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State v. Taylor Respondent's Brief Dckt. 39844

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. CHRISTOPHER MARK TAYLOR, Defendant-Appellant.	)	NO. 39844 RESPONDENT'S BRIEF

Issue

Has Taylor failed to establish that the district court abused its discretion either by imposing concurrent fixed life sentences upon his guilty pleas to aggravated battery on a peace officer and aggravated assault on a peace officer with enhancements for use of a deadly weapon and being a persistent violator, or by denying his Rule 35 motion for a reduction of his sentences?

Taylor Has Failed To Establish The District Court Abused Its Sentencing Discretion

Three-time convicted felon Taylor attempted to elude Officer Dennis Clark after Officer Clark tried to initiate a traffic stop. (PSI, p.5.[1]) Officer Clark pursued Taylor who was driving 100 miles per hour. (PSI, p.5.) When Taylor finally stopped, he got out of his car and shot at Officer Clark, hitting Officer Clark in the face with a shotgun pellet. (PSI, p.5; R., p.186; Exhibit 1.) Officer Clark got back in his patrol car and rammed Taylor's car. (R., p.186.) Taylor ran to his car and drove away as Officer Clark returned fire. (PSI, p.5; R., p.186.) Officer Clark and several other members of law enforcement continued pursuing Taylor. (PSI, p.5; R., p.186; generally Sircomm Radios – CD 1 (dispatch traffic).)

Officer Scott Novak, who was dispatched to assist Officer Clark, stopped his patrol car along the road ahead of Taylor. (R., p.48.) "Taylor drove directly towards Officer [Novak's] car at a high rate of speed causing Officer Novak to feel the imminent threat of great bodily harm or death from Taylor's actions." (R., p.48.) Officer Novak fired two shots at Taylor's car as Taylor continued eluding law enforcement. (R., p.187.)

Taylor eventually crashed after being rammed again by Officer Clark. (PSI, p.3; R., p.187; Exhibits 2-4.) Officer Clark was transported via life-flight to have shotgun pellets surgically removed from his eye. (PSI, p.3.) As a result of the gunshot wound, Officer Clark is blind in his left eye. (R., p.187.)

The state charged Taylor with aggravated battery on a peace officer, fleeing or attempting to elude a peace officer, unlawful possession of a firearm by a felon, and

[1] PSI page numbers correspond with the page numbers of the electronic file "Confidential Exhibits 39844.pdf."

aggravated assault on a peace officer. (R., pp.116-118.) The state also filed an Information Part 2 for use of a deadly weapon in the commission of a felony and an Information Part 3 alleging Taylor is a persistent violator. (R., pp.119-121.) The parties stipulated to participate in mediation, which was ultimately unsuccessful. (R., pp.148-149, 151, 165-166.) Pursuant to a subsequent plea agreement, Taylor pled guilty to aggravated battery on a peace officer and aggravated assault on a peace officer and admitted both the weapon and persistent violator enhancements. (R., pp.172-173.) The state dismissed the remaining counts. (R., p.172.) The court imposed concurrent unified life sentences. (R., pp.248-254.) Taylor filed a Rule 35 motion, which the district court denied. (R., pp.277-288, 298-301.) Taylor filed timely notices of appeal from the judgment and from the order denying Rule 35 relief. (R., pp.261-263, 304-306.)

On appeal, Taylor claims his sentences are excessive, repeating the same arguments he did at the time of sentencing – citing his instability at the time of the events as a result of his "relationship trouble" with his girlfriend and his drug and alcohol use. (R., p.187; Appellant's Brief, pp.9-10, 12.) Taylor claims he wanted to kill himself and was hoping "the police officers would shoot and kill him." (R., p.187; Appellant's Brief, p.10.) Taylor also cites his remorse as a mitigating circumstance and appears to ask this Court to evaluate the district court's sentencing decision by considering sentences imposed in other cases and claiming his actions "demonstrated less culpability than any of the . . . cases" he cites. (Appellant's Brief, pp.8-10, 13.) Review of the applicable legal standards and the facts of this case show that Taylor has failed to show the district court abused its discretion in imposing concurrent fixed life sentences.

The applicable legal standards for reviewing a sentencing court's exercise of discretion are well-established. Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Windom, 150 Idaho 873, 875, 253 P.3d 310, 312 (2011); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Windom, 150 Idaho at 875, 253 P.3d at 312 (citations omitted). A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id. at 875-76, 253 P.3d at 312-13; State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001).

