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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47544-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-30384
v.)	
)	
JUAN CUELLAR,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Juan Cuellar pled guilty to one count of possession of methamphetamine. He received a unified sentence of seven years, with two years fixed. Mr. Cuellar asserts his sentence is excessive in light of the mitigating factors that exist in his case. He further contends that the district court abused its discretion in failing to reduce his sentence in light of the additional information submitted in conjunction with his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion.

Statement of the Facts & Course of Proceedings

On July 26, 2019, law enforcement assisted with a parole officer's check on a wanted parole absconder, Juan Cuellar. (Presentence Investigation Report (*hereinafter*, PSI),¹ p.1.) A search of Mr. Cuellar's hotel room revealed drug paraphernalia, a small amount of a substance testing presumptively positive for marijuana, and baggies containing a crystal substance which tested presumptively positive for methamphetamine. (PSI, pp.1-2.)

Based on these facts, Mr. Cuellar was charged by Information with felony possession of methamphetamine, misdemeanor possession of marijuana, and misdemeanor possession of drug paraphernalia. (R., pp.27-28.) Pursuant to a plea agreement, Mr. Cuellar pled guilty to felony possession of methamphetamine. (9/16/19 Tr., p.5, Ls.4-16; p.14, Ls.11-14; R., pp.31-42.) In exchange, the State agreed to dismiss the remaining charges and to recommend a sentence of one and a half years fixed, concurrent with another case for which Mr. Cuellar was on parole.² (9/16/19 Tr., p.5, Ls.9-16; R., p.34.)

At the sentencing hearing, the State asked the district court to sentence Mr. Cuellar to one and one-half years fixed, with no indeterminate time. (10/21/19 Tr., p.17, Ls.17-20.) Defense counsel also asked the district court to sentence Mr. Cuellar to one and one-half years fixed, with no indeterminate term. (10/21/19 Tr., p.21, Ls.7-10.) Mr. Cuellar was sentenced to seven years, with two years fixed. (10/21/19 Tr., p.24, Ls.13-17; R., pp.45-48.) Mr. Cuellar filed a timely I.C.R. 35 motion for leniency. (R., pp.55-61.) However, the district court denied the motion,

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

² In Ada County CR10-15810, Mr. Cuellar was on parole after being convicted of possession of a controlled substance. (PSI, pp.2, 19, 36.)

finding new information regarding the dismissal of an attempted strangulation charge that was pending during sentencing did not warrant leniency. (Aug., pp.1-6.)

Mr. Cuellar filed a notice of appeal timely from the judgment of conviction. (R., pp.49-51.)

ISSUES

- I. Did the district court abuse its discretion when it imposed an aggregate unified sentence of seven years, with two years fixed, upon Mr. Cuellar following his plea of guilty to possession of methamphetamine?
- II. Did the district court abuse its discretion when it denied Mr. Cuellar's Idaho Criminal Rule 35 Motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Sentence Of Seven Years, With Two Years Fixed, Upon Mr. Cuellar Following His Plea Of Guilty To Possession Of Methamphetamine

Mr. Cuellar asserts that, given any view of the facts, his sentence of seven years, with two years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). 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).

Mr. Cuellar does not allege that his sentence exceed the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by an exercise of reason, Mr. Cuellar must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.*

In light of the mitigating factors present in this case, Mr. Cuellar's sentence is excessive considering any view of the facts.

Mr. Cuellar has a supportive family to assist him in his rehabilitation. *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts). Mr. Cuellar has a good relationship with his mother, with whom he speaks every day and visits on Sundays. (PSI, p.20.) He also has a supportive wife, to whom he has been married for approximately six years. (PSI, p.21.) His family is important to him. (PSI, p.25.)

Mr. Cuellar is addicted to methamphetamine. (PSI, p.24.) He acknowledges that methamphetamine use has caused problems in his life with his family, his employment, and law enforcement. (PSI, p.24.) Mr. Cuellar has tried to stop using methamphetamine and wants to remain sober. (PSI, pp.24-25.)

Further, Mr. Cuellar expressed remorse and accepted responsibility for his actions. (9/16/19 Tr., p.5, Ls.4-16; p.14, Ls.11-14; PSI, p.3.) At his presentencing interview, Mr. Cuellar expressed regret for his actions. (PSI, p.3.) He said, "I feel like I've failed my family and loved ones because of my addiction." (PSI, p.3.)

