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### State v. Booth Appellant's Brief Dckt. 48374

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Dennis Benjamin, ISB 4199  
NEVIN, BENJAMIN & McKAY LLP  
303 W. Bannock  
P.O. Box 2772  
Boise, ID 83701  
(208) 343-1000  
db@nbmlaw.com

Attorneys for Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	S.Ct. No. 48374-2020
Plaintiff-Respondent,	)	Kootenai Co. CR-2017-6184
	)	
vs.	)	<b>APPELLANT’S OPENING BRIEF</b>
	)	<b>(Sentencing Appeal)</b>
JUSTIN BOOTH,	)	
	)	
Defendant-Appellant.	)	
_____	)	

Appellant Justin Booth submits the following brief pursuant to I.A.R. 35(i).

***A. Issue Presented on Appeal***

Did the court abuse its discretion in denying the I.C.R. 35(b) motion given the new information presented to it?

***B. Statement of Facts***

1. Plea and sentencing proceedings

Mr. Booth pleaded guilty to an Amended Superseding Indictment. R 490.<sup>1</sup>  
Count I alleged Mr. Booth committed murder by aiding another (David Hutto) in

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<sup>1</sup> “R” refers to the clerk’s record in the appeal from the judgment. *State v. Justin Roy Booth*, No. 46454-2018.

shooting William “Bo” Tyrus John Kirk in the back with a handgun by holding and re-loading the handgun before and after Mr. Kirk was shot. R 491. There was no Count II but Count III alleged Mr. Booth committed robbery by aiding another in the taking Mr. Kirk’s pickup truck and/or a financial transaction card belonging to Mr. Kirk. *Id.* Mr. Booth pleaded guilty to those charges. R 495. As part of the settlement agreement, Mr. Booth “specifically reserve[d] his right to appeal the rulings on pretrial motions, including, but not limited to, the denial of the Defendant’s Motion to Sever, any sentence in this matter and any claims to ineffective assistance of counsel.” R 488. This agreement was signed by all parties. R 489.

Mr. Booth was sentenced to two concurrent indeterminate life sentences with 30 years fixed. R 533-535.

A timely Notice of Appeal was filed. R 544. A timely motion to reduce sentence pursuant to I.C.R. 35(b) was also filed. R 555; R2 23.<sup>2</sup>

The Court of Appeals affirmed the conviction in an unpublished decision. *State v. Booth*, 2020 WL 218841 (Idaho Ct. App. Jan. 8, 2020). R2 26.

## 2. Rule 35(b) motion

The court held a hearing on the motion. Mr. Booth appeared by telephone from Arizona. He testified that he had not had any disciplinary actions or other problems during his incarceration. But he had not been able to engage in any

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<sup>2</sup> “R2” refers to the record in this case. *State v. Justin Roy Booth*, No. 48374-2020.

rehabilitative program even though it has been nearly two years since sentencing.

He noted that he had been housed in a Texas facility with no programming until he

was moved to Arizona, just two weeks prior. T p. 9, l. 2-22. He was looking into

Arizona programs in order to improve himself. *Id.*, l. 20-25. He testified:

Q. Justin, as you've had some more time to think and some more time to consider what has led you to this incarceration, you have members of the victim's family that are on line, is there anything you want to say to them or the Court that you've learned after having that additional two years to consider this crime?

A. All I can say to them is I am truly sorry. I wish I would have had — I don't know — the courage to stop or the intelligence to know what was going to happen. I think about it every day. I think about how it could have stopped. I do not believe in the mindset that I was at that I was able to stop it. I wish I could have.

T p. 10, l. 24 – p. 11, l. 11.

The court denied the motion, stating:

Here, the Defendant is requesting the Court to reduce the fixed portion of the sentence from 30 years to 15 years. The new information that has been provided can be summarized as follows: that Mr. Booth has been in the custody of the Department of Corrections and he has been moved from Boise to Texas to Arizona; Mr. Booth hasn't received any significant disciplinary violations; Mr. Booth hasn't been given the opportunity to engage in any sort of meaningful treatment; and again we have arguments that were made at sentencing about his level of cooperation with the investigation and the outcomes that were achieved in his case and in Mr. Hutto's case, the codefendant.

I do not find that any of the new information impacts the appropriateness of the sentence. It's not uncommon to have prisoners serving a sentence of a given length to be

moved from facility to facility. That is a decision that the Department of Corrections makes. It's not at all uncommon and it's actually to be expected that inmates are not to violate the rules of the facilities that they're in. And it is not uncommon to have an inmate who is serving a lengthy sentence not necessarily be engaged in rehabilitative treatment at this point in the service of their sentence.

For those reasons, I don't find any of the new information changes the fact that the sentence that was imposed was within the legal parameters and was well within the exercise of the Court's discretion.

In looking at the overall sentence once again, the life sentence that was imposed was an indeterminant life sentence. And that was done in large measure in recognition of the fact that Mr. Booth did cooperate in the investigation and prosecution of the case against Mr. Hutto by giving the statements that he did.

Mr. Hutto did not get an indeterminant life sentence. He will be locked up for the rest of his life. Mr. Booth has to serve a very significant fixed portion of time. And I find that fixed portion of time, as it was at the time of the sentencing, is necessary to protect society.

And for those reasons, I will deny the Defendant's motion to seek relief pursuant to Idaho Criminal Rule 35. The sentence will not be modified.

T p. 18, l. 10 – p. 20, l. 3. The court's written order reads: "IT IS HEREBY ORDERED that the defendant's Rule 35 Motion is denied for reasons stated on the record." R2 27.

A timely Notice of Appeal was filed R2 39.

### ***C. Argument***

"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, 514 (Ct. App. 2020), *citing State v. Knighton*, 143 Idaho 318, 319 (2006); *State v. Allbee*, 115 Idaho 845, 846 (Ct. App. 1989). To prevail, the defendant must show that the sentence is excessive in light of new or additional information provided to the court in support of the motion. *Id.*, *citing State v. Huffman*, 144 Idaho 201, 203 (2007). In conducting a review of the denial of a Rule 35 motion, this Court will “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.*, *citing State v. Forde*, 113 Idaho 21, 22 (Ct. App. 1987).

When determining the “reasonableness of the original sentence,” the burden is on the appellant to show that it is unreasonable and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393 (1992). A sentence may be such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). “A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case.” *Golden, supra; citing State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982).

When considering whether the sentencing court imposed an excessively harsh sentence, this Court will “conduct 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.” *Id.*, *citing State v. Reinke*, 103 Idaho 771, 772 (Ct. App.

1982). When reviewing the length of a sentence, the Court considers the entire sentence. *State v. Oliver*, 144 Idaho 722, 726 (2007).

Here, Mr. Booth gave the court new information about his behavior while in prison, the lack of treatment opportunities, and his hope that his new placement in Arizona would provide him with rehabilitative programming. In addition, he expressed his sincere remorse to the surviving victims of the offenses. Considering the above, the 30-year fixed portion of the sentence is excessive. This Court should reduce the fixed time to 15 years.

Dated this 15<sup>th</sup> day of February 2021.

/s/Dennis Benjamin  
Dennis Benjamin  
Attorney for Justin Booth

## CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of February, 2021, I electronically filed the foregoing with the Clerk of the Court using the iCourt e-file system, which caused the following parties or counsel to be served by electronic means:

Idaho State Attorney General  
Criminal Law Division  
[ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

/s/Dennis Benjamin

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Dennis Benjamin