

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO 47969-2020
Plaintiff-Respondent,)	
)	
v.)	Ada County Case Nos. CR01-17-40344
)	
TONY LEE COLBRAY,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Tony Lee Colbray failed to show that the district court abused its discretion by imposing and executing a sentence of fifteen years, with four years determinate, and by denying his Rule 35 motion?

ARGUMENT

Colbray Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

A grand jury indicted Tony Lee Colbray for one count of conspiracy to traffic heroin, one count of possession of a controlled substance with intent to deliver, one count of possession with

intent to deliver drug paraphernalia, and one count of possession of drug paraphernalia. (Aug., pp. 1-4.) Colbray pleaded guilty to one count of possession of a controlled substance with intent to deliver, and the district court sentenced him to fifteen years, with four years determinate. (R., pp. 56-59, 62-64.)

Colbray filed a Rule 35 motion requesting a reduction of sentence, which the district court denied. (R., pp. 68-69, 89-91.) Colbray filed a motion to withdraw his guilty plea, and the district court denied the motion due to the judgment of conviction having been final. (R., pp. 96-100.) Pursuant to the judgement in Colbray's post-conviction case, CV01-19-7794, the district court reentered the judgment of conviction to allow Colbray to file a timely appeal in this case. (R., pp. 102-104.) Colbray then filed a timely appeal. (R., pp. 106-108, 112-115.)

On appeal, Colbray argues that "the district court abused its discretion when it imposed an excessive sentence, and when it denied his Rule 35 motion, he contends the district court erred by failing to place him on probation." (Appellant's brief, p. 1.) Colbray has failed to show that the district court abused its discretion by imposing and executing a sentence of fifteen years, with four years determinate, and by denying his Rule 35 motion.

B. Standard Of Review

"Appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion." State v. Schiermeier, 165 Idaho 447, 451, 447 P.3d 895, 899 (2019) (internal quotations and citations omitted). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case. Id. at 454, 447 P.3d at 902. "A sentence fixed within the limits

prescribed by the statute will ordinarily not be considered an abuse of discretion.” Id. (internal quotations omitted). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2019) (citation omitted).

The decision to place a defendant on probation is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Reed, 163 Idaho 681, 684, 417 P.3d 1007, 1010 (Ct. App. 2018) (citations omitted). Rehabilitation and public safety are dual goals of probation. State v. Le Veque, 164 Idaho 110, 114, 426 P.3d 461, 465 (2018). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)).

“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, 159 P.3d 838, 840 (2007). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “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.” State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Colbray Has Shown No Abuse Of The District Court's Discretion

The sentence imposed is within the statutory limits of I.C. § 37-2732(a). The record shows the district court perceived its discretion, employed the correct legal standards to the issue before it, and acted reasonably and within the scope of its discretion.

At the sentencing hearing, the district court determined that “imprisonment is appropriate for the protection of the public because the defendant is a multiple offender or professional criminal.” (07/26/2018 Tr., p. 67, Ls. 17-21.) The district court stated that “imprisonment will provide appropriate punishment and deterrent to the defendant,” and that “a lesser sentence will depreciate the seriousness of the defendant’s crime.” (07/26/2018 Tr., p. 67, Ls. 22-25.) The district court also stated that “there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime” based on “the facts of this case . . . in addition to the defendant’s criminal history.” (07/26/2020 Tr., p. 67, L. 25 – p. 68, L. 5.)

In its order denying Colbray’s Rule 35 motion, the district court stated that “the sentence imposed was reasonable. If anything, it was lenient. Defendant has an extensive criminal history spanning two decades. His criminal history includes (but is not limited to) crimes of violence, weapons crimes, and robbery.” (R., p. 91.) The district court acknowledged Colbray’s letters “and appreciates his desire to be done with his life of crime. Nothing in the court’s decision is intended to diminish [Colbray’s] efforts toward self-improvement or minimize his good conduct while serving his sentence.” (R., p. 91.) The district court determined that Colbray’s “sentence was reasonable at the time that it was imposed, and there are no grounds for additional leniency.” (R., p. 91.)

Colbray contends that the mitigating factors—honesty and acceptance of responsibility for his actions, his willingness and need to support his family, and the support he had from his family—

should have lead the district court to place him on probation. (Appellant’s brief, pp. 5-6.) Additionally, Colbray argues that “the district court did not adequately consider the new evidence he presented with his motion; and, had the district court properly considered that evidence, it would have been led to grant his Rule 35 motion.” (Appellant’s brief, p. 7.) Colbray’s arguments do not show an abuse of discretion.

Prior to sentencing, the state and defense both waived a presentence investigation. (07/26/2018 Tr., p. 11, Ls. 9-14.) The state did, however, cite Colbray’s criminal history, which consists of “39 misdemeanor convictions, 15 felony convictions and the two pending [in the State of Washington, he has 56 total charges there. And he’s ██████████ (07/26/2020 Tr., p. 41, Ls. 15-19.) While presenting Colbray’s criminal history to the district court, the state stated “he has controlled substance issues, based on these priors. But he also has crimes of victimization. He has the robberies, a burglary, obtaining signature by duress. ... He has a trespass with intent to steal from Colorado in 2004.” (07/26/2020 Tr., p. 37, Ls. 3-9.) Colbray later confirmed that the state’s reflection of Colbray’s criminal history is accurate. (07/26/2020 Tr., p. 49, Ls. 11-14.)

Colbray’s extensive criminal history in conjunction with his own admittance to the instant offense shows that the sentence imposed is reasonable, and that Colbray is not a suitable candidate for probation. The sentence in this case provides proper deterrence and punishment to Colbray, and a lesser sentence would diminish the seriousness of presenting heroin to the community. Colbray’s criminal conduct presents a risk to society, and his criminal history shows that there is an undue risk to reoffend if he is placed on community supervision. Colbray has failed to show that the district court abused its discretion by imposing and executing a sentence of fifteen years, with four years determinate, and by denying his Rule 35 motion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 3rd day of November, 2020.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

ZACHARI S. HALLETT
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of November, 2020, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

ERIK R. LEHTINEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General