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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
(208) 334-4534
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	
)	NO. 48415-2020
Plaintiff-Respondent,)	
)	Ada County
v.)	Case No. CR01-19-38808
)	
JOSE VALENTINO ALVAREZ)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Jose Valentino Alvarez failed to show that the district court abused its sentencing discretion when it imposed a sentence of nine years, with four years fixed upon his conviction for two counts intimidating a witness?

ARGUMENT

Alvarez Has Failed to Show that the District Court Abused Its Discretion

A. Introduction

During the course of their two-year relationship, Jose Valentino Alvarez abused Moriah Shipp, including an incident in which Moriah fled her home, contacted police, and received hospital care for bruising around her head, neck, shoulder, and thigh, a laceration on her forehead,

and a ruptured ear canal. (PSI, pp. 94-96, 104-106.) The state charged Alvarez with attempted strangulation, aggravated battery, and two counts of battery. (R., pp. 77-78.)

Officers were dispatched a month later when Moriah contacted 911 to report Alvarez presently banging on, and attempting to open, her apartment door. (PSI, pp. 113-119.) Moriah reported Alvarez had stalked her at work, called and texted her cell phone, and texted her via Snapchat. (PSI, pp. 113-119.) The officer viewed a Snapchat conversation in which Moriah stated she would not lie during Alvarez's upcoming court date regarding his assault upon her. Alvarez texted, "Look out for you. I won't forget it." (PSI, p. 116.) During the interview with the officer, Moriah recounted a previously unreported attack in which Alvarez repeatedly punched her in the stomach, and later – while holding a rifle - threatened to rape and kill her. (PSI pp. 8-10.)

The state charged Alvarez with two counts of intimidating a witness, two counts of violation of a no contact order, and battery in an amended information. (R., pp. 108-110.) Alvarez pleaded guilty to the charges in the amended information. (R., p. 132; Tr., p. 6, L. 23 – p. 9, L. 9; p. 22, L. 3 – p. 28, L. 24.) The district court imposed consecutive sentences of four years fixed for the first count of witness intimidation and five years indeterminate for the second count of witness intimidation, and time served for the remaining charges. (R., pp. 133-134.)

Alvarez filed a timely notice of appeal. (R., pp. 137-139.) He also filed a motion for reduction of his sentences. (R., pp. 175-84; Aug. pp. 10-12.) The district court denied the motion (Supp. Tr., p. 25, L. 4 – p. 30, L. 1.)

Alvarez challenges the district court's decision to sentence him to an aggregate nine years with five years determinate and challenges the district court's decision to deny his Rule 35 motion. (Appellant's brief, pp. 4-12.) Alvarez has failed to show an abuse of discretion.

B. Standard of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

“A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” State v. Bakke, 481 P.3d 1197, 1203 (Idaho Ct. App. 2020), review denied (Jan. 20, 2021). 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 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, 270, 429 P.3d 149, 158 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Alvarez Has Shown No Abuse of the Court's Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met this burden, the court considers the entire sentence but, because the decision to release the defendant on parole

is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. 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.” Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)). The district court’s factual finding and reasoning for its sentence show no abuse of discretion.

The district court specifically considered the applicable legal standards. (Tr., p. 79, Ls. 13-23.) It considered the mitigating facts, including that Alvarez had a low LSI score and clean criminal record prior to these incidents (Tr., p. 80, Ls. 7-11); favorable letters of support (Tr., p. 80, Ls. 12-17); and Alvarez’s explanations for his conduct and acceptance or responsibility (Tr., p. 80, L. 18 – p. 81, L. 5). It then “weighed all of these positive things” against things it found “troubling,” including Alvarez’s “conduct in the jail” and his refusal to obey the no contact order. (Tr., p. 81, L. 19 – p. 83, L. 7.) Alvarez’s refusal to follow the jail rules and no contact order indicated that probation would not adequately protect the victim, Moriah Shipp. (Tr., p. 83, L. 8 – p. 85, L. 11.) The district court specifically weighed the mitigating and aggravating factors before imposing sentence. (Tr., p. 85, L. 12 – p. 87, L. 11; p. 89, L. 19 – p. 90, L. 22.)

