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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 48780-2021
)	
v.)	KOOTENAI COUNTY NO.
)	CR28-18-10612
ROBERT SHAWN BECK,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Robert Beck pled guilty to felony operating a motor vehicle while under the influence, the district court sentenced him to ten years, with six years fixed, and retained jurisdiction. After Mr. Beck was released onto probation following the period of retained jurisdiction, an interstate compact report of violations was filed alleging that Mr. Beck had violated the terms of his probation. After Mr. Beck entered an admission to violating his probation, the district court revoked his probation and retained jurisdiction again. The district court later entered an order relinquishing jurisdiction. Mr. Beck subsequently filed a timely motion for modification of sentence pursuant to Idaho Criminal Rule 35, which the district court

denied. Mr. Beck appeals, and he argues that the district court abused its discretion by relinquishing jurisdiction and denying his Rule 35 motion.

Statement of Facts and Course of Proceedings

In July 2018, the State filed a criminal complaint alleging that Mr. Beck committed felony operating a motor vehicle while under the influence (“DUI”) and that Mr. Beck was a persistent violator. (R., pp.11-13.) Mr. Beck subsequently pled guilty to felony DUI pursuant to a plea agreement, and the persistent violator enhancement was dismissed. (R., pp.40-44.) The district court sentenced Mr. Beck to ten years, with six years fixed, and retained jurisdiction (a “rider”). (R., pp.45-47.) After Mr. Beck successfully completed the rider, the district court suspended the execution of Mr. Beck’s sentence and placed him onto supervised probation for a period of ten years. (R., pp.48-54.)

In August 2020, an interstate compact report of violations was filed, alleging that Mr. Beck violated the terms of his probation by: (1) being found “in possession of a methamphetamine pipe”¹ in May 2020; (2) being cited for a vehicle registration issue in June 2020; (3) being cited for an obstructed license plate from the same incident in June 2020; (4) being cited for failure to register a vehicle from the same incident in June 2020; (5) possessing “a marijuana pipe and white container containing marijuana” from a separate incident in May 2020; and (6) absconding from supervision. (R., pp.57-60.) Mr. Beck subsequently entered an admission to having violated his probation by absconding from supervision, and the State

¹ This allegation noted that Mr. Beck would be charged with felony possession of a controlled substance “[p]ending the results” of the lab test for the pipe. (R., p.57.) It is unclear from the record whether those lab tests results came back and whether Mr. Beck was ever charged for the conduct alleged in this violation.

withdrew the other allegations. (R., pp.82-83.) The district court consequently revoked Mr. Beck's probation and ordered a second rider. (R., pp.84-86.)

After Mr. Beck was sentenced to a second rider, Mr. Beck filed an untimely motion for modification of sentence pursuant to Idaho Criminal Rule 35 ("Rule 35 motion"). (R., pp.90-92.) The district court denied this Rule 35 motion. (R., pp.93-96.) In March 2021, the North Idaho Correctional Institution ("NICI") filed a letter and addendum to the presentence investigation report ("APSI") with the district court in which it recommended that Mr. Beck be placed onto supervised probation. (APSI,² pp.6-17.) In April 2021, however, the NICI filed another letter with the district court indicating that the case manager did not believe that Mr. Beck could be successful in the community based on an incident that had occurred in April 2021. (APSI, p.1.) The district court entered an order relinquishing jurisdiction and executing Mr. Beck's underlying sentence the day after the NICI filed the second letter. (R., pp.99-101.)

Mr. Beck subsequently filed a timely Rule 35 motion after the district court relinquished jurisdiction. (R., pp.102-10.) The district court denied Mr. Beck's Rule 35 motion. (R., pp.111-15.) Mr. Beck filed a timely notice of appeal from both the order relinquishing jurisdiction and the order denying his Rule 35 motion.

ISSUES

- I. Did the district court abuse its discretion when it relinquished jurisdiction?
- II. Did the district court abuse its discretion when it denied Mr. Beck's Rule 35 motion?

² Citations to the "APSI" refer to the 37-page electronic document included with the confidential materials titled "Appeal Confidential Volume 1 06-25-2021 06.41.11 48258603 40F82F22-7AC1-4198-9DFA-ED85367B21BD". According to the court minutes for the joint entry of plea and sentencing hearing, a presentence investigation report was not prepared prior to sentencing since Mr. Beck waived the presentence investigation process. (R., pp.40-43.)

ARGUMENT

I.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

An appellate court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). The district court's discretion in deciding whether to relinquish jurisdiction is not limitless. *State v. Rhoades*, 122 Idaho 837, 837 (Ct. App. 1992).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of four essentials. 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.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018). Furthermore, a district court's decision to relinquish jurisdiction will not be deemed a clear abuse of discretion if the court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. *See State v. Brunet*, 155 Idaho 724, 729 (2013).

In this case, Mr. Beck asserts that the district court did not exercise reason, and therefore abused its discretion, by relinquishing jurisdiction rather than releasing him onto probation.

Mr. Beck completed the Advanced Practices and Pre-release programs while on his rider. (APSI, pp.7-9.) According to the facilitator for the Advanced Practices program, “Mr. Beck comes to group on time and with is [*sic*] work complete. He maintains a positive attitude.” (APSI, pp.8-9, 14.) Mr. Beck also accrued eight positive C-Notes while on his rider, including for volunteering to shovel snow, to be a janitor, to complete additional assignments, and for showing “personal responsibility in keeping a regular scheduled filled out and up to date.” (APSI, pp.13-17.) Based on Mr. Beck’s progress in the programs, the case and program

managers initially recommended that Mr. Beck be released onto probation. (APSI, pp.6-11.) While the case manager believed that Mr. Beck had had some issues while on the rider, the case manager noted that “[n]one of these issues are insurmountable and with adequate resources, such as a specialty court, it is possible that Mr. Beck can be successful in the community.” (APSI, p.10.)

