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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
I.S.B. #4115
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47457-2019
)	
v.)	KOOTENAI COUNTY
KATHLEEN CHRISTINE BRYNGELSON,)	NO. CR28-18-17047
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Kathleen Christine Bryngelson appeals from the district court's order denying her Idaho Criminal Rule 35 motion for a reduction of her sentence, which was a prison term of seven years, with two years fixed, for possessing a controlled substance. On appeal, she argues her sentence is excessive in light of the additional information she provided with her Rule 35 motion, and represents an abuse of the district court's sentencing discretion.

Statement of the Facts and Course of Proceedings

In October of 2018, Ms. Bryngelson was stopped by a Rathdrum police officer who knew she was driving without a valid license. (PSI, p.26.) During the ensuing encounter, the officer found small amounts of cocaine and marijuana in baggies, along with drug paraphernalia. (PSI, p.26.) The State charged Ms. Bryngelson with felony possession of a controlled substance, cocaine, misdemeanor possession of marijuana, and misdemeanor possession of drug paraphernalia; the State also alleged Ms. Bryngelson to be a persistent violator. (R., p.49.)

Pursuant to the terms of an agreement, Ms. Bryngelson pled guilty to the felony drug count; in exchange, the State dismissed the misdemeanors, dismissed its persistent violator allegation, and agreed to recommend a sentence no greater than retained jurisdiction. (R., p.149; Tr., p.9, L.14 – p.10, L.18.) The district court noted there was already a presentence investigation report completed in 2006, and with the consent of the parties, the court ordered a “file review” in lieu of a new presentence investigation. (Tr., p.17, Ls.4-21; PSI, pp.26-95.) At the parties’ joint request, the district court released Ms. Bryngelson, pending sentencing, so she could participate in drug treatment at Port of Hope. (Tr., p.9, L.14 – p.10, L.18.) While on release and in treatment, however, Ms. Bryngelson tested positive for drug use more than once, and did not complete the treatment program. (Tr., p.23, L.20 – p.24, L.18; R., p.149; PSI, pp.22-27.)

The Idaho Department of Correction prepared a file review letter containing a review of Ms. Bryngelson’s criminal record and Idaho Department of Corrections records. (PSI, p.26.) The presentence investigator did not interview Ms. Bryngelson, but referenced the recent GAIN assessments which recommended “intensive out-patient treatment” (PSI, p.56), and the Mental Health Review, which found Ms. Bryngelson had “serious mental health illness or other mental

health needs” and that “mental health treatment is recommended to minimize further deterioration,” specifically, “[p]sychiatric medication evaluation, management, and education.” (PSI, pp.36, 68.) Nonetheless, the presentence investigator recommended that Ms. Bryngelson be sentenced to a term of incarceration, without probation, but with beneficial programming. (PSI, p.36.)

At her sentencing hearing, Ms. Bryngelson pointed out that the file review letter omitted significant information about the past decade of her life and did not include a current report from Port of Hope. (Tr., p.22, L.13 –p.23, L.13.) She asked for a continuance to provide that information to the court and also asked to be released to complete her drug treatment. (Tr., p.22, L.13 –p.23, L.13.) The State objected to Ms. Bryngelson’s continued release based on the positive drug tests, and it invoked the plea agreement’s provision releasing it from the agreement’s obligations.¹ (Tr., p.23, L.20 – p.24, L.22; R., p.149.) The district court granted the State’s requests and revoked Ms. Bryngelson’s release, and agreed the State was no longer bound to recommend a sentence with retained jurisdiction. (Tr., p.24, Ls.18-24, p.51, Ls.13-21.) Ms. Bryngelson withdrew her request for a continuance and decided to proceed with sentencing. (Tr., p.24, Ls.11-14.) She made corrections and updates to the file review letter, which were accepted by the district court. (Tr., p.25, L.14 – p.29, L.23.)

Ms. Bryngelson asked the court for probation, or at least a chance to benefit from a rider program and prove herself a worthy probation candidate. (Tr., p.35, L.23 – 38, L.22.) The State cited Ms. Bryngelson’s recent infraction and misdemeanor history and asked the district court to impose a seven-year prison sentence, with two years fixed, without probation or retained

¹ The terms of the plea agreement provide that the State would no longer be bound by the agreement in the event the defendant violated the court-ordered release conditions, and that a showing of a violation requires only probable cause. (R., p.149.)

jurisdiction. (Tr., p.32, Ls.18-22.) The district court adopted the State's recommendation. (Tr., p.41, Ls.2-8; R., p.165.)