I know my struggle is real. I have sponsors and family that believe in me that I can overcome this addiction. I will take the extra steps to keep my sobriety I don't want prison to be my life. I'm getting up in age and don't want to waste my time away. I want to be productive in life to prove to myself and loved ones that I can be a productive citizen and better son, brother, father, and husband. And take one day at a time.

(PSI, p.3.) He told the court at his sentencing hearing:

I want to say that I know the struggle with addiction is real, I understand that it's been part of my life, and now I'm getting older, I don't want to spend the rest of my life in prison. Every time I'm in there, I see old men, I'm like, I don't want to be one. My struggle with my addiction is, I realize, it's getting a downfall, it's taking a toll on me, and I know I need to work on my sobriety.

When I get overwhelmed, I always look to what I know. It's like, I know I need to switch it up, I know I need to keep my sobriety going. I have a treatment program that I go to, I have a sponsor, and I have family friends that help me. So I understand right now that when I feel that way, I need to work on my sobriety and take it a day at a time. That's the only way I'm going to beat that struggle.

(10/21/19 Tr., p.21, L.14 – p.22, L.5.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Mr. Cuellar asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his remorse, his addiction, and his family support, it would have imposed a less severe sentence.

II.

The District Court Abused Its Discretion When It Denied Mr. Cuellar's Rule 35 Motion For A Sentence Reduction In Light Of The New Information Offered In Support Of His Rule 35 Motion

Although Mr. Cuellar contends that his sentence is excessive in light of the information in front of the district court at the time of his October 21, 2019 sentencing hearing (*see* Part I,

supra), Mr. Cuellar asserts that the excessiveness of his sentence is even more apparent in light of the new information submitted in conjunction with his Rule 35 motion. Mr. Cuellar asserts that the district court's denial of his motion for a sentence modification represents an abuse of discretion.

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.*

Mr. Cuellar asked the court to reduce his sentence from seven years, with two years fixed, to one and one-half years fixed, with no indeterminate time. (Aug., p.1.) In support of his motion for a sentence reduction, Mr. Cuellar submitted information regarding the circumstances that occurred three weeks prior to his sentencing hearing in the controlled substance case; namely, that a criminal complaint was filed alleging he committed attempted strangulation in July of 2019. (R., pp.55-56.) Mr. Cuellar recounted what had transpired with the prosecutor's recommendation at the sentencing hearing, defense counsel's comments, and the district court's sentencing decision. (R., pp.56-57.) Mr. Cuellar also noted that, after a preliminary hearing, the attempted strangulation was dismissed on November 6, 2019. (R., p.57.) Mr. Cuellar asserted that leniency was warranted because the prosecutor and the district court admonished Mr. Cuellar "for a charge that was dismissed shortly after his sentencing." (R., p.58.) Mr. Cuellar asserted that the prosecutor's recommendations conveyed a reservation which

impacted the court's decision. (R., p.60.) Further, Mr. Cuellar asserted that the State impliedly breached the plea agreement by arguing the pending attempted strangulation as an aggravating factor to be considered in sentencing Mr. Cuellar, although it was later dismissed, and the court considered the charge in sentencing Mr. Cuellar. (R., p.60.)

In denying Mr. Cuellar's Rule 35 motion, the district court concluded that whether or not the State breached the plea agreement was of no import to the district court's decision on the Rule 35 motion. (Aug., p.4.) The district court framed the question as, "whether the Court was influenced by the State's reservation and/or the attempted strangulation charge in imposing the sentence and whether the dismissal of that charge would alter the Court's sentence." (Aug., p.4.) The court concluded, "The answer to both is 'no.'" (Aug., p.4.) The district court denied Mr. Cuellar's Rule 35 motion, finding that Mr. Cuellar "has failed to demonstrate that his sentence is excessive in light of the now-dismissed attempted strangulation charge and/or the State's alleged breach of the plea agreement." (Aug., p.5.)

In light of the new and/or additional information submitted by Mr. Cuellar in support of his Rule 35 motion, the district court should have reduced his sentence. Based on the foregoing, in addition to the mitigating evidence before the district court at the time of sentencing, it is clear the district court abused its discretion in failing to reduce Mr. Cuellar's sentence in response to his Rule 35 motion.

CONCLUSION

Mr. Cuellar respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 1st day of May, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 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

SJC/eas