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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47457-2019
Plaintiff-Respondent,	)	
	)	Kootenai County Case No.
v.	)	CR28-18-17047
	)	
KATHLEEN C. BRYNGELSON,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
	)	

Has Bryngelson failed to show that the district court abused its sentencing discretion when it denied her motion to reduce her sentence of seven years with two years determinate for possession of cocaine?

ARGUMENT

Bryngelson Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The state charged Kathleen C. Bryngelson with possession of cocaine, possession of marijuana, and possession of paraphernalia. (R., pp. 48-50.) Bryngelson pled guilty to possession

of cocaine and the state dismissed the other charges as part of a plea agreement. (R., pp. 145-53.) The district court imposed a sentence of seven years with two years determinate. (R., pp. 165-66.)

Bryngelson filed a motion for reconsideration of her sentence. (R., pp. 170-72.) In support of the motion Bryngelson provided a letter from a treatment facility stating she "completed detox on 4/16/3019 [sic]," had "entered Intensive Outpatient on 5/6//19 [sic]," had "attended 4 times weekly and bi-monthly individual sessions on [sic] until she was jailed," and "appear[ed] engaged in her treatment and appeared to be focused on her sobriety." (R., p. 174.) The district court denied the motion. (R., p. 181.) The district court found that it had imposed the sentence of seven years with two determinate "based on the long criminal history that Ms. Bryngelson had." (Tr., p. 51, Ls. 13-21.) That history included not only drug offenses, but also thefts and other law violations. (Tr., p. 52, Ls. 2-6.) The court was aware of "the difficulties in Ms. Bryngelson's life." (Tr., p. 51, L. 22 – p. 52, L. 2.) The district court recognized that she was "doing well" at that time, but that was something that should be considered in relation to a future parole. (Tr., p. 52, Ls. 10-19.)

Bryngelson filed a notice of appeal timely only from the denial of her Rule 35 motion for reconsideration. (R., pp. 183-85.) On appeal she asserts that her sentence is excessive, and that a reasonable sentence would allow her to be in drug court or have an earlier opportunity at parole. (Appellant's brief, pp. 6-9.) Review of the record shows that the district court did not abuse its discretion.

B. Standard Of Review

"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). When reviewing for an abuse of

discretion the appellate court applies a four factor test of whether the lower 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, 421 P.3d 187, 194 (2018).

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

"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." Huffman, 144 Idaho at 203, 159 P.3d at 840. This is so because, "absent the presentation of new evidence, an appeal from a Rule 35 motion merely asks this Court to review the underlying sentence." State v. Adair, 145 Idaho 514, 517, 181 P.3d 440, 443 (2008).

Review of the record shows no abuse of discretion because the new evidence did not influence the district court's findings of fact or change the district court's stated rationale for the sentence. At sentencing, as part of a request for a continuance (later withdrawn) Bryngelson's counsel informed the district court that Bryngelson had been unable to obtain a report from her substance abuse treatment provider of how well she had been doing in treatment. (Tr., p. 22, L. 13 – p. 23, L. 5.) Bryngelson represented that she had been doing "really, really good" in treatment. (Tr., p. 26, L. 25 – p. 27, L. 18.) The district court stated that it accepted Bryngelson's "representation that [she's] doing well in recovery." (Tr., p. 28, L. 24 – p. 29, L. 1.)

Later, in stating its rationale for the exercise of its sentencing discretion the district court applied the correct legal standards for sentencing. (Tr., p. 38, Ls. 7-17.) It found that Bryngelson's criminal record is "a long one." (Tr., p. 39, Ls. 4-5.) She committed her first felony when she was 19, had several probation violations, and committed new offenses on a nearly annual basis for

more than a decade. (Tr., p. 39, L. 5 – p. 41, L. 1.) The district court "accept[ed]" that she now was "trying very hard" in her recovery, "but one cannot rack up this kind of criminal history for years and years and years here, virtually every year, and then at the last minute throw themselves into rehabilitation and say, Judge, no consequences, I'm really doing good now." (Tr., p. 41, Ls. 14-19.) Thus the district court imposed a sentence of seven years with two years determinate which it did not suspend but instead imposed. (Tr., p. 41, Ls. 2-8.)

When asked to reconsider based on the report of the treatment center, the district court determined that the new information did not change the underlying reasons for its sentence. (Tr., p. 51, L. 13 – p. 52, L. 19.) Because (1) the district court's reasoning is supported by the record, (2) the district court already found at sentencing that treatment was going well based on Bryngelson's representations, and (3) the new information merely confirmed the factual finding already made and employed by the district court, the district court's rationale was not altered by the information provided Bryngelson. She has shown no abuse of discretion.

Bryngelson asserts that her sentence is excessive "when viewed through the lens of [the] new information" provided by her motion. (Appellant's brief, p. 7.) However, the record shows that the district court imposed a sentence based on Bryngelson's representations that she was doing well in treatment. Bryngelson's presentation of evidence merely confirming the factual findings underpinning the sentence that had already been made by the district court was not new or additional information showing that the sentence was excessive.

CONCLUSION

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

DATED this 30th day of April, 2020.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of April, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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