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LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

MARK W. OLSON
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48549-2021
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-19-38102
)	
TODD ALEXANDER HAMILTON,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Hamilton failed to show that the district court abused its discretion when it denied his Rule 35 motion for reduction of sentence?

ARGUMENT

Hamilton Has Failed To Show That The District Court Abused Its Discretion When It Denied His I.C.R. 35(b) Motion For Reduction Of Sentence

A. Introduction

In September 2019, Todd Hamilton and Haley Moeri, who had just completed a cross-

country trip in their RV, stole approximately \$6,000¹ worth of wine from two Albertson's grocery stores in the Treasure Valley over a period of four days. (PSI, pp.1-2, 129-137.) Moeri had previously stolen wine from a third Albertson's store in July 2019, after which, she returned to the RV she was sharing with Hamilton. (PSI, pp.1-2; Tr., p.37, Ls.16-24.²) Officers spotted the RV several days after the theft and arrested Hamilton and Moeri. (PSI, p.1.) Numerous unopened bottles of wine matching the stolen bottles were recovered in a search of the RV. (PSI, pp.1, 135, 142.)

The state charged Hamilton with four counts of burglary, two counts of grand theft, and two counts of petit theft. (R., pp.43-45.) Pursuant to a plea agreement with the state, Hamilton pled guilty to one count of grand theft, and the state agreed to dismiss the other charges and to recommend a unified five-year sentence with one year fixed. (R., pp.59, 65-66.) At the sentencing hearing, Hamilton recommended that the court place him on probation. (Tr., p.46, L.23 – p.47, L.20.) The district court imposed a sentence that fell between these recommendations – a unified three-year sentence with six months fixed. (R., pp.82-85; Tr., p.81, L.20 – p.83, L.23.)

Approximately one month later, Hamilton filed an I.C.R. 35 motion for reduction of sentence, requesting that the district impose place him on probation and impose 180 days jail. (R., pp.86-90.) Hamilton supported the motion with a letter to the court, and seven character letters from friends and employees. (R., pp.91-106.) The district court denied the I.C.R. 35

¹ Albertson's initially reported the theft to be in excess of \$10,000 (PSI, pp.136-139), but at the sentencing hearing, the prosecutor clarified that after following up with the loss prevention department at the store and itemizing the bottles involved in the theft, Albertson's reported a loss of \$6,132. (Tr., p.17, L.24 – p.18, L.10.) This is the amount that the district court ordered Hamilton to pay in restitution. (R., pp.79-81.)

² Citations to "Tr." in this brief refer to the transcript of the October 27, 2020 sentencing hearing, the only transcript cited to in this brief.

motion by memorandum decision and order without a hearing. (R., pp.107-110.) Hamilton timely appealed. (R., pp.113-115.)

B. Standard Of Review

“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, 473 P.3d 377, 382 (Ct. App. 2020). 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. Hamilton Has Failed To Show That The District Court Abused Its Discretion

“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) (citing State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)). The appellate court’s responsibility when review a court’s denial of a Rule 35 Motion motion for reduction of a sentence is to examine the record before the Court, including the evidence presented in connection with the motion, to determine whether the trial court abused its discretion in denying the leniency requested. State v. Burnight, 132 Idaho 654, 661, 978 P.2d 214, 221 (1999).

In denying Hamilton's I.C.R. 35 motion in this case, the district court cited and applied the correct law and standards consistent with the law set forth above. (R, pp.107-108.) The court then summarized the procedural history of the case, and stated that it reviewed the motion and the record. (R., p.108.) The court acknowledged that while it "appreciate[d] the show of support for Defendant contained within the submitted letters, nothing Defendant has submitted tends to show that his original sentence was unduly harsh or excessive." (Id.) A review of the record supports the district court's determination.

While Hamilton presented numerous letters about his character in support of his I.C.R. 35 motion, they did not provide much, if any, new information that was not presented at the sentencing hearing one month prior. For his sentencing hearing, Hamilton submitted five letters and a sworn affidavit of support, and presented lengthy live testimony from a character witness. (Tr., p.20, L.7 – p.31, L.10; PSI, pp.41-46.) After not getting the sentence he hoped for, Hamilton utilized I.C.R. 35 simply to produce *more* character evidence a short time later, and to present a lengthier personal statement. These additional affirmations of Hamilton's good character did not demonstrate that his underlying sentence was excessive.

