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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|-----------------------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff-Respondent, |) | NO. 47964-2020 |
| |) | |
| v. |) | NEZ PERCE COUNTY NO. CR35-19-7791 |
| |) | |
| MICHAEL B. FIELDS AKA |) | |
| MICHAEL B. COTTRELL, |) | APPELLANT’S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

The district court sentenced Michael Fields (aka Cottrell) to three years fixed for eluding and unlawful possession of a firearm. Mr. Cottrell appealed, and he filed an Idaho Criminal Rule 35 (“Rule 35”) motion for a reduction in his sentence. The district court subsequently denied his motion. On appeal, Mr. Cottrell argues the district court abused its discretion by denying his Rule 35 motion. He submits the district court should have reduced his sentence.

Statement of Facts and Course of Proceedings

The State charged Mr. Cottrell with eluding, unlawful possession of a firearm, grand theft, two misdemeanor offenses, and the persistent violator sentencing enhancement. (R., pp.8,

55–57.) Pursuant to a plea agreement, Mr. Cottrell pled guilty to eluding and unlawful possession of a firearm. (Tr.,¹ p.19, L.9–p.20, L.6, p.28, Ls.1–22.) The State agreed to dismiss the remaining charges. (Tr., p.19, Ls.13–14, p.20, Ls.2–5; R., pp.76, 78 (State’s motion and district court’s order to dismiss).) The parties also agreed to a joint sentencing recommendation of three years fixed for each offense, to run concurrently. (Tr., p.19, Ls.14–18.) Mr. Cottrell waived a presentence investigation report. (Tr., p.28, L.23–p.29, L.12.)

At the sentencing hearing, the district court followed the parties’ agreement and sentenced Mr. Cottrell to three years fixed for each offense, to be served concurrently. (Tr., p.33, L.23–p.34, L.2.) Shortly thereafter, the district court entered a judgment of conviction, and Mr. Cottrell timely appealed. (R., pp.71–73, 85–89.)

Mr. Cottrell also filed a timely Rule 35 motion with attachments. (R., pp.114–32.) He requested the district court reduce his sentence to two years and eight months fixed or three years indeterminate. (R., p.119.) He made the specific request of two years and eight months so he would be released at the same time as another unrelated case.² (R., p.117.) The district court denied his motion. (R., p.144.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Cottrell’s Rule 35 motion?

¹ Pinpoint citations of the transcript on appeal refers to the page number on the bottom right corner of each page.

² To this end, Mr. Fields also argued his counsel was ineffective for failing to correctly advise him on his credit for time served while on parole and on the likelihood of revocation of his parole. (R., pp.115–16.) He argued that his counsel’s incorrect advice was the only reason he agreed to plead guilty with a three-years-fixed recommendation. (R., pp.115–16.)

ARGUMENT

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

“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). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* 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). “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).

Here, Mr. Cottrell argues the district court did not exercise reason because he presented new and additional information in support of a reduction of his sentence. First, he explained that he had never received any major rule violation or disciplinary sanction while in custody since 2015. (R., p.118.) Second, he stated that he had completed all available rehabilitation programs: TFAC, MRT, ART, T4C, CBI-SA, parenting classes, individual counseling, grief and loss counseling, and two riders. (R., pp.118, 124.) Third, he wrote that he was “making amends” to the owner of the fence that he damaged during his criminal conduct, and he planned to pay in full for the damage to the fence. (R., pp.118, 129.) Fourth, he explained that he had a substance- and

crime-free residence and available employment in Alaska. (R., p.118.) Finally, Mr. Cottrell stated that his daughter would be moving to Alaska soon to live with his mother because his ex-wife had lost custody. (R., p.118.) This new and additional information from Mr. Cottrell showed that his initial sentence of three years fixed was excessive. Proper consideration of this information supported a reduction in his sentence to either two years and eight months fixed or three years indeterminate. Therefore, Mr. Cottrell submits the district court did not exercise reason and thus abused its discretion when it denied his Rule 35 motion.

CONCLUSION

Mr. Cottrell respectfully requests this Court reduce his sentence as it deems appropriate. Alternatively, he respectfully requests this Court reverse or vacate the district court's order denying his Rule 35 motions and remand this case to the district court for a new Rule 35 motion hearing.

DATED this 9th day of October, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th 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
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E-Service: ecf@ag.idaho.gov

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

JCS/eas