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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48574-2021
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-20-22541
)	
AMY ROSE BONNING)	
AKA AMY ROSE INGRAM,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

ISSUES

1. Has Bonning failed to show that the district court abused its sentencing discretion when it sentenced her to six years with two years fixed for possession of a controlled substance with the intent to deliver?
2. Has Bonning failed to show that the district court abused its discretion by denying her Rule 35 motion for reduction of her sentence?

STATEMENT OF THE CASE

Law enforcement officers assisted probation and parole with a compliance check of Bonning's residence. (Tr., p.13, Ls.2-10.) During the search of the residence, Bonning attempted to hide a white eyeglasses case. (Tr., p.14, Ls.2-5.) Officers searched the case as well as a box found near where Bonning had been sitting; inside, they located paraphernalia, baggies, a thyroid medication in someone else's name, two snorting devices, three baggies with eighteen grams of methamphetamine, and three additional baggies with smaller weights of methamphetamine. (Tr., p.14, Ls.5-13.) Bonning admitted she was selling methamphetamine, had been doing so since she was last released from prison, and sold about an ounce a day. (Tr., p.14, Ls.17-20.)

The state charged Bonning with felony possession of a controlled substance with the intent to deliver and misdemeanor possession of drug paraphernalia, along with a persistent violator enhancement. (R., pp.17-18, 42-43.) Pursuant to a plea agreement, Bonning entered an Alford¹ plea to possession of a controlled substance with the intent to deliver and the state dismissed the paraphernalia charge and persistent violator enhancement. (R., pp.22-33, 47-57; Tr., p.15, Ls.3-23.) The district court sentenced Bonning to six years with two years fixed. (R., pp.65-67; Tr., p.31, Ls.7-14.) Bonning filed a timely notice of appeal. (R., pp.71-72.) Thereafter, she filed a Rule 35 motion for reconsideration of her sentence, which the district court denied. (R., p.76; Aug., pp.1-16.)

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

ARGUMENT

I.

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

A. Introduction

Bonning asserts that the district court abused its discretion when it sentenced her to six years with two years fixed. (Appellant’s brief, pp.3-6.) Bonning has shown no abuse of discretion. The sentence imposed is reasonable in light of Bonning’s criminal history and the fact that she committed the underlying crime while on felony probation.

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)). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “whether the 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. The District Court Did Not Abuse Its Sentencing 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 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. “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2018) (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

The sentence imposed is reasonable in light of Bonning’s criminal history. Bonning’s lengthy record includes eighteen misdemeanor convictions, many of which are drug related, including two convictions for possession of a controlled substance and eight for possession of drug paraphernalia. (PSI, pp.3-10.) In addition, Bonning has two prior felony convictions for possession of controlled substances. (See PSI, pp.5-6, 10; see also R., pp.42-43.) Moreover, Bonning’s criminal history demonstrates a disregard for following rules. She has multiple convictions for failing to have a driver’s license, failing to maintain car insurance, failing to appear at court, contempt of court, resisting arrest, and providing false information to law enforcement. (PSI, pp.3-10.)

The sentence is also reasonable in light of Bonning's multiple opportunities for and failures on probation in the past. Bonning has had numerous probation violations over multiple cases. (PSI, p.10.) In her first felony drug possession case, her probation was revoked and the underlying sentence was imposed. (PSI, p.10.) At the time the PSI was prepared for her second felony drug conviction, Bonning had pending probation violations for "missing scheduled meetings with her Probation Officer, missing 22 mandatory scheduled substance abuse tests, admitting to using marijuana, and not complying with her payment agreement." (PSI, p.10.) And, Bonning was on felony probation in that case at the time she committed the underlying offense in this case. (See PSI, pp.19-20.) Despite being given the opportunity of probation again, she began selling methamphetamine upon her release from prison and, by her own admission, sold as much as an ounce of methamphetamine a day. (Tr., p.14, Ls.17-20.)

