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### State v. Sartin Appellant's Brief Dckt. 47747

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47747-2020
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY
v.	)	NO. CR42-19-2186
	)	
KENNETH DWAYNE SARTIN, JR.,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Kenneth Sartin, Jr., pled guilty to one count of aggravated assault, and two counts of misdemeanor injury to a child. He was sentenced to eight years, with four years fixed, on the aggravated assault charge, and to six months on each of the injury to child counts, concurrent with the aggravated assault sentence. Mr. Sartin filed a Rule 35 motion for reconsideration of his sentence, which was denied by the district court. Mindful of the fact that his plea agreement contained a waiver of his right to file a Rule 35 motion, and the fact that his motion did not comply with *State v. Huffman*, 144 Idaho 201, 203 (2007), which held that a Rule 35 motion

should contain “new information that the court could properly consider,” Mr. Sartin nevertheless contends the district court abused its discretion when it denied his motion.

### Statement of the Facts & Course of Proceedings

In early March 2019, Twin Falls deputies were dispatched to a domestic dispute “where gun shots had been reported.” (PSI, p.10.) A heavily intoxicated Mr. Sartin was located outside his residence and arrested after he admitted to firing a gun multiple times into the air. (PSI, p.10.) An Information was filed charging Mr. Sartin with one count of felony aggravated assault, with a deadly weapon enhancement, one count of felony malicious injury to property, two counts of injury to a child, and one count of exhibition or use of a deadly weapon. (R., pp.20-23.) Through a plea agreement with the State, Mr. Sartin agreed to plead guilty to felony aggravated assault, with a deadly weapon enhancement, and the two misdemeanor counts of injury to a child. (R., p.46.) In return, the State agreed to dismiss the remaining charges and not file any additional charges, and to recommend a total sentence of eight years, with four years fixed, with all sentences running concurrently. (R., p.46.) The court accepted Mr. Sartin’s guilty plea. (R., p.45.)

At the sentencing hearing, the State made the recommendation required by the plea agreement—an executed sentence of eight years, with four years fixed. (Tr., p.20, L.23 – p.21, L.1.) Mr. Sartin’s attorney recommended the court retain jurisdiction. (Tr., p.27, Ls.18-22.) The court imposed a sentence of eight years, with four years fixed on the aggravated assault charge, and concurrent sentences of six months on each of the two injury to a child charges. (Tr., p.36, Ls.16-18; p.37, Ls.5-11.)

Mr. Sartin then timely filed a motion for reconsideration of his sentence under Idaho Criminal Rule 35. (R., p.102.) The court denied that motion, ruling, “[t]he defendant provided no new information convincing the Court that the sentence should be reduced.” (R., p.104.)

Mr. Sartin timely appealed from the court’s denial of his Rule 35 motion. (R., pp.106-09.)

### ISSUE

Did the district court abuse its discretion when it denied Mr. Sartin’s motion for a sentence reduction?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Mr. Sartin Rule 35 Motion For A Sentence Reduction

##### A. Introduction

Mindful of the fact that Mr. Sartin’s plea agreement contained a waiver of his right to seek a sentence reduction pursuant to Rule 35, as well as the fact that he did not present any new or additional information in support of his Rule 35 motion, as is required by *State v. Huffman*, 144 Idaho 201, 203 (2007), Mr. Sartin nevertheless asserts that the district court abused its discretion when it denied his Rule 35 motion.

##### B. Standard Of Review

A motion for reduction of sentence under Rule 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319 (2006).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. 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) (emphasis in original).

C. The District Court Abused Its Discretion When It Denied Mr. Sartin Rule 35 Motion For A Reduction Of Sentence

Idaho Criminal Rule 35(b) allows a court “to correct a sentence that has been imposed in an illegal manner or to reduce a sentence.” I.C.R. 35(b). “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.

While he is mindful of the fact that his plea agreement contained a waiver of his right to file a Rule 35 motion or an appeal (*see R.*, p.46), and that he offered no new information in support of his Rule 35 motion, *see Huffman*, 144 Idaho at 203, Mr. Sartin nevertheless asserts that the district court should have granted his Rule 35 motion and reduced his sentence. He contends that a sentence reduction was warranted by his mental health and substance abuse problems, his difficult upbringing, his acceptance of responsibility, and his generally good character.

The record contains many references to mental health problems experienced by Mr. Sartin. (*See, e.g.*, PSI, pp.21, 24 (“Mr. Sartin reported being diagnosed with a psychiatric disorder at [REDACTED]. He was prescribed Lithium. He did not recall the diagnosis, but Lithium is commonly prescribed to treat Bipolar Disorders. He attempted suicide on March 2, 2019. He stated that he ‘held a gun to my head and fired a shot in my house.’ He also attempted to hang himself at [REDACTED].”), p.17 (“Kenneth reported he withdrew from Oakridge High School in the ninth grade. [He] was enrolled in special education classes, because he was diagnosed with a learning disability.”).) In addition, Mr. Sartin has a history of alcohol abuse, and that alcohol abuse had an impact on the events of this case. (*See, e.g.*, PSI, p.10 (discussing Mr. Sartin’s admissions to police officers that “he had consumed a large amount of alcohol earlier in the

night”), p.11 (Mr. Sartin noting “it took him weeks to remember all of the details [of that night] because he was ‘so drunk’”), p.18 (discussing Mr. Sartin’s history of alcohol abuse); pp.24-25 (same.) Although he also has a history of drug abuse, he has successfully rehabilitated from his addiction to controlled substances. (See PSI, p.24 (discussing Mr. Sartin’s reconciliation with his wife “after he attended treatment and stopped using drugs”); p.18 (discussing a previous addiction to methamphetamine and current attendance at AA meetings while incarcerated).)

Mr. Sartin also had a troubled childhood. His parents divorced when he was a young child and he bounced around from house to house, eventually being placed in foster care due to his mother’s drug use. (PSI, p.13.) He was also sexually abused between the ages of eight and nine. (PSI, p.13.) He began drinking alcohol at ██████ using marijuana at ██████, cocaine at ██████ and methamphetamine at ██████ (PSI, p.18.) He also attempted to commit suicide by hanging himself at ██████. (PSI, p.21.)

In a written statement to the court, Mr. Sartin said, “I take full [responsibility] for my actions.” (PSI, p.20.) Mr. Sartin told the court at sentencing, “I’ve never once denied the fact that I shot the gun off in the house. I’ve never once – not even from the time the cops asked me what happened to now.” (Tr., p.30, Ls.18-21; *see also* PSI, pp.11, 42.)

Finally, Mr. Sartin is a man of generally good character. He founded a charity called Wings for Heroes of Idaho. (PSI, p.14.) His attorney spoke to the court about how that charity began, and what it means to Mr. Sartin. (See Tr., p.24, Ls.3-22.) He explained that Mr. Sartin learned one day that his “son gave his last \$5 to a veteran who needed help.” (Tr., p.24, Ls.14-15.) “[A]nd when Mr. Sartin found out about that, it impressed him to such a degree that he started this organization to help veteran[s] suffering with PTSD.” (Tr., p.24, Ls.15-17.)

Mr. Sartin asserts that, properly weighed, this mitigating evidence warranted a sentence reduction.

CONCLUSION

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

DATED this 23<sup>rd</sup> day of July, 2020.

/s/ Erik R. Lehtinen  
ERIK R. LEHTINEN  
Chief, Appellate Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of July, 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](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

ERL/eas