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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 47953-2020
Plaintiff-Respondent,)	
)	Bingham County Case No.
v.)	CR06-19-2466
)	
JARED CHARLES SIREECH,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Sireech failed to show that the district court abused its discretion when it denied his Rule 35 motion for reduction of sentence?

ARGUMENT

Sireech Has Failed To Show That The District Court Abused Its Discretion By Denying His I.C.R. 35 Motion For Reduction of Sentence

A. Introduction

In the early morning hours on Highway 91 in Bingham County, an Idaho State Police Officer observed a vehicle traveling at 75 miles per hour in a 55 miles per hour zone. (PSI, p.6.¹) The officer attempted to effectuate a traffic stop. (Id.) However, the vehicle did not pull over, and instead increased its speed to approximately 120 miles per hour. (Id.) The pursued vehicle left the highway and traveled on several paved and unpaved roads on the Fort Hall Reservation. (Id.) The officer eventually utilized a PIT maneuver to stop the vehicle on a residential street. (Id.) The driver of the vehicle, later identified as Jared Sireech, then fled into a residential back yard. (Id.) Sireech was trying to climb a fence when the officer caught up with him and detained him. (Id.)

While placing Sireech into custody, the officer noted an empty holster on Sireech's right hip, and that Sireech smelled like alcohol. (Id.) The officer returned to Sireech's vehicle, in which he observed clean baggies, a spent casing, and a live 9mm bullet. (Id.) A subsequent inventory search of the vehicle revealed a small amount of marijuana, a pipe, and a syringe. (Id.)

The officer transported Sireech to the county jail. (Id.) Along the way, Sireech asked the officer if anyone had located his 9mm firearm, which Sireech stated he threw near some trees on Highway 91. (Id.) Officers later recovered a 9mm firearm in the road, along the path of the pursuit. (Id.) At the jail, Sireech provided breath samples of .161 and .148. (Id.)

The state charged Sireech with felony eluding, misdemeanor driving under the influence, and obstructing an officer. (R., pp.33-35.) Pursuant to an agreement with the state, Sireech pled

¹ Citations to page numbers of the "PSI" refer to the page numbers of the electronic file containing the PSI.

guilty to felony eluding and driving under the influence; the state agreed to dismiss the obstructing charge, and to recommend that Sireech be placed on probation. (R., pp.77-79, 83-84.)

At the sentencing hearing, the district court declined to follow the state's recommendation of probation and instead imposed a unified five-year sentence with three years fixed for felony eluding, and a concurrent six-month jail sentence for driving under the influence. (R, pp.92-95; Tr., p.13, L.3 – p.16, L.14.) The court also ordered Sireech to reimburse the Idaho State Police \$739.00 for the cost of repairs to the police vehicle that was damaged in the course of the officer's PIT maneuver on Sireech's vehicle. (R., pp.58, 87-88.)

Approximately two months after the sentencing hearing, Sireech filed an I.C.R. 35 motion for reduction of sentence. (R., pp.97-98.) Sireech requested that the district court impose a unified two and one-half year sentence with one and one-half years fixed, but provided no argument or new information regarding why his sentence should be so reduced. (See id.) The state objected to the motion. (R., pp.99-100.) The district court denied the motion after concluding that the sentence was reasonable and appropriate as originally imposed. (R., pp.101-105.) Sireech timely appealed. (R., pp.106-108.)

On appeal, Sireech acknowledges that he presented no new information to support his I.C.R. 35 motion, but still asserts that district court abused its discretion in denying the motion in light of the remorse he expressed at the sentencing hearing. (Appellant's brief, pp.2-3.) Because Sireech presented no new information to the district court to support his I.C.R. 35 motion, Sireech cannot show district court error. In any event, the court clearly acted well within its sentencing discretion.

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. Golden, 167 Idaho 509, ___, 473 P.3d 377, 382 (Ct. App. 2020). 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. Sireech Has Failed To Show That The District Court Abused Its Discretion

“In 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 motion.” State v. Yang, 167 Idaho 944, ___, 477 P.3d 998, 1003 (Ct. App. 2020) (citing State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)). As he acknowledges on appeal (Appellant’s brief, pp.1-2), Sireech submitted no new information in support of his Rule 35 motion, nor did he even present an argument as to why his sentence should be reduced (See R., pp.97-98). Sireech therefore cannot show district court error.

In denying his Rule 35 motion, the district court recognized that Sireech was required to “show that an otherwise reasonable sentence is excessive in view of new or additional information.” (R., p.102.) The court reviewed the rationale behind its initial sentencing determination and concluded that Sireech’s sentence was appropriate. (R., pp.101-105.) A review of the record confirms that the district court reasonably exercised its sentencing discretion. As described above in the introduction section of this brief, Sireech’s flight from the pursuing officer

while under the influence of alcohol resulted in a severe danger to the community that ended only after the officer utilized a PIT maneuver. Further, as the district court noted (R., pp.103-104), Sireech has previously engaged in similar conduct to that which occurred in this case. Sireech has prior convictions for aggravated driving under the influence (as a juvenile), and for felony eluding. (PSI, pp.8-9, 11.) Sireech told the PSI investigator that the prior DUI incident resulted in him flipping his vehicle, and the death of his friend. (PSI, p.12.) Following his prior felony eluding conviction, Sireech was placed on a CAPP rider, and then probation. (PSI, pp.11-12.) The state filed a motion to revoke that probation after Sireech absconded – the resulting arrest warrant was still active at the time of the sentencing in the present case. (PSI, pp.11-12; Tr., p.6, L.14 – p.7, L.12.) Sireech also has numerous prior misdemeanor convictions for offenses including petit theft, driving without privileges, and violation of a no-contact order. (PSI, pp.7-12.) Sireech’s LSI-R score of 36 is well above the threshold (31+), for the “high” risk to re-offend category. (PSI, pp.18-19.)

On appeal, Sireech references some of his comments made at the sentencing hearing, at which he expressed remorse, and where he stated that he was speeding in order to get home due to unspecified family problems. (Appellant’s brief, p.3.) Sireech’s sentencing hearing comments were not new information. In any event, none of these statements indicate that the district court abused its sentencing direction. In fact, a review of the sentencing transcript reveals that while Sireech expressed some remorse, he also appeared to blame his criminal conduct on his wife’s failure to support him, which the district court reasonably considered to be “kind of a poor excuse.” (Tr., p.11, L.3 – p.12, L.7.)

Because Sireech did not provide new evidence showing his sentences to be excessive, the district court did not abuse its discretion by denying his I.C.R. 35 motion. In any event, a review of the record reveals that the district court reasonably exercised its sentencing discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Sireech's I.C.R. 35 motion.

DATED this 22nd day of March, 2021.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of March, 2021, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS
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/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd