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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 48596-2021
Plaintiff-Respondent,)	
)	Caribou County Case No.
v.)	CR15-19-227
)	
KEVIN MONDEL MARTINEZ,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
)	

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

ARGUMENT

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

A. Introduction

Martinez robbed a bank in Soda Springs, Idaho. (PSI, p. 8.) He then admitted robbing two other banks, one in Jackson Hole, Wyoming, and the other in Salt Lake City, Utah. (PSI, p. 11.) The state charged him with one count of robbery. (R., pp. 51-52.) He accepted a plea agreement pursuant to which he would plead guilty, while the state agreed that it would not

forward the matter to federal prosecutors and that his sentence “can run concurrently with similar charges in Teton County Wyoming and Salt Lake County Utah.” (R., pp. 61-63.) The court accepted Martinez’ guilty plea (R., pp. 77-78), and then imposed a sentence of ten years with five years fixed (R., pp. 100-02; Tr., p. 35, L. 19 – p. 36, L. 3). Martinez filed a motion under I.C.R. 35 requesting leniency. (R., pp. 103-04.) In support, he submitted a judgment of conviction entered in the U.S. District Court for the District of Wyoming on a conviction for bank robbery, sentencing Martinez to thirty months of imprisonment to be served concurrently with Martinez’ sentence in this case. (R., pp. 116-25.) He also submitted a letter from his mother. (R., p. 126.) Following a hearing, the district court denied the motion. (R., pp. 132-33.) Martinez timely appealed. (R., pp. 134-36.)

B. Standard Of Review

“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.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). 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. Martinez Has Failed To Show 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)). “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. Idaho appellate courts reviewing “the grant or denial of a Rule 35 motion ... consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” State v. Carter, 157 Idaho 900, 903, 341 P.3d 1269, 1272 (Ct. App. 2014).

Because Martinez’ sentence is within statutory limits, to show that it is nevertheless an abuse of discretion he must show 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); I.C. § 18-6503 (providing that robbery is punishable by not less than five years imprisonment and up to life). 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). 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)). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ. Furthermore, a sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (internal citations, quotation marks, and alterations omitted).

In support of his Rule 35 motion, Martinez submitted two documents: a judgment of conviction for bank robbery in federal district court (R., pp. 116-25) and a letter from his mother (R., p. 126).

The letter from Martinez’ mother discusses his background, her support of Martinez, his struggles with substance abuse and mental health issues, and her hope that he will receive treatment. (R., p. 126.) All of that information was included in the presentence report and none constitutes the new evidence required to support a Rule 35 motion. (PSI, pp. 11 – 21.) The district court recognized as much in considering and denying the motion. (Tr., p. 54, L. 7 – p. 55, L. 8. See also Tr., p. 28, Ls. 7 – p. 35, L. 18 (district court at sentencing extensively discussing Martinez’ substance abuse and mental health issues, background, and family support).) At any rate, even if it were new information, nothing in the letter would show that his sentence constituted an abuse of discretion.

Instead, as he does on appeal, below Martinez relied primarily on the sentence imposed by the federal district court, arguing that his sentencing in this case should be modified to “mirror” the sentence imposed by the federal district court. (Tr., p. 43, L. 5 – p. 46, L. 14; Appellant’s brief, pp. 3-4.) But on appeal, as below, Martinez does not explain why his sentence for a different crime imposed by a court in another jurisdiction would suggest that his sentence

for this crime imposed by an Idaho court is excessive. As an initial matter, there is no evidence at all regarding the factual circumstances of the bank robbery for which Martinez was sentenced in federal court, the evidence considered by the court at sentencing, or how the federal court reached its determination. As the district court here noted, “We, quite frankly, have no idea what happened in federal court.” (Tr., p. 51, Ls. 1-7.) But, as the district court also noted, even on the assumption that the crimes were relevantly similar and the federal court considered similar evidence at sentencing, Idaho’s sentencing system provides courts far more flexibility to sentence in accordance with the court’s view of the facts and circumstances than does the federal system. (Tr., p. 50, L. 9 – p. 53, L. 15.) The fact that a different sentence was imposed for a different crime by a different court operating under a different sentencing system not only does not show that the district court here imposed an excessive sentence, it is entirely irrelevant to the question whether the court did so.

Martinez failed to submit new evidence in support of his I.C.R. 35 motion showing his sentence was an abuse of discretion. This Court should therefore affirm the denial of that motion. But even looking to the court’s initial sentencing discussion, it is clear that the court did not abuse its discretion. The district court’s sentencing analysis was extensive and detailed, showing that the court recognized its discretion; acted within the outer boundaries of that discretion; applied the appropriate legal standards, including the goals of sentencing; and reached its sentencing determination by an exercise of reason in light of the mitigating and aggravating factors. (Tr., p. 24, L. 24 – p. 36, L. 3.) The court focused in particular on the impact on the victims in this case (Tr., p. 26, L. 13 – p. 28, L. 2); the fact that this was not an isolated crime, but, Martinez admitted bank robberies in multiple states (Tr., p. 28, Ls. 2-6; p. 31, L. 12 – 32, L. 1); his extensive criminal history (Tr., p. 30, L. 13 – p. 31, L. 4); his “extremely high” LSI-R

score (Tr., p. 34, Ls. 2-12); and his repeated failures at rehabilitation through prior substance abuse and mental health treatment (Tr., p. 29, L. 25 – p. 30, L. 12; p. 31, Ls. 5-11; p. 33, Ls. 4-19; p. 34, L. 13 – p. 35, L. 18).

The district court clearly did not abuse its discretion in initially imposing the sentence, and nothing submitted by Martinez in support of his I.C.R. 35 motion shows that the sentence is excessive.

CONCLUSION

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

DATED this 9th day of September, 2021.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th 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:

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/s/ Andrew V. Wake
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Deputy Attorney General

AVW/dd