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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 48261-2020
)	
v.)	ADA COUNTY NO. CR01-17-46637
)	
KALI DEONE BECK,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Kali Beck was on probation when the State filed a motion to revoke probation. After she entered an admission to violating her probation, the district court revoked Ms. Beck’s probation and executed her underlying sentence. After Ms. Beck filed a successful petition for post-conviction relief, the district court later entered a superseding order revoking her probation. Ms. Beck filed a timely motion to reduce her sentence from the superseding order, and the district court granted that motion. Mindful that the district court granted the sentence reduction that she requested, Ms. Beck appeals and argues the district court abused its discretion by not further reducing her sentence.

Statement of Facts and Course of Proceedings

In February 2018, an amended criminal complaint was filed alleging that Ms. Beck committed the crime of operating a vehicle without the owner's consent. (R., pp.25-26.) Ms. Beck pled guilty to this offense. (R., pp.37-40.) Ms. Beck was sentenced to five years, with two years fixed, and the district court suspended that sentence and placed Ms. Beck on probation for a five year period.¹ (R., pp.49-55.) One of the conditions of Ms. Beck's probation was that she enroll in and participate in the Ada County Mental Health Court program. (R., p.51.)

In March 2019, the State filed a motion for bench warrant for probation violation. (R., pp.70-72.) In that motion, the State alleged that Ms. Beck had violated her probation by: (1) "failing to successfully complete Ada County Mental Health Court"²; (2) "failing to pay fines, fees, funds, surcharges and/or costs as ordered by the Court"; and (3) "failing to pay restitution as ordered by the Court." (R., pp.70-72.) Ms. Beck entered an admission to violating her probation by failing to successfully complete the Ada County Mental Health Court program. (R., p.88.)

In June 2019, the district court revoked Ms. Beck's probation and executed her underlying sentence. (R., pp.93-96.) In August 2019, Ms. Beck filed a Motion for Credit for Time Served. (R., pp.97-99.) In that motion, Ms. Beck explained that she "originally bonded out, in the charge at issue in this case, immediately before being re-arrested for the probation violations alleged in CR-FE-2015-800." (R., p.97.) Ms. Beck was held without bond in CR-FE-2015-800 from February 12, 2018 until August 2, 2018. (R., pp.97-98.) Prior to sentencing in this case, the district court entered an Order to Consolidate the sentencing hearings for this case

¹ The sentence was ordered to run concurrently with two other felony cases, CR-FE-2015-800 and CR01-18-6773. (R., p.50.)

² An order removing Ms. Beck from the Ada County Mental Health Court program was entered in March 2019. (R., pp.85-86.)

and another pending felony case for Ms. Beck, CR01-18-6773³, with the probation violation disposition hearing from CR-FE-2015-800. (R., pp.41-42, 97.) In the Motion for Credit for Time Served, Ms. Beck asked that the district court either grant her one-hundred-and-seventy-two days (172) credit for time served from the date that she was arrested on the warrant in CR-FE-2015-800 until the sentencing hearing in this case or give her forty-five days (45) credit for time served from the date that the cases were consolidated until the sentencing hearing. (R., pp.97-98.) The district court denied the motion after a hearing since it lacked jurisdiction to grant Ms. Beck's request as a matter of leniency under Idaho Criminal Rule 35 since the motion had been untimely filed more than fourteen days after the filing of the order revoking probation.⁴ (R., pp.100-01, 111-13.)

After Ms. Beck filed a successful petition for post-conviction relief,⁵ the district court entered a Superseding Order of Revocation of Probation, Imposition of Sentence and Commitment in June 2020. (R., pp.114-17.) Ms. Beck filed a timely motion for Rule 35 relief from that order and requested that the district court "commute her previously imposed sentence in the amount of 172 days, consistent with the time she was in custody from February 12, 2018 until August 2, 2018 due to her arrest in Ada County Case No. CR-FE-2015-800." (R., pp.120-

³ According to the Motion for Credit for Time Served, the district court commuted Ms. Beck's sentence in CR01-18-6773 at a probation violation disposition hearing held in that case at the same time that the probation violation disposition hearing was held in this case. (R., p.98.) At that disposition hearing, the district court also executed the underlying sentence in CR-FE-2015-800. (R., p.111.)

⁴ Ms. Beck filed a notice of appeal following the district's decision on the motion for credit time served. (R., pp.102-04.); *see* Supreme Court Docketed Number 47473-2019, *State v. Kali Deone Beck*. The Court ultimately entered an Order Denying Motion to Remand Case for Entry of Appealable Order and Dismissing Appeal since the district court had not issued a written order on the motion for credit for time served. (R., p.109.) An Order on Defendant's Motion for Credit for Time Served was later filed by the district court. (R., pp.111-13.)

