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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48780-2021
Plaintiff-Respondent,)	
)	
v.)	Kootenai County Case No.
)	CR28-18-10612
)	
ROBERT SHAWN BECK,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Robert Shawn Beck failed to show that the district court abused its discretion by relinquishing jurisdiction and denying his Rule 35 motion?

ARGUMENT

Beck Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

In July of 2018, an Idaho State Police trooper conducted a traffic stop on Robert Shawn Beck. (R., p. 15.) The trooper noticed Beck appeared to be intoxicated, and Beck admitted to drinking a shot of Rumplemintz and a Keystone Ice beer. (R., p. 15.) Beck failed a field sobriety

test and submitted to a breath test, yielding results of .262 and .255 BrAC. (R., p. 15.) The state charged Beck with one count of felony operating a motor vehicle while under the influence, and a persistent violator enhancement as part three of the information. (R., pp. 35-37.) Beck pleaded guilty to felony DUI, and the state agreed to dismiss the persistent violator enhancement. (R., pp. 40-44.) The district court sentenced Beck to ten years, with six years determinate, and retained jurisdiction. (R., pp. 45-47.) Following the period of retained jurisdiction, the district court placed Beck on probation for a period of ten years. (R., pp. 50-51.)

In August of 2020, the state filed an interstate compact report of violations, alleging that Beck had been found in possession of a meth pipe, with methamphetamine in the pipe. (R., p. 57.) Beck also received numerous citations for a trailer he pulled with his vehicle, possessed a marijuana pipe and marijuana, and absconded supervision. (R., pp. 58-59.) Beck admitted to violating his probation by absconding supervision, and the district court retained jurisdiction again. (R., pp. 82-85.) Beck then filed an untimely Rule 35 motion, which the district court denied. (R., pp. 90-96.)

During his second rider, Beck's conduct raised significant concern from IDOC staff. Beck's case manager stated that Beck "received a surging number of corrective actions," which "is an indicator that his level of willingness is not conducive to abiding by his terms of supervision." (APSI, p. 8 (citations to electronic file named "Appeal Confidential Volume 1 06-25-2021 . . .").) The case manager stated "Beck demonstrated a considerable level of good person addictive thinking patterns. This is where Mr. Beck uses his good deeds as justification for rule-violating behavior. When confronted, he reported that he was only conveying the facts. Additionally he also minimized his negative behavior to an alarming point." (APSI, p. 8.) The case manager stated that "Beck sees himself as a role model in his living unit; however, the staff

who work on the unit do not agree with Mr. Beck's self-assessment. Mr. Beck's level of overconfidence is also likely to present problems on probation" (APSI, p. 8.) After completing the APSI, the case manager submitted an update letter to notify the district court of new information regarding Beck's conduct. (APSI, p. 1.) Beck took items from the school he had been tutoring at, and lied about receiving permission to take the items. (APSI, p. 1.) The case manager stated that Beck "is more interested in creating a façade of following the rules and communicating honestly with staff rather than upholding the level of integrity that is necessary to be successful both at NICI and in the community." (APSI, p. 1.)

Following Beck's second period of retained jurisdiction in this case, the district court relinquished jurisdiction, executed the underlying sentence, and credited Beck with 478 days served. (R., pp. 99-100.) Beck filed another Rule 35 motion, asking the district court to allow him to return to a retained jurisdiction, or to reduce the fixed portion of his sentence. (R., pp. 102-103.) The district court denied Beck's Rule 35 motion, and Beck filed a timely appeal. (R., pp. 111-119.)

On appeal, Beck argues that "the district court abused its discretion by relinquishing jurisdiction and denying his Rule 35 motion." (Appellant's brief, p. 2.¹) Beck has failed to show that the district court abused its discretion by relinquishing jurisdiction and denying his Rule 35 motion.

¹ The state does not dispute Beck's assertion that the district court had jurisdiction to rule on the Rule 35 motion filed after relinquishment of jurisdiction where the prior motion, filed after revocation of probation, was untimely. (Appellant's brief, p. 7, n. 4.)

