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State v. Webster Appellant's Brief Dckt. 41695

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IN THE SUPREME COURT OF THE STATE OF IDAHO

State of Idaho,

Plaintiff/Respondent,

v.

Jared Webster,

Defendant/Appellant,

Jefferson County Case No. CR-2013-696

Supreme Court No. 41695

APPELLANT'S BRIEF

On appeal from the District Court of the Seventh Judicial District of the State of Idaho, in
and for the County of Jefferson

Honorable Gregory W. Moeller, District Judge Presiding.

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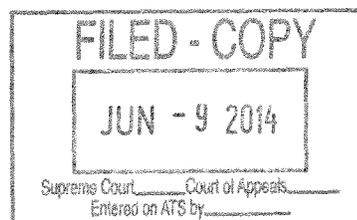


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STATEMENT OF THE CASE

Appellant Jared Webster was charged on May 29, 2013 with three counts of Lewd Conduct with A Child Under the Age of Sixteen Years, a felony under Idaho Code §18-1508, 18-112A. Webster was alleged to have engaged in sexual conduct with a fourteen year old girl who had been living in his home.¹ The girl had been placed in the home due to her parent's inability to care for her. Webster entered a plea of not guilty to all charges.² On October 16, 2013, Webster entered into a plea agreement, the terms of which would reduce the offenses charged from lewd conduct, to Felony Injury to a Child, a felony under Idaho Code § 18-1501, with the State recommending a period of local jail time, or retained jurisdiction. The agreement required Webster to obtain a "low-moderate" risk assessment as part of his Presentence Investigation.³

At the sentencing hearing, Webster argued for a period of probation. Webster argued that more responsibility should be placed with the victim, who the evidence indicated was the aggressor sexually towards Webster.⁴ The State argued that because Webster was the responsible adult in the situation that blame reside solely in him. The State then argued for a period of retained jurisdiction, pursuant to the plea agreement.⁵

The Court then made its ruling, focusing on the frequency of the contact between Webster and the girl, noting "This happened by your account approximately 15 times, by the victim's account 15 to 30 times..."⁶

¹ R. Vol I., P. 42-44.

² Id.

³ R. Vol. I, P.53-54.

⁴ Tr., Vol. I., P. 24, L. 12-25.

⁵ Tr., Vol. I, P. 28, L. 10-15.

⁶ Tr., Vol. I, P.32, L. 4-11.

The Court issued its sentence in the case, and ordered Webster to serve a term of incarceration consisting of four years fixed and six years indeterminate, for a total unified sentence of 10 years, the maximum allowable sentence under the statute.

The Court noted that Webster was an eagle scout, inferring that Webster should know better.⁷

ISSUES ON APPEAL

1. Did the Court abuse its discretion by imposing an excessive sentence?

ARGUMENT

A. Standard of review.

Where the sentence imposed by a trial court is within statutory limits, "the appellant bears the burden of demonstrating that it is a clear abuse of discretion." *State v. Stevens*, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). When evaluating a claim that the trial court has abused its discretion, the sequence of our inquiry is first, whether the trial court correctly perceived the issue as one of discretion; second, whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and finally, whether the trial court reached its decision by an exercise of reason. *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

B. In light of the governing facts, the sentence of 10 years was excessive.

While the ultimate issue of sentencing is given to the discretion of the trial courts, there must be some form of safeguard to ensure that sentences are not excessive. This Court has set forth the governing analysis of the discretion of the trial court as to sentence, and

⁷ Tr., Vol I., P. 33, L. 2-5.

when those sentences push the boundaries of justice, in *State v. Windom*, 150 Idaho 873, 253 P.3d 310. This Court noted:

In order to prevail on a claim that a sentence represents an abuse of discretion, "the defendant must show in light of the governing criteria, [that the] sentence was excessive under any reasonable view of the facts." *State v. Charboneau (Charboneau II)*, 124 Idaho 497, 499, 861 P.2d 67, 69 (1993) (quoting *State v. Broadhead*, 120 Idaho 141, 145, 814 P.2d 401, 405 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992)). Thus, where 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. *Broadhead*, 120 Idaho at 145, 814 P.2d at 405. Thus, in order to prevail, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *State v. Stover*, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005).

State v. Windom, 150 Idaho 873, 875-76, 253 P.3d 310, 312-13 (2011).

There is a clear distinction between instances where the Court exceeds the maximum allowable sentence by statute, rendering a sentence illegal on its face, and a sentence where, although within the appropriate guidelines, under a reasonable view of the facts, the sentence was excessive.