The record supports the district court’s factual findings and conclusion that Alvarez was a continuing risk to harm the victim or another domestic partner. In his domestic violence evaluation Alvarez scored a “high chance of re-offending in the future,” was in the “high-risk range for

domestic violence,” and a “problem risk” on the assessment tools. (PSI, pp. 3-4, 10.) “The Intimate Justice scale show[ed] a severe potential for violence towards his partner.” (PSI, p. 10.) During the evaluation, Alvarez attempted to spread blame for the assaults to Moriah’s behavior (PSI, pp. 5-6, 10 (Alvarez “is not an accurate historian of his abusive behavior”).) In the stalking assessment and management evaluation, Alvarez showed a “severe potential for violence towards his partner,” and fell into the “rejected” type of stalker which is the “most common and dangerous type.” (PSI, pp. 14-15.) The evaluator wrote Alvarez “was unlikely to discontinue attempting to engage” Moriah and “was not decreasing in his behaviors towards [her] until incarceration.” (PSI, p. 16.)

Moriah recounted a two year history of emotional, mental, and physical abuse. (PSI, pp. 30-32.) She wrote that she lives “in a constant state of fear” and “could not live a normal life” because Alvarez had “tried to take [her] life more than once” and had not obeyed prior no-contact orders. (PSI, p. 31.) She was fearful of what would happen to her after the conclusion of the criminal proceedings. (PSI, p. 31.)

While in custody at the Ada County Jail, Alvarez, used the Telmate “GettingOut Visits” app to send a request directly to Moriah, requesting direct communication and enabling video chat. (PSI, pp. 173-174, 177-178.) Moriah contacted police and filed a report. (PSI, pp. 173-178.) Although Alvarez denied knowing he was sending Moriah an invitation to download a video communication app (Tr., p. 60, L. 21 – p. 61, L. 7), the district court found that Alvarez understood “how the system worked” (Tr. p. 84, L. 14 – p. 85, L. 11).

The district court recognized its first obligation to protect society. (Tr. p. 79, L. 13-25; p. 81, L. 9-18; p. 83, L. 8-21; p. 89, Ls. 4-11.) It found Alvarez is “capable of committing acts of physical, emotional, and verbal abuse, that [Alvarez is a] high risk for domestic violence, that

[Alvarez is a] high risk for stalking behaviors. And not just a significant risk related to the commission of future crimes, but to commit future offenses towards [Moriah], that [Alvarez is] a significant risk for crimes of violence and harassment.” (09/18/20 Tr. p. 86, L. 1-10.) The district court’s sentence is reasonable and not an abuse of discretion.

In arguing otherwise, Alvarez contends he should have been given “a rider or ... probation in light of the mitigating factors, including his young age, lack of significant criminal history, troubled childhood, positive work history, and community support.” (Appellant’s brief, p. 5.) As set forth above, however, the district court did consider the mitigating factors, but concluded they were outweighed by the need to protect society, particularly the victim in this case and any future domestic partners, from a man who was clearly a danger to them. Alvarez has failed to show an abuse of discretion.

The district court also properly denied the Rule 35 motion. “In 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 motion.” State v. Yang, 167 Idaho 944, 949, 477 P.3d 998, 1003 (Ct. App. 2020). “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.” State v. Del Critchfield, 167 Idaho 650, 654, 474 P.3d 1247, 1251 (Ct. App. 2020).

The district court applied the correct legal standards to the motion. (Supp. Tr., p. 18, L. 10 – p. 20, L. 9.) It found that the correct legal standards had been applied at the sentencing and reviewed the balancing of mitigating and aggravating factors. (Supp. Tr., p. 21, L. 1 – p. 24, L. 20.) The court found it had not exceeded its authority. (Supp. Tr., p. 24, L. 21 – p. 25, L. 3.) The district court then conclude that the information provided in the Rule 35 motion did not indicate a

reduction of sentence was appropriate. (Supp. Tr., p. 25, L. 4 – p. 30, L. 1.) Because the sentence was reasonable when imposed and was not shown to be unreasonable by new information, the district court did not abuse its discretion.

Alvarez contends the district court erred by denying his Rule 35 motion in light of his potential for brain development and other factors. (Appellant’s brief, pp. 9-12). The district court considered the information presented in the motion, but concluded it was either not new information or did not change the balancing of sentencing factors. (Supp. Tr., p. p. 25, L. 4 – p. 30, L. 1.) Alvarez has failed to show the district court abused its discretion.

CONCLUSION

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

DATED this 14th of September, 2021

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

MOLLY GARNER
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of September, 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:

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

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