Due to the persistent violator enhancement, which Taylor admitted, his crimes were punishable by a maximum allowable sentence of fixed life imprisonment. I.C. § 19-2514. Because the concurrent fixed life sentences imposed upon Taylor's convictions are within the statutory limit, Taylor bears the burden on appeal of showing his sentences are excessive. State v. Hedger, 115 Idaho 598, 604, 768 P.2d 1331, 1337 (1989). On appeal, the question before this Court is not what sentence it would have imposed, but rather, whether the district court abused its discretion. State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008) (citing State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982)); see also Windom, 150 Idaho at 875, 253 P.3d at 312 ("[W]here reasonable minds might differ, the discretion vested in the trial court will be respected, and this Court will not supplant the views of the trial court with its own."). Although Taylor's sentence is unquestionably weighty, he has not demonstrated from the record any abuse of discretion in the district court's

determination that a fixed life term of imprisonment was not only warranted, but also necessary, under the facts of this case.

The Idaho Supreme Court has held: "To impose a fixed life sentence requires a high degree of certainty that the perpetrator could never be safely released back into society or that the nature of the offense requires that the individual spend the rest of his life behind bars." Windom, 150 Idaho at 876, 253 P.3d at 313 (citing Stevens, 146 Idaho at 149, 191 P.3d at 227; State v. Cross, 132 Idaho 667, 672, 978 P.2d 227, 232 (1999)) (internal quotations and emphasis omitted); accord State v. Perez, 145 Idaho 383, 388, 179 P.3d 346, 351 (Ct. App. 2008) (quoting State v. Eubank, 114 Idaho 635, 638, 759 P.2d 926, 929 (Ct. App. 1988)) (a fixed life sentence "should be regarded as a sentence requiring a high degree of certainty – certainty that the nature of the crime demands incarceration until the perpetrator dies in prison, or certainty that the perpetrator never, at any time in his life, could be safely released."). This "high degree of certainty" is generally satisfied where "the offense is so egregious that it demands an exceptionally severe measure of retribution and deterrence, or if the offender so utterly lacks rehabilitative potential that imprisonment until death is the only feasible means of protecting society." Perez, 145 Idaho at 388, 179 P.3d at 351 (emphasis added). The record clearly shows the existence of both of these circumstances in this case.

In deciding concurrent fixed life sentences were appropriate, the district court recognized the standards applicable to such a sentence and found that both criteria necessary for the imposition of such a sentence were satisfied in this case. With respect to the question of whether Taylor could ever "be safely released back into society," Windom, supra, the district court noted Taylor's lengthy criminal history and

that he has failed at numerous rehabilitative efforts. The court stated: "You were, in fact, on probation at the time that these offenses were committed. Certainly, numerous attempts have been made to rehabilitate you . . .." (Tr., p.84, Ls.21-24.) The court continued:

> In 2002 was your first felony conviction and it was at that time you were afforded the rider program. It was noted that you were a disciplinary problem then, and yet the department indicated it was reluctantly recommending probation.
>
> And, certainly, it was not long after you were placed back out on probation that your probation was violated and your sentence was reimposed. And then you were again found in the penitentiary setting to be a disciplinary problem, and the parole commission elected to pass you to top your time in 2008.
>
> And then once you topped your time in 2008 and were out, it wasn't long before you were back within the criminal justice system in 2009 and 2010 for your second and third felony convictions; and yet even then you were afforded once again the opportunity of probation. And it was again while you were on probation that Officer Clark and Officer Novak had the encounter with you.
>
> And, certainly, this court recognizes that you've been afforded every opportunity to be a productive member of society, to change your behavior and to be a good father, to be a good son, a good husband, but that has not proven to be the case.

(Tr., p.85, L.19 – p.86, L.19.)

In terms of rehabilitative potential, in addition to the history summarized by the court, Taylor has 30 misdemeanor convictions, including convictions for driving under the influence, contempt of court, disturbing the peace, possession of drug paraphernalia, inattentive driving, and fleeing or attempting to elude a peace officer. (PSI, pp.7-13.) Taylor's prior rehabilitative programming includes MRT class, Cognitive Self Change, Breaking Barriers, and a 21-day treatment program at the Walker Center. (PSI, pp.14-15, 19.) Notably, Taylor "was unable to pass the competency tests" for

Cognitive Self Change and, following his stint at The Walker Center, Taylor only managed to stay sober for two days. (PSI, pp.14, 19.) Consistent with, and explanatory of, Taylor's unsuccessful participation in past programming, during the GAIN-I evaluation, Taylor "reported he would not participate in treatment if incarcerated." (PSI, p.62 (emphasis added).)

While in the retained jurisdiction program, Taylor was a "disciplinary problem" and, "[a]t times, his behavior . . . resulted in disruption of the orderly operation of the institution." (PSI, p.14.) Later, while incarcerated in prison after his probation was revoked for absconding supervision and failing to participate in programming, Taylor "continued to be a disciplinary problem, receiving DORs for tattooing (3), possessing a sharp instrument, disobedience to orders (5), possession of unauthorized property, simple battery, harassment, and group disruption." (PSI, p.15.)