As the district court recognized at sentencing (Tr., p.82, Ls.10-15), the thefts did not constitute a singular isolated event, or a simple and fleeting lapse of bad judgment, as Hamilton appeared to attempt to portray them to the presentence investigator (See PSI, pp.2-3). Hamilton's thefts were planned out and methodical. They involved two different stores, multiple trips to the wine aisles of the grocery store, efforts to conceal the wine, and an apparent targeting of the most expensive wines. (PSI, pp.1-2, 129-138.)

As the presentence investigator noted (PSI, p.27), Hamilton never provided an adequate or plausible explanation for, or insight into, the thefts that would demonstrate he does not pose a

significant danger to the community going forward. At the sentencing hearing, the district court reasonably surmised, based in part upon Hamilton's rental of a storage unit, that Hamilton and Moeri were looking to sell the wine, and that the thefts were "based purely in greed." (Tr., p.82, Ls.10-21.)

A review of his Hamilton's extensive statements made at the sentencing hearing (Tr., p.48, L.7 – p.58, L.16), to the presentence investigator (PSI, pp.2-4), and in a letter submitted in support of his I.C.R. 35 motion (R., pp.91-93), reveals a primary theme of expressing how difficult the collateral consequences of the thefts have been *for him* – including negative financial implications for his family and for a restaurant he owned, and the emotional impact of his thefts on himself and his family. Hamilton appears to have viewed these events as something bad that happened to him. The district court reasonably observed that Hamilton and Moeri were "projecting as victims." (Tr., p.82, Ls.2-10.)

Prior to this flurry of wine thefts, Hamilton had only one conviction since 1997, for driving while impaired in 2013. (PSI, pp.14-26.) However, prior to 1997, Hamilton had accumulated an extensive record of theft and other charges. Hamilton's record reflects at least seven theft-related convictions, including several felonies. (Id.) Hamilton also has multiple convictions for battery and eluding officers. (PSI, pp.15, 19, 22.) The district court reasonably considered this criminal history in declining to place Hamilton on probation. (Tr., p.82, L.22 – p.83, L.10.) The court noted that despite the lengthy period of time between charged crimes, Hamilton was, "at least for a period of time ... fundamentally a thief," and not someone who made an unforeseeable isolated mistake with respect to the recent charges. (Tr., p.82, L.22 – p.83, L.10.) Hamilton was willing to engage in the wine thefts even though, as noted several times during the sentencing hearing and in the presentence investigation report (Tr., p.40, Ls.5-

14; p.43, Ls.12-15; p.46, Ls.4-15; PSI, pp.12, 26), he was in the process of successfully obtaining “clemency” with regard to his Florida convictions that remained on his record.

Hamilton scored a 28 on the LSI-R, which is in the higher end of the moderate recidivism (16-30) category. (PSI, pp.26-27.) In light of all of these factors, the state submits that both the plea agreement, which resulted in the dismissal of seven charges, and the six-month fixed sentence, demonstrated leniency and a strong consideration of mitigating factors by both the state and the district court. Nothing in the letters submitted in support of Hamilton’s I.C.R. 35 motion demonstrate that this sentence was excessive.

On appeal, Hamilton points to a phrase in the I.C.R. 35 denial order in which the district court stated both that Hamilton “provided no new information,” in support of his I.C.R. 35 motion, and that the letters he provided “did not change the court’s mind.” (Appellant’s brief, p.5 n.3.) However, a review of the context of statements reveals that the court was not ignorant or dismissive of the letters or their content, but instead simply concluded, reasonably, that the letters contained no new information that warranted a sentence reduction. In fact, as noted above, the court specifically acknowledged that it “appreciate[d] the show of support for Defendant contained within the submitted letters.” (R., p.108.)

Hamilton has failed to show that the district court abused its discretion by denying his I.C.R. 35(b) motion for reduction of sentence. This Court should therefore affirm the district court’s determination.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Hamilton's I.C.R. 35(b) motion.

DATED this 23rd day of September, 2021.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of September, 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:

MAYA P. WALDRON
WALDRON LEGAL, PLLC
maya@waldronlegal.com

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd