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# State v. Alvarez Appellant's Brief Dckt. 48415

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO, | ) | |
| | ) | NO. 48415-2020 |
| Plaintiff-Respondent, | ) | |
| | ) | ADA COUNTY NO. CR01-19-38808 |
| v. | ) | |
| | ) | |
| JOSE VALENTINO ALVAREZ, | ) | APPELLANT'S BRIEF |
| | ) | |
| Defendant-Appellant. | ) | |
| | ) | |

## STATEMENT OF THE CASE

### Nature of the Case

After Jose Alvarez pled guilty to two counts of felony intimidating a witness, the district court ordered him to serve an aggregate sentence of nine years, with four years fixed. Mr. Alvarez subsequently filed a timely motion to reduce his sentence pursuant to Idaho Criminal Rule 35 (hereinafter, "Rule 35 motion"), which the district court denied. Mr. Alvarez appeals, and he argues that the district court abused its discretion by imposing an excessive aggregate sentence and denying his Rule 35 motion.

Statement of Facts and Course of Proceedings

In December 2019, an amended criminal complaint was filed by the State alleging that Mr. Alvarez committed attempted strangulation, aggravated battery, and two counts of misdemeanor battery. (R., pp.68-70.) After a contested preliminary hearing, Mr. Alvarez was bound over to the district court on those charges. (R., pp.71-76; *see generally* Tr. Vol. I.[1]) In May 2020, the State filed an amended information accusing Mr. Alvarez of committing two counts of felony intimidating a witness, two counts of misdemeanor violations of a no contact order, and one count of misdemeanor battery. (R., pp.108-110.)

Pursuant to a plea agreement, Mr. Alvarez pled guilty to each of the charges from the amended information. (R., pp.114-17; Tr. Vol. II, p.22, L.3—p.28, L.20.) As part of the plea agreement, the State agreed to recommend probation if Mr. Alvarez was found to be a low or moderate risk on a domestic violence evaluation or that the district court retain jurisdiction (a "rider") if Mr. Alvarez was found to be a "moderate-high" risk on a domestic violence evaluation. (R., p.114; Tr. Vol. II, p.7, L.22—p.8, L.2.) The State also dismissed another pending case, CR01-19-43575, as part of the plea agreement. (R., p.114; Tr. Vol. II, p.7, Ls.6-9.) Furthermore, the State agreed to limit its sentence recommendation to ten years, with three years fixed. (R., p.114; Tr. Vol. II, p.7, Ls.10-21.)

[1] There are three transcripts prepared for this appeal. Citations to the first transcript, cited herein as "Tr. Vol. I", refer to the transcript prepared for the preliminary hearing held on January 15, 2020, and that transcript is contained in the electronic document titled "Appeal Exhibits 02-11-2021 10.22.48 44442494 918E3397-028C-4882-83DF-AC2D3D5D8DC5". Citations to the second transcript, cited herein as "Tr. Vol. II", refer to the transcript prepared for the entry of plea hearing held on May 8, 2020 and the sentencing hearing held on September 18, 2020, and that transcript is contained in the electronic document titled "Appeal Transcripts 02-11-2021 10.22.48 44440669 3039F4AE-CB45-4334-8150-886BE65DACDC". Citations to the third transcript, cited herein as "Tr. Vol. III", refer to the transcript prepared for the hearing on Mr. Alvarez's Rule 35 motion held on April 14, 2021, and that transcript is contained in the electronic document titled "AP AC State v Jose Valentino Alvarez 48415 CR01-19-38808 4-14-20".

On the day before the sentencing hearing was originally scheduled to occur, the State filed a notice of intent to argue outside of the plea agreement based on Mr. Alvarez being charged with a felony violation of the no contact order entered in this case by allegedly "us[ing] the Telmate system in the Ada County jail to cause an invitation to communicate with him to be sent to victim [M.S.], who did in fact receive that invitation at an email address entered into the Telmate system by Defendant."[2] (R., pp.122-25.)