Here, the Court was faced with numerous reasons to not sentence Webster to the maximum sentence, however, chose to do so. Such facts included a lack of criminal history, the behavior of the victim, and the favorable risk assessment per the psychosexual evaluation. Such facts will be discussed below.

The Court noted that Webster's criminal history consisted of no prior sexual crimes, but only three adult misdemeanors, all of which were Fish & Game violations.⁸ The Court went so far as to note that "they're the type of offenses that normally wouldn't give me too

⁸ Tr., Vol I, P. 34, 20-25.

much concern about the safety of the community, but they do provide me with some indication of your willingness to ignore the law when you think you can get away with it.”⁹ While the Court did note that Webster had what could be considered a small criminal history, it failed to give it adequate weight when determining sentencing.

It is noted from the transcript the Court’s displeasure with Webster. The Court made mention of “evil acts” that he had committed and began to discuss them.¹⁰ “Some time after you turned 27, it was either right before or during your contact with the victim, you were involved with two 19-year olds at the same time in a threesome...”¹¹ and “When you were 28 you’ve been involved in a sexual relationship with your boss. You’ve been involved in Internet sex with a 21-year-old via Skype, in which you usually masturbated while you’ve been conversing with this person.”¹² While such behaviors may not be the common acceptable practice, there is nothing inherently illegal about such activities and preferences, however, the Court appeared to couple this with the instant offense. “...after you turned 28—and, again, these incidents aren’t against the law but they certainly show your personality as being willing to engage in risky and inappropriate behavior.”

In its analysis of the objectives of criminal sentencing, the Court focused on punishment for wrong doing, noting “ In this case, because of the egregious nature of your conduct, the fourth element, which is punishment or retribution for wrongdoing I think is also, and this case equally as important as protection of society. You’ve done something very seriously wrong here to a very young woman and despite her problems and challenges,

⁹ Id.

¹⁰ Tr., Vol I, P. 36, L.11-14.

¹¹ Tr., Vol I, P. 36, L. 20-24.

¹² Tr., Vol I, Pp. 37-38, L. 23-25, 1-2.

you took advantage of her problems and challenges, frankly, for your own pleasure.”¹³ The Court, having noted its displeasure with Webster’s conduct, then proceeded to review the factors weighing in favor or against incarceration, found in Idaho Code § 19-2521.

In mitigation, the Court noted that there was “clear evidence” the victim may have facilitated the intercourse, but that it “didn’t want to put too much weight on this”. The Court clearly failed to adequately analyze when fashioning its sentence.

The record of the sentencing was clear with indication that this young girl not only sought out, but was aggressive in her pursuit of Webster, even breaking down a locked door to get at him.¹⁴ While not excusing the illegal behavior of Webster, the conduct of the victim in this case was a much larger mitigating factor than the Court gave weight to.

Idaho Code § 19-2521(2)(e) takes into account such facts when allowing the Court to favor avoiding imprisonment. It is clear that in this case the conduct was indeed induced more so than simply facilitated by the victim.

The Court failed to properly take such facts into account when sentencing Webster to the maximum sentence, despite the recommendations of counsel and the “low-moderate” risk assessment received.

Taken into account collectively, the lack of criminal history, the aggressiveness of the victim, and the low risk assessment sentencing Webster to a term of 10 years, with four years determinate, was excessive.

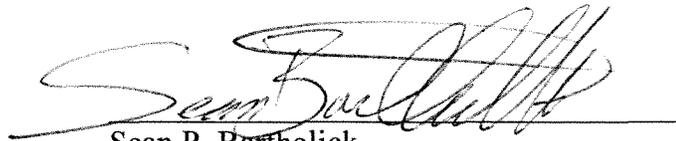
¹³ Tr. Vol I, P. 39, L. 9-12.

¹⁴ Tr., Vol I, P. 32, L. 8-10.

CONCLUSION

Appellant Jared Webster's sentence was excessive in light of the evidence presented before the court. Therefore, Webster asks that this Court vacate his sentence and remand this case to District Court for resentencing.

DATED this 12TH day of May, 2014.



Sean P. Bartholick
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 14TH day of May 2014, in accordance with Idaho Rule of Civil Procedure 5(b), a true and correct copy of the foregoing document was served to the following individual(s) via the indicated method:

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Hon. Gregory W. Moeller
SEVENTH DISTRICT JUDGE
Jefferson County Courthouse
Rigby, ID 83445

- U.S.P.S., first-class mail
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