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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47964-2020
Plaintiff-Respondent,)	
)	
v.)	Nez Perce County Case No.
)	CR35-19-7791
MICHAEL B. FIELDS AKA)	
MICHAEL B. COTTRELL,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
)	
)	

Has Michael B. Cottrell failed to show that the district court abused its discretion by denying his Rule 35 motion?

ARGUMENT

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

A. Introduction

In December of 2019, authorities responded to a suspicious vehicle. (R., pp. 11-12.) Authorities ran the license plate number, [REDACTED] on the green Cadillac Seville, which returned to a white Ford Focus belonging to Michael B. Fields, otherwise known as Michael B. Cottrell.

(R., p. 12.) Authorities observed a black North Face backpack inside the Cadillac Seville. (R., p. 12.) While attempting to locate Cottrell, authorities received an anonymous report of a shooting at one of Cottrell's last known addresses. (R., p. 12.) After finding no indication of a shooting at the reported address, authorities returned to the Cadillac Seville and observed Cottrell begin to drive the vehicle. (R., p. 12.) An officer initiated a traffic stop, but Cottrell eluded police by driving through a fence, causing approximately \$3,000 in damage. (R., p. 12.) Cottrell then drove sixty-two miles per hour in a twenty-five miles per hour zone, failed to stop at numerous stop signs and drove onto the curb of an airport parking lot where people were preparing for a flight. (R., p. 12.) Officers were unable to Cottrell, but found the black North Face backpack containing a black HI-point nine millimeter pistol. (R., p. 12.) Amanda Branson admitted to Police that Cottrell had delivered a stolen Viewsonic projector and an Xbox console, which were reported stolen in a residential burglary. (R., p. 65.) Upon execution of a search warrant of Cottrell's vehicle, authorities located stolen items, including a grey North Face backpack, a black Apple TV and a pair of brown Gucci shoes. (R., p. 65.)

The state charged Cottrell with one count of felony eluding, one count of unlawful possession of a firearm, one count of grand theft by receiving/possessing stolen property, a persistent violator enhancement, and two misdemeanors for failure to notify upon striking fixtures on highway and possession of drug paraphernalia. (R., pp. 55-57.) Cottrell pleaded guilty to eluding and unlawful possession of a firearm, and the state agreed to dismiss the remaining charges. (R., p. 68.) For each of the two counts, the district court sentenced Cottrell to three years determinate, to run concurrent with each other and with any parole matter imposed in CR-2015-8834. (R., pp. 68, 71-73.) Cottrell filed a Rule 35 motion, which the district court denied, and Cottrell filed a timely appeal. (R., pp. 85-89, 114-119, 144.)

On appeal, Cottrell argues that “the district court abused its discretion by denying his Rule 35 motion.” (Appellant’s brief, p. 1.) Cottrell has failed to show that the district court abused its discretion by denying his Rule 35 motion.

B. Standard Of Review

“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. Cottrell Has Shown No Abuse Of The District Court’s Discretion

The sentences imposed are within the statutory limits of I.C. §§ 49-1404 and 18-3316. 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 stated it wishes that parole “had been more successful.” (Tr., p. 32, Ls. 13-14.) The district court noted that the last time Cottrell had been before the court on an eluding charge, it had involved “pretty dangerous circumstances for everybody involved.” (Tr., p. 32, Ls. 19-23.) The district court stated “[i]n this particular case, relatively high speed through a residential area including running stop signs as well, so certainly

it's appropriate in light of this repeated circumstance for [Cottrell] that there be a sentence imposed that serves as a period of punishment and also a period of time to protect society.” (Tr., p. 32, L. 23 – p. 33, L. 4.) The district court “went back through the records” of Cottrell’s probations, which were not as “positive” as the district court would like to have seen, and the district court also found that Cottrell had been “through a couple of retained jurisdiction programs.” (Tr., p. 33, Ls. 7-12.) The district court determined “with the commission of new felonies ... it is appropriate that another sentence of incarceration be imposed, and [the district court is] willing to do that in conformance with the parties’ agreement in this matter.” (Tr., p. 33, Ls. 14-18.)

Cottrell contends that claims he made in his Rule 35 motion regarding lack of major rule violations while in custody, completion of rehabilitation programs, desire to reimburse the owner of the fence he drove through, employment and residency plans, and desire to support his daughter show an abuse of discretion. (Appellant’s brief, pp. 3-4.) Cottrell’s argument does not show an abuse of discretion.

The instant offenses threatened serious harm to the community, and Cottrell’s erratic driving caused significant property damage. The persistent violator enhancement the state filed derived from three felony convictions in 2016, including one count of eluding, one count of aggravated assault, and one count of burglary. (R., p. 57.) As the district court addressed, Cottrell has served probation and been through retained jurisdiction, and Cottrell concedes that he’s previously completed numerous rehabilitative programs, such as “TFAC, MRT, ART, T4C, CBI-SA, parenting classes, individual counseling, grief and loss counseling, and two riders.” (Appellant’s brief, p. 3.) Yet, Cottrell has continued his criminal conduct, showing that alternative treatment is ineffective in rehabilitating Cottrell and deterring his criminal thinking. Although Cottrell claims that he “never received any major rule violation or disciplinary sanction while in

custody,” he’s shown that there’s an undue risk he will reoffend if he is not sentenced to a term of incarceration. (Appellant’s brief, p. 3.)

The information Cottrell submitted with his Rule 35 motion does not merit a reduction of sentence, or any form of leniency. The sentences of three years determinate for each of the eluding and unlawful possession of a firearm convictions provides proper punishment, deterrence and protection to the community. The district court’s decision to deny his Rule 35 motion is justified, and Cottrell has failed to show that the district court abused its discretion by doing so.

CONCLUSION

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

DATED this 6th day of January, 2021.

/s/ Kenneth K. Jorgensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of January, 2021, served a true and correct copy of the attached RESPONDENT’S BRIEF to the attorney listed below by means of iCourt File and Serve:

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