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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48349-2020
Plaintiff-Respondent,)	
)	
v.)	Ada County Case No. CR01-18-50722
)	
IAN SYLVESTER JONES,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Ian Sylvester Jones failed to show that the district court abused its discretion by denying his Rule 35 motion?

ARGUMENT

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

A. Introduction

In October of 2018, authorities conducted a traffic stop on a vehicle driven by Kynoah Hegre, with Ian Sylvester Jones as a passenger. (PSI, p. 6 (citations to electronic file named “Appeal Confidential Exhibits Record 12-31-2020 . . .”).) A drug detection K-9 alerted to the odor

of a narcotic in the vehicle, and authorities found a black zipper case containing a large amount of meth, which Jones had been holding in his lap during the traffic stop. (PSI, p. 6.) Jones admitted that the meth and black zipper case belonged to him. (PSI, p. 6.)

Initially, the state charged Jones with one count of trafficking in methamphetamine. (R., pp. 22-23.) Pursuant to a plea agreement, the state amended the charge to possession of a controlled substance with intent to deliver and Jones pled guilty. (R., pp. 25-28.) The district court sentenced him to seven years, with three years determinate and retained jurisdiction. (R., pp. 43-45.) Following a period of retained jurisdiction, the district court placed Jones on probation for a period of five years, beginning in October of 2019. (R., pp. 53-57.)

In February of 2020, the state filed a motion for bench warrant for probation violation, alleging that Jones drove without privileges, failed to provide proof of insurance, used meth in November of 2019, failed to report to his supervising officer on multiple dates, failed to participate in rehabilitation programs, absconded from supervision, and failed to pay fines and restitution as ordered by the district court. (R., pp. 63-83.) Jones admitted violating his probation by absconding. (R., p. 92.) The district court revoked Jones' probation, and executed the underlying sentence of seven years, with three years determinate and credit for 446 days served. (R., pp. 95-97.) Jones filed a Rule 35 motion, which the district court denied, and then filed a timely appeal. (R., pp. 99, 103-131, 139-140, 145.)

On appeal, Jones argues that he "provided the district court with new and additional information to justify a reduction in his sentence to a rider," and therefore "the district court abused its discretion in denying his Rule 35 motion." (Appellant's brief, pp. 1, 5.) Jones has failed to show that the district court abused its discretion by denying his Rule 35 motion.

B. Standard Of Review

The decision whether to retain jurisdiction 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. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. 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, 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. Jones Has Shown No Abuse Of The District Court’s Discretion

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 Rule 35 hearing, the district court noted that “this was not [Jones’] first crime. Back in the mid-2000s ... [he] participated in the savage beating of another individual that ended up –

and he served a period of time in prison for that.” (Tr., p. 11, Ls. 2-6.) The district court stated that Jones “got out, appears to have been again engaging in drug activity to the point where he was arrested with a trafficking amount of methamphetamine and was pled down to simply possession, and, therefore, did not have a mandatory minimum sentence.” (Tr., p. 11, Ls. 7-12.) The district court stated that “he got leniency at that point in time, and [the sentencing judge], in his discretion, imposed a rider.” (Tr., p. 11, Ls. 12-14.) The district court stated that Jones “came out of the rider program having previously been incarcerated, having previously been, you know, familiar with the Department of Corrections, and didn’t take the opportunity to change his behavior but, instead, started using methamphetamine again, quit going to programming, and was discharged from probation,” and “on those facts alone” the district court’s decision “was appropriate at the time.” (Tr., p. 11, Ls. 15-24.) The district court noted that “prior to his arrest in 2018, having once been in prison, engaged in – participated apparently in working with somebody inside the prison to introduce controlled substance,” which caused the district court “to think for one more reason that Mr. Jones was not entitled to leniency.” (Tr., p. 11, L. 25 – p. 12, L. 7.) The district court stated that the “principal goal, of course, is protecting the public, and given Mr. Jones’ criminal history, [the district court] would be remised to not take a hard look at the appropriate remedy for that,” and “given the fact that he’s had a period of incarceration, he’s had a chance at a rider and almost immediately failed probation, and pretty seriously failed it, [the district court did not] think that would be protecting the public.” (Tr., p. 12, Ls. 10-19.) The district court determined that Jones “had chances at rehabilitation here, including a prior period of incarceration, a prior rider, and the opportunities offered on probation do not seem to have been successful, so [the district court did not] see that the goal of rehabilitation would be served by a second rider in this case.” (Tr., p. 12, L. 20 – p. 13, L. 1.)

On appeal, Jones argues that “although he was named in the IDOC investigation, there was never any proof of wrongdoing on his part,” and that information about that investigation “supported a reduction in his sentence to a rider.” (Appellant’s brief, pp. 3-6.) Jones’ argument does not show an abuse of discretion. The thirty-two page investigation from IDOC may not have resulted in criminal charges, but it clearly implicates Jones in a drug smuggling scheme. (PSI, pp. 267-298.) Jones was involved in the transfer and packaging of the narcotics, and spoke over the phone with an inmate regarding details of the drug exchanges. (PSI, pp. 267-298.) Specifically, the investigation concluded Jones was “involved in the transfer and packaging of the narcotics later recovered.” (PSI, p. 267.) Others involved in the smuggling operation were recorded describing Jones’ involvement. (PSI, pp. 270-71.) Jones also incriminated himself in other recorded calls. (PSI, pp. 273-86.) The lack of charges or a conviction did not make the district court’s reliance on the information of the investigation error. State v. Wheeler, 129 Idaho 735, 739, 932 P.2d 363, 367 (Ct. App. 1997) (“In sentencing a defendant, the court may consider hearsay evidence, evidence of previously dismissed charges against the defendant, or evidence of charges which have not yet been proved, so long as the defendant has the opportunity to object to, or rebut, evidence of his alleged misconduct.”)

In addition, the other factors considered by the district court show the sentence to be reasonable. Jones’ LSI score is thirty-two, placing him in the high risk category to reoffend. (PSI, p. 182.) His extensive criminal history consists of numerous felony convictions, and opportunities on probation and retained jurisdiction. (PSI, pp. 172-174.) Following his release from retained jurisdiction, Jones quickly violated probation by using methamphetamine, and later absconded supervision. (R., pp. 66-68.)

Jones' inability to reform his criminal behavior following a period of retained jurisdiction shows that he is not deterred by, or amenable to alternative treatment. Jones quickly failed on probation, showing that retained jurisdiction is an ineffective form of rehabilitation for Jones. His extensive criminal history and LSI score shows that he's a risk to the community, and execution of the underlying sentence is a reasonable punishment for the instant offense. The district court's decision to deny Jones' Rule 35 motion is reasonable, and any lesser disposition would depreciate the seriousness of Jones' criminal conduct. Jones has failed to show that the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

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

DATED this 27th day of May, 2021.

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

ZACHARI S. HALLETT
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of May, 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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/s/ Kenneth K. Jorgensen
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