At sentencing, the State recommended an executed aggravate sentence of ten years, with four years fixed. (Tr. Vol. II, p.44, L.15—p.45, L.1.) Defense counsel requested that the district court "place Mr. Alvarez on probation, or in the alternative, sentence him to a Rider program[.]" (Tr. Vol. II, p.56, Ls.12-20.) The district court sentenced Mr. Alvarez to serve four years, all fixed, for one of the felony intimidating a witness charges and a consecutive executed sentence of five years, with none fixed, for the other felony intimidating a witness charge.[3] (R., pp.132-36; Tr. Vol. II, p.90, Ls.7-22.)

Mr. Alvarez filed a timely notice of appeal from the judgment of conviction. (R., pp.137-44.)

Mr. Alvarez subsequently filed a timely Rule 35 motion requesting a reduction of his aggregate sentence to five years, with two years fixed. (R., pp.175-84.) The State filed an objection to Mr. Alvarez's Rule 35 motion. (Aug. R., pp.1-9.) The district court denied Mr. Alvarez's Rule 35 motion following a hearing. (Tr. Vol. III, p.29, L.16—p.30, L.1.)

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[2] At a later scheduled sentencing hearing, the State asserted that "[b]ut it's the State's view, and it's my recollection that Judge Moody agreed, that the State is no longer bound by the plea agreement, given that new criminal charge that was filed against Mr. Alvarez." (Tr. Vol. II, p.44, Ls.5-14.)

[3] For each of the three misdemeanor charges, Mr. Alvarez was sentenced to serve "three hundred twenty-six (326) days in the Ada County Jail, with credit for time served in the amount of three hundred twenty-six (326) days." (R., p.134; Tr. Vol. II, p.89, L.19—p.90, L.6.)

## ISSUES

I. Did the district court abuse its discretion when it sentenced Mr. Alvarez to an executed aggregate sentence of nine years, with four years fixed?

II. Did the district court abuse its discretion when it denied Mr. Alvarez's motion to reduce his aggregate sentence pursuant to Idaho Criminal Rule 35(b)?

## ARGUMENT

### I.

### The District Court Abused Its Discretion When It Sentenced Mr. Alvarez To An Executed Aggregate Sentence Of Nine Years, With Four Years Fixed

"Where the sentence imposed by a trial court is within statutory limits, 'the appellant bears the burden of demonstrating that it is a clear abuse of discretion.'" *State v. Windom*, 150 Idaho 873, 875 (2011) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

> 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). In this matter, Mr. Alvarez's aggregate sentence did not exceed the ten-year statutory maximum. *See* I.C. § 18-2604(3) (five-year maximum; *See* I.C. § 18-112); I.C. § 18-308 (district court can order successive terms of imprisonment for each crime). Accordingly, to show that the sentences imposed were unreasonable, Mr. Alvarez "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).

"'[R]easonableness'" implies that a term of confinement should be tailored to the purposes for which the sentence is imposed." *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982).

> 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.

*State v. Stevens*, 146 Idaho 139, 148 (2008), *abrogated in part by, State v. Garcia*, 166 Idaho 661 (2020). "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).

In this case, Mr. Alvarez asserts the district court did not exercise reason and therefore abused its discretion by imposing an aggregate sentence that is excessive under any reasonable view of the facts. Specifically, Mr. Alvarez contends that the district court should have sentenced him to a rider or granted him probation in light of the mitigating factors, including his young age, lack of significant prior criminal history, troubled childhood, positive work history, and community support.

At the time of sentencing, Mr. Alvarez was [redacted]. (PSI,[4] pp.29, 41; Tr. Vol. II, p.69, Ls.5-11.) Defense counsel explained that sentencing that Mr. Alvarez is "[redacted] His brain is still developing at this point in his life. And he's someone who, at this point, you know, these years of his life can actually make the most improvement." (Tr. Vol. II, p.65, Ls.18-23.) Defense counsel recommended a more rehabilitative focused approach at sentencing because Mr. Alvarez's "brain literally is still developing the prefrontal cortex of his brain for the next three-ish years. And this is the time when, you know, intensive treatment is likely going to be the most beneficial thing for him and for society for when he's released."