Mr. Beck filed a letter with the district court at the end of his programming on the rider. (APSI, pp.2-5.) In that letter, Mr. Beck informed the district court that he spent time tutoring other inmates that were working towards completing their General Educational Development (“GED”) tests and that he was a teacher’s assistant temporarily in the pre-release program.³ (APSI, p.5.)

However, the correctional case manager filed a second letter from the NICI with the district court in April 2021. (APSI, p.1.) In that second letter, the case manager informed the district court that Mr. Beck had “received an infraction for making False Statements” after Mr. Beck was found in possession of some school supplies. (APSI, p.1.) While the case manager stated that “[o]nce a recommendation has been made, case managers do not change it”, the case manager nevertheless wrote to the district court that Mr. Beck’s “behavior at NICI is a strong indicator that he will not be willing to follow significant sections of his Agreement of Supervision.” (APSI, p.1.) The district court filed an order relinquishing jurisdiction the day after this second letter was filed. (R., pp.99-101.)

Mr. Beck argues that the district court did not exercise reason when relinquishing jurisdiction in light of his progress on his programming as well as his volunteer work on the

³ The letters that Mr. Beck submitted to the district court throughout the proceedings were handwritten and can, at times, be somewhat difficult to read. If quotations to the letters are necessary, they are reproduced to the best of appellate counsel’s ability.

rider. Mr. Beck had previously completed his first rider in this case without any significant disciplinary issues. (APSI, pp.22-37.) As noted by the case manager in the first letter submitted to the district court, none of Mr. Beck's issues on his rider were insurmountable. (APSI, p.10.) The district court should have followed the original recommendation from the NICI and released Mr. Beck back onto probation.

II.

The District Court Abused Its Discretion When It Denied Mr. Beck's Rule 35 Motion

“A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014) (citing *State v. Knighton*, 143 Idaho 318, 319 (2006)). “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.” *Id.* “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. Huffman*, 144 Idaho 201, 203 (2007). “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.” *Id.*

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. 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.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018). The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender

and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985).

In this case, the district court abused its discretion by failing to grant Mr. Beck’s Rule 35 motion.⁴ In his Rule 35 motion, Mr. Beck requested that the district reduce the fixed portion of his sentence.⁵ (R., pp.102-04.) In support of his Rule 35 motion, Mr. Beck submitted a letter to the district court. (R., pp.105-10.)

In the letter that Mr. Beck prepared for his Rule 35 motion, Mr. Beck explained that he was initially “angry” when he was sent on the second rider and when his programming was delayed, and that he had an “ugly attitude” when he first began his programming. (R., pp.105-

⁴ As noted in the Statement of Facts and Course of Proceedings section in this appeal, an untimely motion for reconsideration of sentence under Idaho Criminal Rule 35 was filed sixty days after the district court revoked Mr. Beck’s probation and ordered the second rider in November 2020. (R., pp.90-92.) The Idaho Court of Appeals has held that, “[a] court does not possess jurisdiction to consider an untimely Rule 35(b) motion.” *State v. Mace*, 157 Idaho 885, 888, 341 P.3d 602, 605 (Ct. App. 2015). Furthermore, “judgments and orders made without subject matter jurisdiction are void and ‘are subject to collateral attack, and are not entitled to recognition in other states under the full faith and credit clause of the United States Constitution.’” *State v. Urrabazo*, 150 Idaho 158, 163 (2010) (citation omitted), abrogated by *Verska v. Saint Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889 (2011); *cf. Loman v. State*, 138 Idaho 1, 2 (Ct. App. 2002) (holding that an untimely notice of appeal deprives the appellate courts of jurisdiction to the extent that “[t]here was never a valid appeal for an appellate court to ‘determine.’”) Since the district court did not have jurisdiction to consider the untimely Rule 35 motion filed in January 2021, the district court’s order denying that motion should be void. (R., pp.93-96.) Mr. Beck asserts that the filing of an untimely Rule 35 motion should not preclude the later filing of a timely Rule 35 motion since the district court did not possess jurisdiction to consider the untimely Rule 35 motion.

⁵ Mr. Beck also alternatively requested that the district court “allow for him to return to a retained jurisdiction.” Since that requested relief was found to be procedurally impermissible in *State v. Flores*, 162 Idaho 298 (2017), Mr. Beck does not assert on appeal that the district court abused its discretion by failing to grant his request for a second rider without an intervening period of probation.

06.) However, after a presentation with his advance practices group in March 2021, Mr. Beck realized that he “had constructed a huge wall” around himself and that he had been determined not to “learn a damn thing.” (R., p.106.) After making this realization, Mr. Beck “was starting to think a bit clearer and be more open minded” during his subsequent classes and determined that he had been directing his anger towards other people because he had actually been angry at himself for the behavior that resulted in his probation violations. (R., pp.106-07.) Once Mr. Beck realized that his anger was “misdirected”, he “knew [he] had to make amends, and [he] became grateful. Grateful that [he] was given the opportunity to do a rider[.] . . .” (R., pp.107-08.)

The new and additional information presented by Mr. Beck supported a reduction in his sentence. Mr. Beck asserts that the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

Mr. Beck respectfully requests that this Court vacate the district court’s order relinquishing jurisdiction, and remand his case to the district court with the instruction that the district court place him on probation. Alternatively, Mr. Beck respectfully requests that this Court reduce his sentence or remand this case to the district court as it deems appropriate.

DATED this 30th day of August, 2021.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JLW/eas