Given Taylor's history and his expressed unwillingness to undertake any efforts toward positive change, it can hardly be said that the district court erred in concluding Taylor could never be safely released into the community. This, alone, warranted the fixed life sentences imposed by the court. However, Taylor's life sentences are also justified as a result of the egregious nature of his offenses. Windom, supra. As noted by the district court, Taylor "not only put [the officers] lives at risk[]," he "put the lives of the community at risk." (Tr., p.87, Ls.4-7.) That no officer or citizen died as a result of Taylor's actions does not make his crimes any less egregious. As aptly noted by the district court, it did "not need to wait . . . until [Taylor] does in fact kill someone to determine whether a fixed life sentence is appropriate." (Tr., p.83, Ls.19-23.)

The allegedly mitigating circumstances cited by Taylor do not demonstrate an abuse of discretion. Taylor's claimed distress over his "relationship trouble" comes nowhere close to explaining, much less excusing, his behavior, which was entirely consistent with his criminal history before his "relationship trouble." The state is also extremely skeptical of Taylor's after-the-fact assertion that he wanted to commit "suicide by cop" given that such a desire is inconsistent with the fact that he actually shot at the police officer first, which could easily have impaired the officer's ability to shoot back, and given that Taylor fled from both Officer Clark and Officer Novak when they opened fire. Even taking Taylor's claimed intent at "face value," the district court noted that putting the officers in the position of shooting Taylor "leaves lasting and emotional impact upon the lives of those officers." (Tr., p.87, Ls.7-11.)

Taylor's history of drug and alcohol abuse also fails to establish an abuse of sentencing discretion. The court acknowledged Taylor's "significant history" of such abuse, but such a history did not require the court to disregard the need to protect the community, particularly in light of all of Taylor's failed treatment opportunities and his continued disinterest in getting treatment. (Tr., p.78, Ls.12-22.)

It is also difficult to accept Taylor's claims of remorse given his lengthy involvement with the criminal justice system. It is likewise difficult, if not impossible, to accept Taylor's claim that he did not intend to threaten Officer Novak or that he really only wanted Officer Clark to shoot and kill him. (Tr., p.75, Ls.1-3; PSI, p.6.) What seems more likely is that Taylor is remorseful for ruining his own life, not Officer Clark's. (See Tr., p.75, Ls.6-8.) In any event, Taylor's remorse, assuming he has any, does not change the fact that fixed life is an appropriate sentence under the circumstances.

As for Taylor's reliance on lesser sentences imposed in other cases, comparative sentencing is not appropriate because: "It is well settled that not every offense in like category calls for identical punishment; there may properly be a variation in sentences between different offenders, depending on the circumstances of the crime and the character of the defendant in his or her individual case." State v. Pederson, 124 Idaho 179, 183, 857 P.2d 658, 662 (Ct. App. 1993) (citations omitted).

Taylor also complains that although "the district court indicated it did not sentence for tattoos, it went on to draw a conclusion about Mr. Taylor based on the tattoos." (Appellant's Brief, p.14.) Taylor argues "this displays an abuse of discretion, and sentencing based on a lack of the exercise of reason, and demonstrates that the district court sentenced based on inflammatory factors and an argument based on revenge and other impermissible factors." (Appellant's Brief, p.14.) In a related claim, Taylor contends the "prosecutor's repeated statements regarding tattoos, and Mr. Taylor's appearance" "constituted an inflammatory attack, and bordered on attempted testimony by the prosecutor regarding the meaning of the tattoos." (Appellant's Brief, p.13.) Taylor further asserts the prosecutor's "inflammatory comments argued essentially for a sentenced based on revenge, rather than based on the permissible sentencing factors." (Appellant's Brief, pp.13-14.) Both of these arguments are without merit.

Regarding Taylor's numerous tattoos, the prosecutor commented on the tattoo on the left side of Taylor's neck, which reads: "Fuck Authority." (Tr., p.42, L.19 – p.43, L.3; PSI, p.4.) The prosecutor expressed his belief that that particular tattoo said "quite a bit about Mr. Taylor's attitude toward th[e] court, toward law enforcement in general

and towards society." (Tr., p.42, L.23 – p.43, L.1.) The prosecutor also noted Taylor's "peckerwood" tattoo and said that although Taylor denied gang activity, that tattoo is "a gang affiliation from prison." (Tr., p.46, Ls.16-19.) Finally, the prosecutor stated:

> Since [Taylor has gotten out of Cottonwood,] he's gotten all this artwork, all this gang related artwork, all this artwork that is designed to scare people.
>
> I mean I'm kind of used to it, but can you imagine a family sitting down in a restaurant and this guy walking in and sitting down next to them? . . . You know, they're going to pull their kids a little closer to them. And I'll tell you I think that's exactly what Mr. Taylor wants. He has made his persona fear, and that's another good reason for putting him in prison for the rest of his life.