Ms. Bryngelson timely filed a Criminal Rule 35(b) motion, asking the court for leniency. (R., p.171.) She included additional information in the form of a letter from Port of Hope. (R., p.174.) She also testified regarding her good behavior, her enrollment in classes, and her work assignment; she also told the court she had been diagnosed with a disabling heart condition. (Tr., p.45, L.18 – p.48, L.4.) Additionally, she reported the stable housing and employment that she would have upon release. (Tr., p.45, L.18 – p.48, L.4.) She asked the district court to reconsider placing her on probation with drug court, retaining jurisdiction, or reducing the length of her sentence. (Tr., p.46, Ls.18-25.) The district court declined Ms. Bryngelson's requested Rule 35 relief. (Tr., p.52, Ls.20-22; R., p.181.)

Ms. Bryngelson filed a Notice of Appeal timely from the order denying her Rule 35 motion. (R., p.183.)

ISSUE

Did the district court abuse its discretion when it denied Ms. Bryngelson's Criminal Rule 35 Motion For Reduction Of Sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Ms. Bryngelson's Criminal Rule 35 Motion For Reduction Of Sentence

A. Introduction

The district court erred in denying Ms. Bryngelson's Criminal Rule 35(b) motion for reduction of her sentence. The additional information Ms. Bryngelson presented to the district court demonstrates that her sentence of seven years, with two years fixed, without probation or retained jurisdiction, is excessively harsh. The order denying her motion should be reversed.

B. Standard Of Review

The district court's sentencing decisions are reviewed under the multi-tiered abuse of discretion standard. *State v. Miller*, 151 Idaho 826, 834 (2011). The relevant inquiry is whether the district court: correctly perceived the issue as one of discretion; acted within the boundaries of its discretion; acted consistently with the legal standards applicable; and reached its decision by an exercise of reason. *Id.*; *see also State v. Le Veque*, 164 Idaho 110, 12 (2018).

A request for reduction of sentence pursuant to Idaho Criminal Rule 35(b) is essentially 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). "When 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 Rule 35 motion." *State v. Huffman*, 144 Idaho 210, 203 (2007). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Trent*, 125 Idaho at 253.

The determination of whether to place a defendant on probation or instead to send her to prison is governed by the legal standards set forth in Idaho Code § 19-2521, which require that the district court *not* impose a prison sentence "unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public . . ." *Id.* Where, as in the present case, the district court lacks sufficient information at the time of sentencing to decide if a defendant is suitable for probation, the court has discretion to impose sentence and retain jurisdiction for further evaluation by the Department of Correction, and afford the defendant an opportunity to demonstrate her rehabilitation potential and suitability for probation.

See I.C. § 19-2601(4); *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005); *State v. Lee*, 117 Idaho 203, 205-06 (Ct. App. 1991). The district court's refusal to retain jurisdiction for such further evaluation will not be deemed an abuse of discretion if the district court already has sufficient information to determine that a suspended sentence and probation would be inappropriate under Idaho Code § 19-2521. *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982).

Where a defendant challenges her 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. *Miller*, 151 Idaho at 834.

C. The Additional Information Presented In Connection With Ms. Bryngelson's Rule 35 Motion Demonstrates That Her Seven Year Sentence, With Two-Years Fixed, Without A Chance Of Probation, Is Unreasonably Harsh

In connection with her Rule 35 motion, Ms. Bryngelson presented additional information that showed she was worthy of a chance to participate in drug court, or an earlier chance for parole. In the letter from Port of Hope, her counselor, Dixie Taylor informed the court that Ms. Bryngelson had been engaged in her treatment and focused on her sobriety, and that she had attended classes consistently, completing all required work. (R., p.174.)

Ms. Bryngelson also testified that upon her arrival at the prison she had enrolled in classes – TFAC (Thinking for a Change), and CBI-SA (Cognitive Behavior Interventions for Substance Abuse). (Tr., p.45, Ls.20-25.) Her behavior was good and she was given a job and had begun working, until chest pains and fluid around her heart forced her to take bedrest. (Tr., p.45, Ls.20 – p.46, L.2.) Ms. Bryngelson also advised the court she had stable housing waiting in Hayden, and a job at a family-owned excavation company. (Tr., p.47, Ls.3-7.) She

also shared her intention to complete her education and her aspiration of a career in drafting and design. (Tr., p.47, Ls.10-14.)

