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LAWRENCE G. WASDEN
Attorney General
State of Idaho

MARK A. KUBINSKI
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 48391-2020, 48392-2020
Plaintiff-Respondent,)	
)	Kootenai County Case Nos. CR28-19-
v.)	15305, CR28-19-16216
)	
JEPHY ALLEN BORDEN,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Jephy Allen Borden failed to show that the district court abused its sentencing discretion when declined his motion to reduce his concurrent aggregate sentences of ten years with five years determinate on two convictions for burglary and one conviction for eluding law enforcement?

ARGUMENT

Borden Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

When an officer attempted to stop a black truck for reckless driving, the truck ran a red light and attempted to elude the officer, at times driving through incoming traffic and using speeds

more than double the posted speed limit. (48391 R., p. 15.) Subsequent investigation showed Borden was the driver of the truck. (48391 R., pp. 15-23.) While the eluding investigation was ongoing, police received a report of a burglary of a barn, in which a motorcycle and ATV were stolen. (48391 R., pp. 22, 24-25.) The investigation of the burglary also lead to Borden. (48391 R., pp. 22-23, 26-36.) A few days after the burglary of the barn, police received a report of a residential burglary of two unoccupied homes for sale. (48392 R, p. 14.) The houses had been “ransacked” and several items stolen. (48392 R., pp. 14-15.) Once again, the investigation led to Borden. (48392 R., pp. 17-22.)

The state charged Borden with eluding, two counts of burglary (of the barn), grand theft, and two counts of petit theft in one case. (48391 R., pp. 69-71.) In another case the state charged him with three counts of burglary (of the houses), conspiracy to commit burglary, and grand theft. (48392 R., pp. 34-37.) Borden pled guilty to two counts of burglary and one count of eluding in a plea agreement resolving both cases. (48391 R., pp. 76-81; 48392 R., pp. 53-58.) The district court imposed concurrent sentences of five years determinate for eluding and ten years with five years determinate on each burglary, for an aggregate sentence of ten years with five years determinate. (48391 R., pp. 119-21; 48392 R., pp. 105-06.)

Borden later moved for a reduction of his sentences. (48391 R., pp. 122-24; 48392 R., pp., 108-10.) The district court denied the motions. (48391 R., p. 130; 48392 R., p., 115.) Borden filed notices of appeal timely from the denial of his Rule 35 motions for reduction of sentence. (48391 R., pp. 132-34; 48392 R., pp. 117-19.)

Borden argues that “the district court did not exercise reason in denying his motions to reduce his sentences.” (Appellant’s brief, pp. 4-10.) This argument fails because it is unsupported by the record.

B. Standard Of Review

The denial of a Rule 35 motion for reduction of sentence is reviewed for an abuse of discretion. State v. Dabney, 159 Idaho 790, 798, 367 P.3d 185, 193 (2016). In conducting a review of the grant or denial of a Rule 35 request for leniency, the appellate court applies the same criteria used for determining the reasonableness of the original sentence. State v. Anderson, 163 Idaho 513, 517, 415 P.3d 381, 385 (Ct. App. 2015). 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. Schiermeier, 165 Idaho 447, 454, 447 P.3d 895, 902 (2019); Anderson, 163 Idaho at 517, 415 P.3d at 385 (citing State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982)). The appellate court “will not review a defendant’s underlying sentence for excessiveness when the defendant has appealed only the grant or denial of his Rule 35 motion unless the motion was supported by new evidence tending to show that the original sentence was excessive.” State v. Carter, 157 Idaho 900, 903, 341 P.3d 1269, 1272 (Ct. App. 2014) (citing State v. Farwell, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007); State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)).

C. Borden Has Shown No Abuse Of The District Court’s Discretion

Borden’s criminal record preceding the current convictions consisted of two felonies and seven misdemeanors, “including Burglary, Trespass, Petty Theft, Theft with a Prior, Spousal Battery, Minor Possess Alcohol, Sell Liquor to Minor, Disturbing the Peace, Grand Theft, Possession of a Controlled Substance, Paraphernalia, and Inattentive Driving.” (PSI, pp. 5-10.) He had “at least three active warrants for his arrest.” (PSI, p. 10.) After noting Borden’s unfortunate childhood at sentencing, the district court found an adult history “full of stealing, theft,

[and] burglary.” (3/5/20 Tr., p. 24, L. 21 – p. 26, L. 10.) The district court concluded that community protection was a central concern based on the nature of the crimes. (3/5/20 Tr., p. 26, L. 11 – p. 27, L. 17.) The district court also considered the other factors of sentencing. (3/5/20 Tr., p. 27, L. 18 – p. 29, L. 7.) Regarding rehabilitation, the district court found it could “happen after or toward the end of a prison term.” (3/5/20 Tr., p. 30, Ls. 1-9.)

In rejecting Borden’s motion to reduce his sentence to make him eligible for rehabilitation programming earlier the district court noted that having an offender wait until about a year before being eligible for release on parole was typical. (8/28/20 Tr., p. 28, L. 25 – p. 29, L. 8.) The district court also considered the nature of Borden’s crimes, which it found were “egregious,” and Borden’s criminal history. (8/28/20 Tr., p. 29, L. 21 – p. 31, L. 22; p. 32, Ls. 3-13.) Reducing the sentences would “depreciate the seriousness of the crime[s].” (8/28/20 Tr., p. 31, L. 23 – p. 32, L. 2.) The record shows the district court weighed various factors and reached a decision within its discretion.

On appeal Borden reiterates the evidence he believes is in his favor and asserts the district court abused its discretion by not exercising reason because it did not give greater weight to that evidence. (Appellant’s brief, pp. 4-10.) However, he ignores the factors the district court found most weighty, including protection of the community, deterrence, and that a lesser sentence would depreciate the seriousness of Borden’s crimes. Because review of the record shows the denial of the motion to reconsider was reasonable, Borden has failed to show an abuse of discretion.

CONCLUSION

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

DATED this 13th day of July, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of July, 2021, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JACOB L. WESTERFIELD
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

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