[4] Citations to the "PSI" refer to the confidential sentencing materials included with the clerk's record as contained in the 195-page electronic document titled "Appeal Confidential Exhibits 02-11-2021 10.22.48 44442282 517271FC-D231-425B-B488-567D14E6F247".

(Tr. Vol. II, p.74, L.19—p.75, L.4.); *see also, State v. Justice*, 152 Idaho 48, 54 (Ct. App. 2011) (discussing the defendant's "relative youth" as a mitigating factor).

Furthermore, the absence of any prior convictions or arrests also supports a lesser sentence for Mr. Alvarez. "The absence of a criminal record is a mitigating factor that courts consider." *State v. Miller*, 151 Idaho 828, 836 (2011). "It has long been recognized that '[t]he first offender should be accorded more lenient treatment than the habitual criminal." *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (alteration in original) (quoting *State v. Nice*, 103 Idaho 89, 91 (1982)). Mr. Alvarez's only prior criminal history before this case was for a disturbing the peace charge in 2015. (PSI, pp.34, 39-40.) Defense counsel explained that the disturbing the peace charge occurred when Mr. Alvarez "was an [redacted] high school student, where he and another student essentially created a ruckus and both were cited for disturbing the peace."[5] (Tr. Vol. II, p.56, Ls.3-11.) Mr. Alvarez's LSI-R score was 10, which placed him in the "low risk" category. (PSI, pp.33-34, 40.) The presentence investigation report noted that Mr. Alvarez "appears to be a guarded candidate for community supervision." (PSI, pp.41-42.)

The Court of Appeals has also recognized that a defendant's "extremely troubled childhood is a factor that bears consideration at sentencing." *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). Mr. Alvarez reported in the domestic violence evaluation ordered by the district court that "his father was physically abusive, hitting with belts, extensions cords, hands etc." (PSI, pp.35, 54.) Mr. Alvarez's mother explained that she divorced Mr. Alvarez's biological father around the time that Mr. Alvarez was [redacted] because Mr. Alvarez's biological father "was physically and mentally abusive during our marriage." (PSI, pp.70-71.)

[5] Mr. Alvarez reported that he was not arrested in the disturbing the peace case, and that this case involved his first time being arrested. (PSI, p.40.)

Mr. Alvarez's stepfather "reported Jose witnessed violence growing up, described biological father as 'very abusive' and 'almost killed' Jose's mother." (PSI, 34.)

At sentencing, defense counsel explained that the relationship between Mr. Alvarez and M.S. was "not only an unhealthy one, but a greatly dysfunctional one" due, at least in part, to the "history of abuse in their families while growing up", and that Mr. Alvarez and M.S. "were kind of replicating what they had seen when they were younger." (Tr. Vol. II, p.59, L.22—p.60, L.4.) Defense counsel emphasized the importance of Mr. Alvarez engaging in counseling because of Mr. Alvarez's "past history with abuse". (Tr. Vol. II, p.69, L.23—p.70, L.1.) Defense counsel further described a conversation that she had with Mr. Alvarez in which Mr. Alvarez stated that "I've never wanted to be like my father. You know, I wanted to be a better person. I never saw myself, you know, being here." (Tr. Vol. II, p.70, Ls.2-10.) While in custody in this case, Mr. Alvarez was "engaging himself in domestic violence classes on the tablets in jail, domestic violence classes, cognitive awareness classes, anger management classes." (Tr. Vol II, p.72, L.21—p.73, L.8.) Mr. Alvarez's young age, lack of significant prior criminal history, and troubled childhood are mitigating factors that supported his request for probation or a rider.