⁵ Ms. Beck filed a petition for post-conviction relief in October 2019 in case number CV01-19-19383. A judgment granting Ms. Beck relief on that petition was entered in June 2020.

22.) In its amended objection to the Rule 35 motion, the State did “not object to the Court reducing Beck’s fixed portion of her sentence in this case by 172 days to achieve the Court’s goal at the time of the probation violation disposition.” (R., pp.125-30.) The State did object, however, to the district court commuting Ms. Beck’s sentence. (R., pp.126-27.)

The district court subsequently entered an order on Ms. Beck’s Rule 35 motion without a hearing. (R., pp.131-34.) The district court granted Ms. Beck’s Rule 35 motion and reduced the fixed portion of her underlying sentence by one-hundred-and-seventy-two (172) days. (R., pp.131-34.) Ms. Beck filed a timely notice of appeal from the district court’s order on the Rule 35 motion. (Aug. R., pp.1-5.)

ISSUE

Did the district court abuse its discretion when it declined to further reduce Ms. Beck’s sentence pursuant to Rule 35(b)?

ARGUMENT

The District Court Abused Its Discretion When It Declined To Further Reduce Ms. Beck’s Sentence Pursuant to Rule 35(b)

“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) (citing *State v. Knighton*, 143 Idaho 318, 319 (2006)). “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.* “In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.*

“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 (2007).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. 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.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018). 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).

Mindful that she was granted the sentence reduction that she requested, Ms. Beck asserts the district court did not exercise reason, and therefore abused its discretion, by not further reducing her sentence.

In the presentence report prepared for case number CR01-18-6773, Ms. Beck disclosed that she had been diagnosed with bipolar disorder, anxiety, and post-traumatic stress disorder (“PTSD”). (PSI,⁶ pp.197-99.) An Idaho Standard Mental Health Assessment was administered in that case pursuant to Idaho Code § 19-2524. (PSI, pp.215-21.) According to that assessment, “it does appear that [Ms. Beck] meets DSM V clinical criteria for a diagnosis of Bipolar disorder,

⁶ Citations to the “PSI” refer to the 737-page electronic document included with the confidential materials titled “Appeal AUGMENTED Confidential Exhibits 04-26-2021 08.45.46 46427877 FE2166BC-CCB0-4687-86D2-0BD65071BD9D.”

mixed type.” (PSI, p.220.) Likewise, the clinician included a diagnosis for PTSD in his report based on Ms. Beck’s reported history and current symptoms. (PSI, p.220.) In a letter provided to the district court as part of the presentence investigation, Ms. Beck’s mother explained Ms. Beck’s long, troubled history with her mental health issues following her commitment to Intermountain Hospital when she was [REDACTED] years old. (PSI, pp.226-27.) Ms. Beck’s mother indicated that she believed that Ms. Beck was “being properly medicated for the first time in her life” and that Ms. Beck was “prepared to be accountable.” (PSI, p.226.)

According to the Global Appraisal of Individual Needs (“GAIN”) assessment prepared in the 2018 case, Ms. Beck self-reported symptoms sufficient to meet the criteria for alcohol use disorder moderate, stimulants use disorder mild, and met the lifetime criteria for substance use disorder moderate. (PSI, p.207.) Ms. Beck’s responses in the GAIN assessment indicated that she had “moderate motivation for treatment”, that “she has quit using substances”, and that she “is about 100% read to remain abstinent.” (PSI, p.210.)

In the motion for Rule 35 relief, Ms. Beck requested that the district court “commute her previously imposed sentence in the amount of 172 days, consistent with the time she was in custody from February 12, 2018 until August 2, 2018 due to her arrest in Ada County Case No. CR-FE-2015-800.” (R., pp.120-22.) During that period of time, her defense counsel at the time “neglected to ask the court to revoke her bond in this case, and, as a result, she was in custody but not accruing pre-disposition credit in this case.” (R., p.120.) Mindful that she was granted the sentence reduction that she requested, Ms. Beck maintains that the district court did not exercise reason, and therefore abused its discretion, by not further reducing her sentence. Proper consideration of the mitigating information supported a further reduction in her sentence.

CONCLUSION

Ms. Beck respectfully requests that this Court reduce her sentence or remand this case to the district court as it deems appropriate.

DATED this 1st day of June, 2021.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June, 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

JLW/eas