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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47723-2020
)	
v.)	BANNOCK COUNTY
)	NO. CR-2017-14530
BRANDON HOOVER,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Brandon Hoover pled guilty to one count of possession of methamphetamine. He received a sentence of five years, with three years fixed. He filed a timely I.C.R. 35(b) motion for leniency. Mindful that he did not assert any new or additional information in support of his motion, Mr. Hoover contends that the district court abused its discretion in failing to reduce his sentence pursuant to his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion.

Statement of the Facts & Course of Proceedings

On September 17, 2019, when officers served an arrest warrant upon Brandon Hoover, a search incident to arrest revealed a baggie containing a crystalline substance and a pipe. (R., p.16.) The substance tested presumptively positive for methamphetamine. (R., p.16.)

Based on these facts, Mr. Hoover was charged by Information with one count of possession of methamphetamine. (R., pp.43-44.) Pursuant to a plea agreement, Mr. Hoover pled guilty to possessing methamphetamine. (R., p.69-72, 75.) Mr. Hoover was sentenced to five years, with three years fixed, but his sentence was suspended and he was placed on probation for four years. (R., pp.86-92.) After the State filed a motion alleging that Mr. Hoover violated his probation, he admitted to violating some of the terms of his probation and the district court revoked probation. (R., pp.97-100, 112-15.) He filed a timely motion requesting relief under I.C.R. 35(b). (R., pp.116-17.) After a hearing at which Mr. Hoover was not present, the district court denied the motion, finding that Mr. Hoover did not provide new or additional information in support of his motion for leniency. (R., pp.120-22.) Mr. Hoover filed a timely notice of appeal. (R., pp.123-25, 129-32.)

ISSUE

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

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Hoover's Rule 35 Motion For A Sentence Reduction

Mindful that Mr. Hoover did not present new or additional information in support of his motion for leniency, Mr. Hoover 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.*

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. Hoover 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).

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. Hoover asked the court to modify his sentence. (R., p.116.) This was Mr. Hoover's first probation violation in this case, and he was in communication with his assigned probation officer just days before his probation officer filed the violation. (R., pp.99-100.) The district court should have exercised its discretion and granted Mr. Hoover's motion for leniency. The district court abused its discretion in failing to reduce Mr. Hoover's sentence in response to his Rule 35 motion. Mindful that Mr. Hoover did not submit new or additional information in support of his motion for leniency, he asserts that the district court erred in denying his motion.

CONCLUSION

Mr. Hoover respectfully requests that this Court reduce his sentence as it deems appropriate or remand his case to the district court for a new sentencing hearing. 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 23rd day of April, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 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