In addition, Mr. Alvarez's employability and positive work history are mitigating factors that would supported his request for probation or a rider. According to the presentence investigation report, Mr. Alvarez worked as an account manager for Axiom Fitness and as an account manager at his stepfather's and mother's business for about a year each prior to his incarceration in this case. (PSI, p.37.) The presentence investigation reporter noted that:

> Appended letters of support from past employers (including Axiom Fitness) and co-workers describe defendant as kind, honest, positive, focused, wise, helpful, supportive, and a hard-working, invaluable team player.

(PSI, p.37; *see* PSI, pp.68-80.) At sentencing, defense counsel explained that "Mr. Alvarez would also have full-time employment in Twin Falls" if he was released into the community by working at his parents' company. (Tr. Vol. II, p.67, Ls.10-14.) Furthermore, defense counsel emphasized that Mr. Alvarez "has an incredibly hard work ethic", that Mr. Alvarez "was an assistant manager and a sales lead" for Axiom gym and "the lead salesman for the company at all four locations", and that Mr. Alvarez was then the "top salesperson, selling over $100,000 a month" at his parents' company. (Tr. Vol. II, p.71, L.16—p.72, L.8.) Mr. Alvarez's positive work history and potential employability are mitigating factors in support of leniency. *See State v. Mitchell*, 77 Idaho 115, 118 (1955) (recognizing gainful employment as a mitigating factor); *see also, State v. Shideler*, 103 Idaho 593, 594–95 (1982) (employment and desire to advance within company were mitigating circumstances).

The support and good character letters from Mr. Alvarez's family and friends stand in favor of mitigation as well. *Shideler*, 103 Idaho at 594–95 (reducing defendant's sentence upon a finding of family support and good character as mitigation); *see State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (finding that the district court acknowledged family and friend support as mitigating circumstances). Ten individuals prepared letters in support of Mr. Alvarez. (PSI, pp.68-80.) According to the letters, Mr. Alvarez "is extremely courteous, respectful to his mother, easy to talk to and takes responsibility" (PSI, pp.68-69), "has always been helpful and respectful" (PSI, pp.70-71), "has always been known to be hard worker" (PSI, p.72), "is the best bigger brother I think any girl would want" (PSI, pp.73-74), "has displayed an incredible amount of kindness, honesty, and integrity" (PSI, p.75), ""is organically gregarious" and "always set a warm tone to my time in his company" (PSI, p.76), "is a hard-working honest young man who

has so much potential" and "always has such good intentions" (PSI, p.77), and "is an honorable individual, invaluable employee, and all around great guy." (PSI, p.79.)

Two women who had previously dated Mr. Alvarez wrote letters in his support. (PSI, pp.78, 80.) One of the women explained that "our relationship did not involve the types of domestic problems he's being accused of now. Jose is a very loving and kind person who keeps a positive attitude in times of triumph and is always looking for new ways to grow and learn as an individual." (PSI, p.78.) The other woman wrote that "[n]ever once did [Mr. Alvarez] violate my body or mind", that Mr. Alvarez is "a loving person more than anything", and that Mr. Alvarez "is someone who I can trust." (PSI, p.80.) Mr. Alvarez's community support and good character are mitigating factors that support a lesser sentence.

In sum, Mr. Alvarez contends that the district court did not exercise reason at sentencing because it failed to give adequate weight to the mitigating factors in his case. Proper consideration of these factors supported his request for probation or a rider. Mr. Alvarez submits that the district court abused its discretion by imposing an excessive sentence.

## II.

## The District Court Abused Its Discretion When It Denied Mr. Alvarez's Rule 35 Motion To Reduce His Aggregate Sentence

"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)). "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.* "When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional

information subsequently provided to the district court in support of the Rule 35 motion." *State v. Huffman*, 144 Idaho 201, 203 (2007). "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." *Id*.

> 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).

