

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

2-12-2020

State v. Brandon Appellant's Brief Dckt. 47542

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Brandon Appellant's Brief Dckt. 47542" (2020). *Not Reported*. 6405.
https://digitalcommons.law.uidaho.edu/not_reported/6405

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

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

ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender
I.S.B. #7259
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,)	
)	NO. 47542-2019
Plaintiff-Respondent,)	
)	BUTTE COUNTY NO. CR-2018-119
v.)	
)	
BRENT WARREN BRANDON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Brent Warren Brandon appeals from the district court’s Order Denying Defendant’s Success[ive] Motion for Correction of Reduction of Sentence. Mr. Brandon was sentenced to a unified sentence of seven years, with three years fixed, for his domestic battery with a traumatic injury conviction. Mindful that he filed a previous Rule 35 motion, he asserts that the district court abused its discretion by denying his successive Rule 35 motion for a reduction of sentence.

Statement of the Facts & Course of Proceedings

On March 29, 2018, a Prosecuting Attorney’s Information was filed charging Mr. Brandon with domestic battery with a traumatic injury. (R., pp.45-46.) He entered a guilty

plea to the charge and was sentenced to a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.54-55, 82-83.) Later, the district court relinquished jurisdiction. (R., p.91.)

Mr. Brandon filed a Motion for Reconsideration timely from the order relinquishing jurisdiction. (R., pp.93-94.) The district court denied the motion. (R., pp.95-100.) Nearly two months later, he filed a successive Motion for Correction or Reduction of Sentence, ICR 35. (R., pp.102-04.) The motion was denied. (R., pp.120-23.) Mr. Brandon appealed timely from the district court's Order Denying Defendant's Successive[ive] Motion for Correction or Reduction of Sentence. (R., pp.126-33, 138-40.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Brandon's Successive Idaho Criminal Rule 35 Motion?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Brandon's Successive Rule 35 Motion

Mindful that he previously filed a Rule 35 motion, Mr. Brandon asserts the district court abused its discretion in denying his successive Rule 35 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) (citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* (citing *Lopez*, 106 Idaho at 450).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). In order to show an abuse of discretion, Mr. Brandon must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). “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 201, 203 (2007).

Appellate courts use a four-part test for determining whether a district court abused its discretion: 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). Mr. Brandon asserts that the district court failed to give proper consideration to the information provided in support of his Rule 35 motion and, as a result, did not reach its decision by an exercise of reason.

In support of his Rule 35 motion, Mr. Brandon argued that:

In [August] of 2018[,] I, Brent Brandon, was sentenced to a rider at Cottonwood [Idaho] for domestic battery. On the 22 of April, 2019, my rider was revoked for unauthorized exchange of property and unauthorized writing in an S.A. [booklet]. I believe that my sentence should be reconsidered for the following reasons: In 2005[,] I was diagnosed with ADHD at the Miralok(?) [sic] Clinic in Grand Junction[, Colorado] and put on medication. In 2013[,] I was pronounced dead from traumatic brain injury due to an automobile accident, resulting in brain damage. Coupled with a learning [disability] my entire life, evidence by my never completing schooling beyond grade [six], I have struggled with my reading / writing / comprehension. I have been on prescribed medications since my

diagnosis in 2005 but upon transferring to cottonwood, my medication was withheld for reasons unknown, exacerbating my condition. In an attempt to properly complete my sentence, I [sought] help from tutors and mentors (documentation held in property at Cottonwood). I also filled out numerous concern forms in an attempt to alleviate my condition. Without my medication[,] I enlisted the help of a fellow inmate to assist me in the comprehension of my program requirements, unbeknownst to me, a violation resulting in the [revocation] of my rider. I have since resumed my medication and humbly request your consideration for reducing my sentence.

(R., p.103.)

Based on the above information, Mr. Brandon asserts that the district court abused its discretion by denying his successive Rule 35 motion. He asserts that had the district court given proper consideration the statement in support of his motion, it would have granted the Rule 35 motion and reduced his sentence.

CONCLUSION

Mr. Brandon respectfully requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 12th day of February, 2020.

/s/ Elizabeth Ann Allred
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th 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

EAA/eas