(Tr., p.55, Ls.13-25.)

The "artwork" on which the prosecutor commented presumably refers to Taylor's potentially visible tattoos[2] that cover his entire head and both arms, and, in addition to "Fuck Authority" and "peckerwood," Taylor's tattoos include "white" over his right eyebrow and "trash" over his left eyebrow, a "skull with tribal, swaztika [sic]," "pure" and "wood" across his knuckles, a tear drop on his left cheek, "666" on his right cheek, and "DFL" and "5150" on the back of his neck. (PSI, pp.3-4.)

Regarding Taylor's tattoos, the court stated:

> You have a long history of not respecting the norms of society as well as authority, which -- and while I recognize that I don't sentence someone for tattoos, certainly in some eyes that is artwork. However, I think that there are some expressions of words, and while you have every right to say them, certainly, it suggests to me that when you write across your forehead "white trash," you have no respect for yourself and you have no respect for others. And when you write along your neck "F" authority," [sic] you have no respect for society and you have no respect for law enforcement.

[2] It is highly unlikely the prosecutor was suggesting that families at restaurants would respond to the tattoos on Taylor's chest, stomach, and penis, as it is doubtful that Taylor exposes those tattoos while in a restaurant. (PSI, pp.3-4.)

> And, frankly, while you've done nothing to disrespect this court, I have to realize that in reality I don't think you have respect for authority, and I think that that is carried out by your behavior in the penitentiary setting.

(Tr., p.85, Ls.2-18.)

Taylor's invitation to disregard the district court's express statement that it was not sentencing him for his tattoos and assume instead that is precisely what the court did should be rejected. See State v. Mason, 102 Idaho 866,869-70 643 P.2d 78, 81-82 (1982) ("There is a presumption of regularity which attaches to the trial court's actions.") (citations omitted). Further, even if the court drew certain conclusions about Taylor because of his tattoos, Taylor has failed to explain why this was improper. In fact, there was nothing improper in relying on Taylor's "Fuck Authority" tattoo as evidence of Taylor's attitude toward the laws of this state and those that enforce those laws. See State v. Leon, 142 Idaho 705, 709, 132 P.3d 462, 466 (Ct. App. 2006) ("It is fundamental that a sentencing court may properly conduct an inquiry broad in scope, largely unlimited, either as to the kind of information it may consider or the source from which it may come.") (citations omitted).

Taylor's complaints about the prosecutor's comments about his tattoos are also not well-taken. He has cited no authority to support any assertion that the comments were improper or constituted misconduct. Nor has Taylor identified what comments the prosecutor made that asked for "a sentence based on revenge" versus retribution, a

recognized goal of sentencing. There was nothing in the prosecutor's sentencing argument that is legally prohibited.[3] Taylor has failed to show otherwise.

The district court considered all of the relevant information, the applicable legal standards, and acted within its discretion in imposing concurrent fixed life sentences.

Taylor next asserts the district court abused its discretion by denying his Rule 35 motion. (Appellant's Brief, pp.15-16.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this Court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Taylor 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." Id. Taylor has failed to satisfy his burden.

Taylor concedes, as he must, that he did not present any new information in support of his Rule 35 motion. (Appellant's Brief, p.15; R., pp.277-287.) Rather, Taylor asked the court for leniency in the form of an "opportunity at parole,"[4] and the court denied the request. (R., pp.277-301.) Taylor contends "the district court should have reduced his sentence pursuant to the Rule 35 motion because the sentence was

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[3] Even if this Court concludes that the prosecutor made inappropriate comments at sentencing, the question Taylor has presented on appeal is whether the *district court* abused its sentencing discretion, not whether the prosecutor engaged in misconduct. (Appellant's Brief, p.4 (issues on appeal).) As explained, the court, which clearly understood the relevant sentencing considerations and the bounds of its discretion (see generally Tr., pp.76-77), Taylor has failed to show an abuse of discretion.

[4] The memorandum filed in support of Taylor's Rule 35 motion also included an Eighth Amendment argument (R., pp.281-283), which is not raised on appeal and which, in any event, would not be new information but only an argument in support of sentencing relief.

excessive as originally imposed," and relies on the arguments he made in support of his excessive sentence claim. (Appellant's Brief, pp.15-16.) Because Taylor did not provide any "new" information to support his request for a sentence reduction and because Taylor failed to establish his sentence was excessive as imposed, Taylor has also failed to establish the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

The state respectfully requests this Court to affirm Taylor's convictions and sentences and the district court's order denying Taylor's Rule 35 motion for a reduction of sentence.

DATED this 18th day of April, 2013.

JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of April 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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