20 – p.20, L.1.) The State asked for imposition of the suspended sentence. (8/12/19 Tr., p.14, Ls.7-8.) The district court revoked Mr. Perez's probation. (8/12/19 Tr., p.22, Ls.4-7; R., pp.301-04.) Mr. Perez filed a Rule 35 motion, which was denied without a hearing. (R., pp.305-08, 312-15.) Mr. Perez filed a timely Notice of Appeal. (R., pp.316-18.)

ISSUE

Did the district court abuse its discretion by denying Mr. Perez's Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion By Failing To Reduce Mr. Perez's Sentence In Response To The New And Additional Information Submitted In Support Of His Rule 35 Motion

Mr. Perez asserts that the district court abused its discretion by denying his Rule 35 motion in light of the new information submitted in conjunction with his motion. Mr. Perez asserts that the district court's denial of his motion for a sentence modification represents an abuse of discretion.

In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

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). "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.*

In support of his motion for a sentence reduction, Mr. Perez submitted information that he had recently found God. (R., p.306.) During his six years on probation, Mr. Perez completed every drug test and maintained regular communication with his probation officer. (R., p.306.) Mr. Perez, who was only 55 days from an early release by the district court, had also obtained his GED and completed all of the domestic violence classes that the court required. (R., p.306.) Mr. Perez's family—his ex-girlfriend and stepson—also wrote letters to the district court to show their support for Mr. Perez. (R., pp.307-08.)

In light of Mr. Perez's substantial progress while on probation, in addition to his family/community support, the district court should have reduced his sentence. Based on the foregoing, it is clear the district court abused its discretion in failing to reduce Mr. Perez's sentence in response to his Rule 35 motion.

CONCLUSION

Mr. Perez respectfully requests that this Court reduce the indeterminate portion of his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new hearing on his Rule 35 motion.

DATED this 27th day of February, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

SJC/eas