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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48700-2021
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-19-36502
)	
JONIER LATIMORE WEST,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

Has West failed to show that the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion?

STATEMENT OF THE CASE

In August of 2019, an Idaho State Police officer on a routine patrol saw “a vehicle make an illegal U-Turn across a double yellow line.” (Conf. Ex., p.1.) The officer stopped the vehicle and observed the driver, West, had “glassy and bloodshot eyes” and slurred speech. (Id.) Additionally, “there was an odor of alcoholic beverage emitting from” West’s breath. (Id.) West

attempted “a series of field sobriety tests” and failed them. (Id.) After securing a warrant, the officer drew West’s blood, and testing later showed he had a .256 blood-alcohol content. (Id.; Tr., p.11, Ls.1-13.)

The state charged West with felony driving under the influence, alleging he had a prior conviction for felony DUI within the last 15 years. (R., pp.27-28.) The state subsequently filed an Information Part II, alleging West was a persistent violator. (R., pp.35-36.) West filed a motion to suppress evidence (R., pp.37-40), which was denied (R., p.58). Pursuant to a plea agreement between the parties, West pleaded guilty to felony DUI, the state withdrew the persistent violator enhancement, and the state dismissed charges in a separate criminal case. (R., pp.69-81.) The district court sentenced West to ten years with three years fixed. (R., pp.87-89.)

West timely filed a motion for leniency pursuant to Idaho Criminal Rule 35. (R., pp.94-96.) The district court denied the motion. (R., pp.100-02.) West timely appealed. (R., pp.103-05.)

ARGUMENT

West Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

West contends that, “[b]ased upon the new or additional information presented with his Rule 35 motion and the mitigating factors present in his case,” the lower court “abused its discretion in denying his Rule 35 motion.” (Appellant’s brief, pp.3-6.) Review of the record and application of the relevant legal standards shows no abuse of discretion.

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. Grant, 154 Idaho 281, 288, 297 P.3d 244, 251 (2013) (quoting State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)); see also State v. Anderson, 163 Idaho 513, 517, 415 P.3d 381, 385 (Ct. App. 2015) (“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.”). In conducting a 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.” Anderson, 163 Idaho at 517, 415 P.3d at 385.

C. West Has Failed To Show An Abuse Of Discretion

The district court did not abuse its discretion when it denied West’s Rule 35 Motion. “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. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013) (emphasis added, internal quotations omitted). The information in West’s motion was as follows:

Due to restrictions at the [Correctional Alternative Placement Program] facility where Mr. West is housed, he has been unable to program. He informed counsel that the coronavirus had limited the number of offenders permitted to program. He learned that because he is serving a term, and not a Rider, the facility deems him a lower priority for programming than the rider inmates due to the time constraints of the retained jurisdiction. If the Court were to grant Mr. West's requested modification, he is hopeful that he would become eligible to start his programming much sooner or moved to a facility where he could participate in programming.

(R., p.94.) West additionally submitted a letter to the court, purporting that “[m]y breathing is not normal, and I have asthma which places me at a high risk with Covid-19,” and requesting a sentence reduction “in accordance with other state’s attorneys general[’s] directives to release non-violent offenders like myself and [to] allow me to pursue treatment and be safe from the coronavirus in the community.” (R., p.96.) The district court denied West’s motion to reduce his sentence, concluding the original sentence was not “unduly harsh or excessive,” and finding West had “not presented any new evidence or authority for the Court to consider.” (R., p.101.)