In this case, the district court abused its discretion by failing to grant Mr. Alvarez's Rule 35 motion. In his Rule 35 motion, Mr. Alvarez requested that his aggregate sentence be reduced to five years, with two years fixed. (R., p.175.) Mr. Alvarez requested a sentence reduction based on additional information provided regarding the development of the brain for young adults like Mr. Alvarez. (R., pp.179-81.) In the Rule 35 motion, Mr. Alvarez stated that:

> Science tells us that adolescent and young adult brains, like Jose's, differ from adult brains, primarily in the development of the pre-frontal cortex of their brain, or the portion of the brain that controls high-level reasoning, regulation of emotion, goal planning, comprehension, and impulse control. Michael S. Gazzaniga et al., "*Extensive Individual Differences in Brain Activations Associated with Episodic Retrieval Are Reliable Over Time*," Journal of Cognitive Neuroscience, V01. 14, No. 8, pg. 75 (2002). It is estimated that that portion of

> the brain is not fully developed until well into the 20's, making juveniles and young adults markedly different. Sara B. Johnson et al., "*Adolescent Maturity and the Brain: The promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, "J. Adolescent Health 45(3) pp. 216 — 221 (2009). As such, Mr. Alvarez should be treated differently. Under the current sentence, Mr. Alvarez may be incarcerated for up to nine years and will be incarcerated for a minimum of four years, making his age of release range from [redacted] Right now, while his brain is still developing, is the most important time for Jose to be receiving treatment.

(R., pp.179-80.) Mr. Alvarez also explained that he would not likely begin his treatment at the Idaho Department of Corrections until October 2022 due to the lengthy fixed portion of his sentence, and that "[t]he longer treatment is delayed the more difficult it will be to address any problematic preconceived notions of appropriate relationship boundaries and behavior. *See* Matamales et al., '*Aging-Related Dysfunction of Striatal Cholinergic Interneurons Produces Conflict in Action Selection*,' Neuron 90, 362—37 3 (2016)." Furthermore, Mr. Alvarez asserted that the cost of his incarceration "to society, both monetarily and in unquantifiable societal damage, is not a cost we, as a society, are willing to bear."[6] (R., pp.181-82.) In a supplement to the Rule 35 motion, Mr. Alvarez attached an email indicating that he had not had any disciplinary offenses since his arrive at the Idaho State Correctional Institution. (Aug. R., pp.10-12.)

At the hearing held on Mr. Alvarez's Rule 35 motion, defense counsel informed the district court that the felony no contract order violation charge that was filed shortly before the

[6] Mr. Alvarez also contended in his Rule 35 motion that his "sentence was illegally imposed" because the district court took under consideration a pending offense and that the district court should have presumed that Mr. Alvarez was innocent of the pending charged conduct. (PSI, pp.177-78.) The Idaho Supreme Court has held that "consideration of charges which are pending or have been previously dismissed in arriving at a sentencing decision is within the sentencing authority of the court." *State v. Coffin*, 104 Idaho 543, 548-49 (1983) (citing *State v. Ott*, 102 Idaho 169, 170 (1981)). Consequently, Mr. Alvarez does not raise the illegally imposed sentence claim in this appeal.

original sentencing hearing and allowed the State to argue outside of the plea agreement had been resolved with Mr. Alvarez pleading guilty to one count of disturbing the peace instead. (Tr. Vol. III, p.11, Ls.10-18.) Defense counsel requested the district court reduce Mr. Alvarez's sentenced at the Rule 35 hearing based on the new or additional information presented in light of the previously mentioned mitigating factors presented at sentencing. (Tr. Vol. III, p.15, Ls.8-21.)

The new and additional information presented by Mr. Alvarez supported a reduction in his sentence. Mr. Alvarez asserts that the district court abused its discretion by denying his Rule 35 motion.

## CONCLUSION

Mr. Alvarez respectfully requests that this Court vacate the judgment of conviction, and that it remand his case to the district court with an instruction that he be sentenced to probation, a rider, or a lesser sentence. Alternatively, Mr. Alvarez respectfully requests that this Court reduce his aggregate sentence or remand this case to the district court as it deems appropriate.

DATED this 18th day of August, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 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
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JLW/eas