

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

10-2-2020

### State v. Ricks Appellant's Brief Dckt. 47824

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Ricks Appellant's Brief Dckt. 47824" (2020). *Not Reported*. 6676.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/6676](https://digitalcommons.law.uidaho.edu/not_reported/6676)

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](mailto:annablaine@uidaho.edu).

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

JACOB L. WESTERFIELD  
Deputy State Appellate Public Defender  
I.S.B. #9841  
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,	)	
	)	
Plaintiff-Respondent,	)	NO. 47824-2020
	)	
v.	)	BANNOCK COUNTY NO.
	)	CR-2015-13699
	)	
JESSICA MARIE RICKS,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Jessica Ricks was on probation when the State filed a motion to revoke probation. After she entered admissions to violating her probation, the district court revoked Ms. Ricks's probation and executed her underlying sentence. The district court subsequently denied Ms. Ricks's motion to reduce her sentence. Ms. Ricks appeals, and she argues the district court abused its discretion by denying her motion to reduce her sentence.

## Statement of Facts and Course of Proceedings

In September 2015, a criminal complaint was filed alleging that Ms. Ricks committed the crime of possession of a controlled substance (methamphetamine). (R., pp.21-22.) Ms. Ricks pled guilty to this offense. (R., pp.103-12.) Ms. Ricks was sentenced to four years, with two years fixed, and the district court retained jurisdiction (a “rider”). (R., pp.128-31.) In March 2017, Ms. Ricks was placed onto probation for four years following the successful completion of her rider. (Aug. R., pp.1-9.)

In June 2018, a Special Progress Report and Bench Warrant Request was filed with the district court indicating that Ms. Ricks had failed to report for appointments, tested positive for methamphetamine, and failed to report her new address after being evicted. (R., p.133.) However, the warrant request filed with the district court stated that it was for the purpose of allowing a probation officer to meet with Ms. Ricks to work on a Performance Action Plan that would focus on improvement and assisting Ms. Ricks in being successful on probation. (R., p.133.) Ms. Ricks was arrested on that warrant in July 2018, and the district court entered an Order of Commitment with the special instruction that she was to be released at the discretion of her probation officer. (R., pp.136-37.)

In September 2019, a Motion to Find Probation Violation and a Report of Probation Violation were filed with the district court. (R., pp.146-52.) In the Report of Probation Violation, Ms. Ricks was alleged to have violated her probation by: (1) providing a written admission to having used marijuana and methamphetamine; (2) failing to report for her random urinalysis testing after July 18, 2019; (3) being discharged from an AP Rider Aftercare program by failing to attend that program; (4) changing her residence without obtaining permission from her probation officer; (5) failing to report to scheduled appointments with her probation officer;

and (6) living outside of the Sixth Judicial District without the permission of her probation officer. (R., pp.148-52.) Ms. Ricks subsequently entered admissions to the reported violations except for the allegation that she lived outside of the Sixth Judicial District.<sup>1</sup> (Tr. Vol. I,<sup>2</sup> p.2, L.4—p.4, L.11.) After Ms. Ricks was released from custody pending the disposition hearing, a Report of Probation Violation Addendum was filed alleging that Ms. Ricks had provided a written admission to having used marijuana and methamphetamine after her release from custody. (R., pp.171-73.) Ms. Ricks subsequently admitted to violating her probation by having used marijuana and methamphetamine after being released from custody. (Tr. Vol. I, p.18, Ls.11-17.)

At the disposition hearing, Ms. Ricks asked for the district court to revoke her probation. (Tr. Vol. I, p.20, L.21—p.21, L.6, p.23, L.20—p.24, L.2.) However, Ms. Ricks also requested that the district court reduce the fixed portion of her sentence by one year pursuant to Idaho Criminal Rule 35. (Tr. Vol. I, p.20, L.21—p.21, L.15.) The State agreed with the recommendation that Ms. Ricks’s probation be revoked, but asked that the district court not address the motion to reduce sentence since a written motion had not been submitted prior to the disposition hearing. (Tr. Vol. I, p.21, L.16—p.22, L.5.) The district court revoked Ms. Ricks’s probation and executed her underlying sentence. (Tr. Vol. I, p.24, Ls.8-25; R., pp.180-82.) The district court did not address the motion to reduce sentence at the disposition hearing, and the district court asked Ms. Ricks’s defense counsel to file a Rule 35 motion if Ms. Ricks wanted to further pursue that motion. (Tr. Vol. I, p.24, Ls.6-8.)

---

<sup>1</sup> The State withdrew the allegation that Ms. Ricks lived outside of the Sixth Judicial District without permission. (Tr. Vol. I, p.3, L.22—p.4, L.10.)

<sup>2</sup> There are two transcripts on appeal. The first transcript, cited as “Tr. Vol. I”, contains the entry of admissions hearing held on November 12, 2019, the entry of admissions hearing held on December 16, 2019, and the disposition hearing held on January 13, 2020. The second transcript, cited as “Tr. Vol. II”, contains the Rule 35 hearing held on February 3, 2020.