On appeal, West fails to show that the district court abused its discretion. The court correctly found that West failed to support his motion with new evidence (R., p.101), as West’s drug and mental health issues, and his desire for programming in custody, were not “new” issues before the court. (See Tr., p. p.16, L.2 – p.17, L.17; p.22, L.15 – p.27, L.17); see also State v. Quintana, 155 Idaho 124, 133, 306 P.3d 209, 218 (Ct. App. 2013) (“The letters from family and friends Quintana submitted in support of her Rule 35 motion cannot be truly considered ‘new’ as they simply purport to provide additional information as to her mental health, a factor we have already determined was adequately considered by the district court at sentencing.”). Nor was it news to anyone in September of 2020, when West was sentenced, that COVID-19 was disrupting the usual workings of the judicial and prison systems. (See, e.g., Tr., p.8, Ls.6-7; see also R., pp.65, 67-69, 85 (showing that after March of 2020, hearings in this case were conducted remotely via WebEx).) And the district court judge, who read the PSI (see Tr., p.33, L.11), would have

already known that West claimed he was at risk of coronavirus complications (Conf. Ex., p.22). Thus, the district court properly found that West's statements about needing programming, and having difficulties finding it in the post-COVID world, was not "new" information, much less information that would justify a reduction in sentence. State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007) (noting that "Huffman has presented no new information that the court could properly consider," and "holding the district court did not abuse its discretion by rejecting a Rule 35 motion based on factors that "were considered by the district judge at the original sentencing"). West fails to show the court abused its discretion.

On appeal, West additionally raises several other mitigating factors that he claims justify a reduced sentence. (See Appellant's brief, pp.4-5.) Specifically, West cites his "difficult childhood, substance abuse and a desire for treatment, mental health issues, and remorse" as "mitigating factors that support a reduction in sentence." (Appellant's brief, p.4.)

But this evidence is likewise irrelevant for a Rule 35 analysis because none of it is new. The district court was well aware of all the mitigating evidence at sentencing. (See e.g., Tr., p.16, Ls.2-14; p.23, L.20 – p.24, L.6 (discussing West's difficult childhood); p.16, L.2 – p.17, L.17; p.22, L.15 – p.27, L.17 (discussing West's substance abuse, mental health issues, need for programming and prior attempts at treatment); p.19, L.14 – p.21, L.5 (where West made remorseful statements).) As such, West cannot show the court erroneously denied his Rule 35 motion based on these factors. Huffman, 144 Idaho at 203, 159 P.3d at 840.

In any event, even considering the known mitigating information, West's sentence is justified. West's focus on mitigation leaves out all of the aggravating factors in the record. He has a lengthy criminal history in multiple states, with 16 misdemeanor convictions, including convictions for harassment, petit theft, disturbing the peace, disorderly conduct, and DUI. (Conf.

Ex., pp.195-204.) The instant conviction is West's fifth felony conviction. (Conf. Ex., pp.2-4, 195-204.) Along the way, West accrued no less than four probation violations. (Conf. Ex., pp.234-35.) And West's record of prison misconduct is just as aggravating, with "12 negative log entries" (Conf. Ex., p.31), and multiple fights, including one where West "back-handed another inmate" (Conf. Ex., p.23).

It is also particularly troubling that, despite previous attempts at treatment (Conf. Ex., pp.3-4, 209-11), probation (Conf. Ex., p.217), drug court (Conf. Ex., p.5), a CAPP rider (id.) and aftercare (id.), West was pulled over in this case with a .257 BAC, something West himself considered a "reckless" act that put the community and his "friends ... in the vehicle" at risk. (Tr., p.19, Ls.16-19.) Despite all the attempted interventions, nothing seems to have changed since 2016, when West's probation officer recommended an imposed sentence because he "can't seem to stay out of trouble and continually puts the public at risk with his behavior." (Conf. Ex., p.205.)

Thus, in light of all of the aggravating and mitigating factors, even West had to admit below that ten years imprisonment, with three years fixed, was within the appropriate range. His attorney told the court that West knew "he's got to do some time, and in the grand scheme of things" West was "very content" with the state's sentencing recommendation. (Tr., p.18, Ls.8-11.) In light of all the information in the record, West fails to show his sentence was excessive or that the court abused its discretion by denying his motion for leniency.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying West's Rule 35 motion.

DATED this 27th day of September, 2021.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th 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/ Kale D. Gans
KALE D. GANS
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KDG/dd