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### State v. Burns Appellant's Brief Dckt. 48242

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48242-2020
Plaintiff-Respondent,	)	
	)	BONNEVILLE COUNTY NO. CR10-20-5149
v.	)	
	)	
JAYSON BARY BURNS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Jayson Bary Burns appeals from his judgment of conviction for two counts of possession of a controlled substance and one count of eluding. Mr. Burns pleaded guilty and the district court imposed two sentences of seven years, with two and one-half years fixed, and one sentence of five years, with two and one-half years fixed. Mr. Burns subsequently filed an Idaho Criminal Rule 35(*hereinafter*, Rule 35) motion for reduction of sentence, which was denied. Mr. Burns appeals, and he asserts that the district court abused its discretion by imposing excessive sentences and by denying his Rule 35 motion.

## Statement of the Facts & Course of Proceedings

Officers attempted to stop a vehicle driven by Mr. Burns, but he avoided them at a high rate of speed until the pursuant was eventually called off. (Tr., p.7, Ls.15 – p.8, L.1.) Officers eventually found Mr. Burns at his hotel room where he attempted to flee on foot. (Tr., p.8, Ls.1-3.) He was eventually apprehended and controlled substances were found on him. (Tr., p.8, Ls.1-3.)

Mr. Burns was charged with two counts of possession of a controlled substance, heroin and methamphetamine, felony eluding, misdemeanor possession of drug paraphernalia and misdemeanor resisting and obstructing. (R., p.33.) He pleaded guilty to the two possession of a controlled substance charges and to eluding and the State agreed to dismiss the misdemeanors. (R., p.60.) The district court imposed two sentences of seven years, with two and one-half years fixed, and one sentence of five years, with two and one-half years fixed. (R., p.71.) Mr. Burns filed a Rule 35 motion, which was denied. (R., pp.79; 84.) Mr. Burns appealed. (R., p.86.) He asserts that the district court abused its discretion by imposing excessive sentences and by denying his Rule 35 motion.

## ISSUES

- I. Did the district court abuse its discretion when it imposed two unified sentences of seven years, with two and one-half years fixed, and one sentence of five years, with two and one-half years fixed, upon Mr. Burns following his plea of guilty to two counts of possession of a controlled substance and one count of eluding?
- II. Did the district court abuse its discretion when it denied Mr. Burns' Rule 35 motion?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion When It Imposed Two Unified Sentences Of Seven Years, With Two and One-Half Years Fixed, And One Sentence Of Five Years, With Two And One-Half Years Fixed, Upon Mr. Burns Following His Plea Of Guilty To Two Counts Of Possession Of A Controlled Substance And One Count Of Eluding

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Burns’ sentences do not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Burns “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

*Stevens*, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011). Mr. Burns asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts.

At the sentencing hearing, counsel for Mr. Burns requested that the court retain jurisdiction so that Mr. Burns could participate in treatment. (Tr., p.5, L.21 – p.6, L.2.) Counsel noted that Mr. Burns had not really had an opportunity for treatment in the past and “this would give him an opportunity to be treated and perhaps show the Court that he can participate in a period of probation after that APSI is done.” (Tr., pp.6-9.) Further, counsel argued that due to the COVID breakout that “it would behoove us to give defendants every opportunity to show that they can prove themselves on probation before putting them into that sort of setting where they risk infection.” (Tr., p.6, Ls.10-19.)

Further, Mr. Burns addressed the district court at the sentencing hearing. He stated,

I’ve made a lot of mistakes in my life. I’ve been addicted to drugs most of my life. I don’t have excuses for my actions except that they’re childish and very immature. I was hoping to get a specialty court. I was really looking forward to being to do that, just trying to get some guidance and get a better support system out here on the street – out there on the streets.

My past, I understand why you recommend something like that. I do and I did. I put myself in these situations and I’ve got to hold up to them and I’ll take responsibility for them. I apologize to the courts and community. I’m not that same person from when I got arrested. My actions and my past, my record says that I’m something [and] I’m not really that person. I’ve made some mistakes, but that’s not who I really am. I really want to do better; and I wish that if I did a retained jurisdiction, if the specialty courts would take me after that, I would love to do that. I’m tired of this in-and-out life. It’s embarrassing. I can’t do this anymore. I don’t know. I apologize to the courts. And that’s all I’ve got to say.

(Tr., p.10, L.21 – p.11, L.15.)

Considering that Mr. Burns accepted responsibility for his actions, expressed remorse to the court at the community, and recognized his need for treatment, Mr. Burns submits that the district court abused its discretion by imposing excessive sentences.

II.

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

An order denying a motion for reduction of a sentence under Rule 35 is reviewed for an abuse of discretion. *State v. Hillman*, 143 Idaho 295, 296 (Ct. App. 2006). If the sentence is found to be reasonable at the time of pronouncement, the defendant must then show that it is excessive in view of the additional information presented with the motion for reduction. *Id.*

Mr. Burns addressed the district court at the Rule 35 hearing. He stated,

I was trying to get, like, six months moved to the back so it would be two years instead of two-and-a-half, trying to get it so when I do go – if I do go to prison – or when I do, I can try to get to a work camp or something like that as soon as possible. That's – that was my only think. I understand I'll be sitting in county for quite awhile due to this virus, but I'm trying to just move six months to two fixed six indeterminate – or five indeterminate instead.

(Rule 35 Tr., p.4, L.21 – p.5., L.4.) Considering that Mr. Burns sought to be productive by getting to a work camp as soon as possible, Mr. Burns submits that the district court abused its discretion by denying the Rule 35 motion.

CONCLUSION

Mr. Burns respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing or a new Rule 35 hearing.

DATED this 22<sup>nd</sup> day of March, 2021.

/s/ Justin M. Curtis  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of March, 2021, 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

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

JMC/eas