Ms. Bryngelson additionally asserts that, when viewed through the lens of this new information, her personal history further demonstrates that her sentence is unreasonably harsh.

Ms. Bryngelson was 34 at the time of her sentencing. (Tr., p.31, L.12.) She suffered traumatic childhood experiences that should be taken into account. She was raised by a mother who used drugs and was never around. (PSI, p.42.) Her biological father left when she was just two; her mother lied and said he was dead and then had three more children, with other men, and one of those men raped Ms. Bryngelson when she was nine. (PSI, p.42.) Her mother subsequently overdosed on heroin in the bathtub while the younger children were home, and Ms. Bryngelson and her siblings were then placed in foster care. (PSI, p.42.)

Ms. Bryngelson began drinking at age 15 and developed a serious drinking problem. (PSI, p.58.) She was consuming about two fifths of tequila a day when this offense occurred. (PSI, p.58.) It was not until she was in her thirties that Ms. Bryngelson started using cocaine, specifically crack cocaine, on weekends. (PSI, p.58.) The GAIN assessed Ms. Bryngelson as having severe alcohol and drug disorders and recommended she receive “intensive out-patient treatment.” (PSI, p.56.) In addition, her Mental Health Review found Ms. Bryngelson had “serious mental health illness or other mental health needs” and that “mental health treatment is recommended to minimize further deterioration,” specifically, “[p]sychiatric medication evaluation, management, and education.” (PSI, pp.36, 68.) It further warned that Ms. Bryngelson’s mental health disorders posed a “high potential for distraction from treatment.” (PSI, p.64.) Regrettably, but upon the advice of her counselor, Ms. Bryngelson was not

receiving mental health treatment but had deferred seeing a mental health professional until she had made further progress in drug treatment. (Tr., p.26, Ls.2-7.)

However, and notwithstanding the lack of needed mental health treatment, Ms. Bryngelson still made progress in treatment at Port of Hope. She told the court at her original sentencing,

I love being in recovery. I love – I never thought I would love life not using drugs and alcohol, but I do very much so.

And I actually associate with my family now and I don't avoid them because back when I was using drugs and alcohol, I wouldn't go around my family, I wouldn't do that. And now I'm actually involved very much in my kids' life and my nieces and nephews and my mom. And I just know I've changed my life a lot, and I just – I don't know how to be able to show that to you because I don't have a report from anyone.

(Tr., p.28, Ls.9-23.)

Regarding her desire for probation, she explained,

I feel I would benefit a lot -- a lot more on probation, a lot more staying in my treatment than I would being -- one of my biggest issues in my life is abandonment and -- from both my parents and me to my children, carried on to my children. And I don't feel that if -- I feel that if that cycle continues then I will continue on a bad path and that's not what I want. I'm 34 and I want -- my goal was to have all my children under one roof and to be the mom I know I can be.

(Tr., p.31, Ls.5-16.)

She acknowledged her past failures on probation, when she was in her early twenties, she told the court that now, at 34,

I feel that I can -- I can make it on probation this time. And I didn't give myself a chance in the past. I didn't care. I was a naive child and I thought rules didn't matter, and I know now that they do. And I know I can -- I know I can. And for the first time in my life I have that focus and I have a great support system and I never had that before. I never had someone I could call whenever I felt like. Like I just had my brother's four-year death anniversary² on Friday, and it was first time that I didn't get drunk. He died in my arms on my driveway and it was the first

² Ms. Bryngelson's brother died of suicide in May of 2018. (PSI, p.64.)

time I didn't get drunk or I didn't get high. I was actually sober and I was able to call someone and be like, "I feel like I need to go to the bar right now." And they're, like, "No, you don't. You need to be -- have good people. You need to come here right now." And I did. I went to Port of Hope. And I played basketball with everybody until the wee hours until they let me leave. And so I just -- I know that I can do this this time.

(Tr., p.32, L.20 – p.33, L.13.)

In light of the additional information presented with her Rule 35 motion, Ms. Bryngelson's prison sentence of seven years, with two years fixed, is excessive and therefore unreasonable, representing an abuse of the district court's discretion.

CONCLUSION

Ms. Bryngelson respectfully asks this Court to reverse the district court's order denying her Rule 35 motion, and to remand her case to the district court with instructions that the district place her on probation, retain jurisdiction, or alternatively reduce the fixed portion of her sentence.

DATED this 26th 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 26th 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