B. Standard Of Review

The decision to place a defendant on probation is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Reed, 163 Idaho 681, 684, 417 P.3d 1007, 1010 (Ct. App. 2018) (citations omitted). Rehabilitation and public safety are dual goals of probation. State v. Le Veque, 164 Idaho 110, 114, 426 P.3d 461, 465 (2018). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)).

“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)). The record shows the district court perceived its discretion, acted within that discretion, applied the correct legal standards, and reached its decision by the exercise of reason.

C. Beck Has Shown No Abuse Of The District Court’s 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). “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.” State v. Del Critchfield, 167 Idaho 650, 654, 474 P.3d 1247, 1251 (Ct. App. 2020).

In the district court’s memorandum decision and order denying Beck’s second Rule 35 motion, the district court stated that “Beck has not set forth any new evidence that could be adduced at hearing on an I.C.R. 35 motion. Beck’s attached letter provides no evidence. It simply explains that he was mad while on his retained jurisdiction, which explains nothing about why Beck cannot be honest.” (R., p. 114.) Beck provided no evidence that he “is any more likely to perform appropriately on an additional period of retained jurisdiction at this time, as compared to when he started his second period of retained jurisdiction. In fact, the evidence is just the opposite.” (R., p. 114.) The district court noted the APSI report of actions taken to correct Beck’s behavior and stated “Beck’s disciplinary problems increased toward the end of his period of retained jurisdiction. In a prison-based program where Beck in a controlled environment can focus on his myriad problems, Beck chooses to behave worse as time goes on.” (R., p. 114.) The district court noted that after its initial “tepid” recommendation of probation, IDOC issued a follow-up report changing its recommendation in light of Beck’s ongoing bad behavior. (R., p. 114; compare PSI p. 6 (March 19, 2021 APSI recommending probation) with PSI, p. 1 (April 7, 2021, reversing recommendation after Beck stole school supplies and lied about it).)

The district court stated it had ordered the first retained jurisdiction rather than probation “due to the severity of his crime and his lengthy criminal record” and the “risk to the public of placing Beck on probation.” (R., pp. 114-115.) Beck “performed well enough to convince [the district court] he was an acceptable risk to be placed on probation. However, that was proven

wrong when Beck then absconded probation.” (R., p. 115.) The district court determined “Beck made many choices that prove that he is not a good candidate for probation and that he is not an acceptable risk to the public to be placed on probation.” (R., p. 115.) Ultimately, the sentence was appropriate “given Beck’s social and criminal history and the crime for which the sentence was imposed.” (PSI, p. 115.) “Any lesser sentence would depreciate the seriousness of Beck’s crime.” (R., pp. 115.)

Beck argues that the mitigating factors—completion of programs and positive notes while on his rider, and the original recommendation from the NICI—show an abuse of discretion, and merit Beck being placed back on probation. (Appellant’s brief, pp. 4-6.) Beck also argues that his change in perspective towards his programming shows the district court abused its discretion by denying his Rule 35 motion. (Appellant’s brief, pp. 7-8.) Beck’s arguments do not show an abuse of discretion.

Beck’s continued criminal conduct while on probation, in conjunction with his negative performance during his second rider, show that he is not amenable to alternative treatment, and he is not a suitable candidate for community supervision. Beck’s failure to abide by the terms of his probation and rider shows that there is an undue risk he will reoffend without a significant term of incarceration. A reduction of sentence in this case would depreciate the seriousness of Beck’s felony DUI conviction. The instant offense threatened significant harm, and the sentence imposed provides appropriate deterrent and punishment to Beck. Beck has exhausted the district court’s options for alternative treatment, and the district court’s disposition in this case provides appropriate protection to society. Beck has failed to show that the district court abused its discretion by relinquishing jurisdiction and denying his Rule 35 motion.

CONCLUSION

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

DATED this 19th day of November, 2021.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

ZACHARI S. HALLETT
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of November, 2021, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen
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