A timely motion to reduce sentence pursuant to Idaho Criminal Rule 35 was filed after the disposition hearing. (R., pp.183-84.) At a hearing on the motion to reduce sentence, Ms. Ricks's defense counsel asked the district court to reduce the fixed portion of her sentence by two years. (Tr. Vol. II, p.1, Ls.22-24.) The district court denied Ms. Ricks's motion to reduce her sentence. (Tr. Vol. II, p.2, L.22—p.3, L.11; R., p.188.) Ms. Ricks filed a timely notice of appeal from the district court's orders revoking her probation and denying her motion to reduce sentence.<sup>3</sup> (R., pp.189-91.)

### ISSUE

Did the district court abuse its discretion when it denied Ms. Ricks's motion to reduce her sentence pursuant to Rule 35(b)?

### ARGUMENT

#### The District Court Abused Its Discretion When It Denied Ms. Ricks's Rule 35 Motion To Reduce Her Sentence

“A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014) (citing *State v. Knighton*, 143 Idaho 318, 319 (2006)). “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.* “In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.*

---

<sup>3</sup> Ms. Ricks does not challenge the district court's order revoking her probation and executing her underlying sentence on appeal.

“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 (2007).

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). The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985).

In this case, Ms. Ricks asserts the district court did not exercise reason, and therefore abused its discretion, by denying her motion to reduce her sentence. In the Presentence Investigation (“PSI”) submitted prior to sentencing, Ms. Ricks disclosed the following in regard to her alcohol and controlled substance history: (1) she began drinking alcohol at the age of [REDACTED], she drank alcohol regularly when she was [REDACTED] years old, and she used alcohol sometimes daily prior to her arrest; (2) she started using marijuana when she was [REDACTED] years old, and she was a daily marijuana user for years; and (3) she had been using methamphetamine “off and on” for nineteen years. (PSI,<sup>4</sup> pp.15-16.) In the Global Appraisal of Individual Needs

---

<sup>4</sup> Citations to the “PSI” refer to the 92-page electronic document included with the confidential materials, titled “Appeal-Confidential Documents PSI Volume 1.”

(“GAIN”) assessment prepared prior to sentencing, Ms. Ricks self-reported symptoms sufficient to meet the criteria for alcohol dependence with physiological symptoms and amphetamine dependence with physiological symptoms. (PSI, pp.27-29.) Ms. Ricks also disclosed that she had been diagnosed with an anxiety disorder, major depressive disorder, and bipolar disorder. (PSI, pp.14-15.)

Ms. Ricks completed an inpatient treatment program in 2019 prior to her arrest for the probation violations. (Tr. Vol. I, p.4, Ls.14-19, p.22, Ls.11-24.) Ms. Ricks began to struggle, and ultimately violated her probation, after Medicaid would not provide funding for her aftercare classes. (Tr. Vol. I, p.4, L.20—p.5, L.3.) After being arrested on the probation violation filed in September 2019, Ms. Ricks voluntarily enrolled in and successfully completed the inpatient portion of the Bannock County Sheriff’s Help And Recovery Environment (“SHARE”) program. (Exh.,<sup>5</sup> p.2; Tr. Vol. I, p.5, L.12—p.6, L.19, p.8, L.16—p.9, L.1.) Ms. Ricks also completed a written recovery plan prior to disposition, which explained how she would address her needs upon her release from custody. (Exh., pp.4-7.) Ms. Ricks applied for the Crossroads program through the Idaho Department of Corrections, which would have provided a more intense level of supervision to assist Ms. Ricks if she was released back onto probation. (Tr., p.12, L.12—p.14, L.23.) Unfortunately, Ms. Ricks was not accepted into the Crossroads program. (R., p.170; Exh., p.8.)

In the Report of Probation Violation Addendum and subsequent Progress Report, Ms. Ricks’s probation officer recommended that Ms. Ricks be released back onto probation and that she enter the Life in Recovery program through Consumer Care. (R., pp.171-73, 177.) Ms. Ricks’s probation officer indicated that the probation office had secured a space in that

---

<sup>5</sup> Citations to “Exh.” refer to the 10-page electronic document titled “Appeal Exhibits Volume 1 - Letters.”

program for Ms. Ricks if she was successfully admitted. (R., p.177.) Ms. Ricks had also applied to problem-solving courts prior to her disposition, but none of those programs met with her. (Tr., p.23, Ls.16-19.)

At the Rule 35 hearing, Ms. Ricks's defense counsel noted that Ms. Ricks's attitude had "changed dramatically from when she began to where she is now, and I think it's a positive change." (Tr. Vol. II, p.2, Ls.4-6.) Ms. Ricks's defense counsel indicated that Ms. Ricks had overcome her frustrations with the legal system and past denial of her drug addiction. (Tr. Vol. II, p.2, Ls.6-10.) According to defense counsel, Ms. Ricks had recognized her addiction issues and was actively trying to address those issues. (Tr. Vol. II, p.2, Ls.6-10.)

In sum, Ms. Ricks maintains the district court did not exercise reason in denying her motion to reduce her sentence. Proper consideration of the information presented supported a sentence reduction.

#### CONCLUSION

Ms. Ricks respectfully requests that this Court reduce her sentence or remand this case to the district court as it deems appropriate.

DATED this 2<sup>nd</sup> day of October, 2020.

/s/ Jacob L. Westerfield  
JACOB L. WESTERFIELD  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of October, 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

JLW/eas