The district court reviewed the PSI materials and considered the objectives of criminal sentencing. (Tr., p.27, Ls.7-16.) The district court emphasized that Bonning was on felony probation at the time she committed the underlying crime, which was not merely the possession of methamphetamine but possession with the intent to deliver methamphetamine to others. (Tr., p.27, Ls.17-23; p.29, Ls.2-4.) As the district court noted, Bonning has a long history of methamphetamine use, drug convictions, and failures on probation. (Tr., p.29, Ls.5-11.) The district court recognized Bonning's mental health issues, but also recognized that her conduct posed a risk to the community. (Tr., p.29, Ls.12-22.) In light of Bonning's underlying conduct, criminal history, failures on probation, and the fact that she was on felony probation in a prior drug case at the time she committed this offense, the district court did not abuse its discretion when it determined that a period of incarceration was necessary.

Bonning argues that the district court failed to exercise reason and therefore abused its discretion because the sentence is “objectively unreasonable” in light of the mitigating factors, such as her childhood and adult trauma, medical problems, and mental health and substance abuse issues. (Appellant’s brief, pp.4-6.) However, the district court considered that mitigating information. (PSI, pp.11-13, 16-17, 20, 59-90; Tr., p.22, L.12 – p.27, L.11; p.29, Ls.12-18.) As the PSI noted, “[i]t is clear Ms. Bonning has struggled with her substance addiction and criminal thinking for over 20 years. Despite the amount of familial support she has, it has not helped her overcome her addiction and criminal behavior. She has been placed on probation many times and has had numerous probation violations.” (PSI, p.20.) In light of that information, the district court reasonably concluded that a period of incarceration was appropriate. Bonning has failed to show that the district court abused its sentencing discretion.

II.

Bonning Has Failed To Show That The District Court Abused Its Discretion When It Denied Her Rule 35 Motion For Reduction Of Sentence

A. Introduction

Bonning asserts that the district court abused its discretion when it denied her Rule 35 motion for reduction of her sentence. (Appellant’s brief, pp.6-8.) Bonning has shown no abuse of discretion. The district court did not abuse its discretion when it considered the information provided and determined that it did not render the otherwise-reasonable sentence excessive.

B. Standard Of Review

“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. Anderson, 163 Idaho 513, 517, 415 P.3d 381, 385 (Ct. App. 2015). Where a sentence is neither illegal nor excessive when pronounced,

“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. Burggraf, 160 Idaho 177, 180, 369 P.3d 955, 958 (Ct. App. 2016) (citing Huffman, 144 Idaho at 203, 159 P.3d at 840). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” Huffman, 144 Idaho at 203, 159 P.3d at 840.

C. Bonning Failed To Show Her Sentence Was Excessive In Light Of New Information

Bonning sought a reduction of her sentence based on documentation of her performance in classes and treatment while incarcerated. (Aug., pp.1-14.) While encouraging, the district court is not required to grant leniency based on positive performance in prison, which is, after all, the expectation. See State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010); State v. Copenhaver, 129 Idaho 494, 496, 927 P.2d 884, 886 (1996) (“The district court further did not abuse its discretion in refusing to view Copenhaver’s good behavior in prison between his sentencing and the Rule 35 hearing as a mitigating factor.”). The district court reviewed the documentation and concluded that, “[d]espite the additional information presented by Bonning, ...the sentence is not excessive given the nature of the offense and Bonning’s criminal history.” (Aug., p.16.) Further, as the district court noted, “shortly after the sentence was imposed, Bonning’s probation in a separate case (Ada County Case No. CR01-18-48323) was revoked, her suspended prison sentence of a similar length to this one was ordered into execution without a period of retained jurisdiction, and she didn’t file a Rule 35(b) motion seeking a period of retained jurisdiction.” (Aug., p.16.) “Given the outcome of that case, it would make little practical sense to retain jurisdiction in this case now.” (Aug., p.16.) Bonning has failed to show any abuse of the district court’s discretion.

CONCLUSION

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

DATED this 22nd day of July, 2021.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd 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:

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/s/ Kacey L. Jones
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KLJ/dd