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State v. Moreno Appellant's Brief Dckt. 41938

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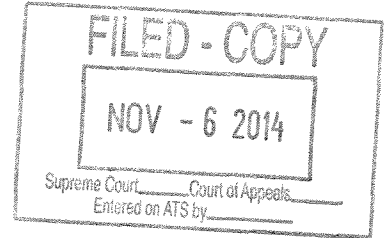
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IN THE SUPREME COURT OF THE
STATE OF IDAHO

* * * * *



STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 vs.)
)
 ROBERTO MORENO,)
)
 Defendant-Appellant.)
 _____)

SUPREME COURT NO.41938-2014
ADA COUNTY NO. 2013-8456

APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District
of the State of Idaho, in and for the County of Ada
HONORABLE RONALD J. WILPER, Presiding Judge

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I. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the verdict found and the sentence imposed in this case for the offense of lewd conduct with a minor, which was seven years fixed plus eighteen years indeterminate and sexual abuse of a minor which was seven years fixed plus eighteen years indeterminate. Those charges running concurrent.

B. Course of Proceedings and Statement of Facts

Appellant was found guilty by a jury on November 15, 2013 to a charge of lewd conduct on a minor under 16 years of age and sexual abuse of a minor under 16 years of age. The Court proceeded to sentencing of the Defendant on January 27, 2014.

The court imposed a prison sentence of seven years years fixed plus eighteen years indeterminate on both charges to run concurrent. The pertinent facts are that the Defendant had two prior felonies for substance abuse approximately ten years prior to this offense. That the Defendant came back as a moderate risk to reoffend.

This appeal follows.

II. ISSUE ON APPEAL

Whether the District Court's sentence was unreasonable and excessive.

III. ARGUMENT

A. THE TRIAL COURT ABUSED ITS DISCRETION BY IMPOSING A PRISON SENTENCE OF 7 YEARS FIXED AND EIGHTEEN YEARS INDETERMINATE.

1. Standard of Review

Idaho law has consistently recognized that sentencing decisions are left to the "sound" discretion of the trial court, so long as it does not exceed the statutory maximum. State v. Dunn, 91 Idaho 870, 434 P.2d 88 (1967); McNeeley v. State, 111 Idaho 200, 722 P.2d 1067 (Ct. App. 1986). However, that discretion must be principled, and by law must be guided by a fundamental requirement of reasonableness in light of all of the facts of a case. State v. Nice, 103 Idaho 89, 645 P.2d 323 (1982).

The parameters of what constitutes a reasonable sentence were set forth in State v. Toohill, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982):

[A] sentence of confinement is reasonable to the extent it appears necessary, at the time of sentencing, to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution

applicable to a given case. A sentence of confinement longer than necessary for these purposes is unreasonable.

Such determinations cannot be made with precision. In deference to the discretionary authority vested in Idaho's trial court, we will not substitute our view for that of a sentencing judge where reasonable minds might differ. An appellant must show that, under any reasonable view of the facts, his sentence was excessive in light of the foregoing criteria.

Id., 103 Idaho at 568.

Subsequent decisions have indicated that in order to protect the interest of a defendant facing incarceration, the trial court must comply with the weighty responsibility of engaging in a careful and deliberate analysis of the competing factors under Toohill. See State v. Ranson, 124 Idaho 703, 864 P.2d 149 (1993).

2. The Length Of The Sentence Is Unreasonable

Under the Toohill standard, the trial court's sentence of twenty five years, with seven years fixed, is unreasonable because it is longer than necessary to achieve any of the objectives of sentencing. It should be noted that the allegations of abuse are in any measure are unacceptable. However , the primary objective of protection of society can and could have been accomplished with an emphasis on treatment programs available for the Defendant's substance difficulties and a community based monitoring program could insure that the Defendant be limited to contact with underage children. The evidence presented to the jury by the state offered evidence of unlawful touching and solicitation. The sentence handed down by Honorable Ronald J. Wilper would generally be handed out to Defendant's who have demonstrated a total lack of rehabilitation.

We next look to the offense conduct in assessing the reasonableness of the sentence. The victim, LM, came forward with accusations that Roberto Moreno touched her in her genital area and requested that she touch him and then gave her a dollar. These were also allegations of touching, but not of oral or genital intercourse.

An important sentencing factor is protection of society. Appellant submits that seven years, even five years, is excessive and unnecessary for protection of society. Appellant is not a threat and could be safely monitored in the community.

Finally the trial court in its analysis of the sentencing criteria talked in generalities regarding the pertinent statute it was applying but failed to go through any analysis regarding the criteria set out in the Toohill case supra. It is difficult to evaluate the courts analysis in arriving at its sentence, however the Appellant, I believe is entitled to specifics as to how the court arrived at the sentence imposed. The appellant proposes that the court's analysis set forth on the record falls short in what would be reasonable in a case such as this one. That the Appellant's sentence was excessive given the circumstances presented.

Considering all of the facts of this case, the sentence of twenty five years is excessive and unreasonable under any reasonable view. The District Court abused its discretion by imposing that lengthy of a sentence, and the sentence must be reversed or modified to be made reasonable. State v. Shideler, supra. Appellant requests the Court to

remand this matter for resentencing.

IV. CONCLUSION

For the reasons set forth above, this Court should reverse the District Court's sentence and remand for further proceedings.

Dated this 5th day of October, 2014.

Respectfully submitted,



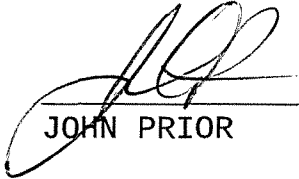
JOHN PRIOR
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that a true and correct copy of the above and foregoing Appellant's Brief was mailed to:

Lawrence Wasden
Idaho Attorney General
P.O. Box 83720
Boise, ID 83720-0010

properly enclosed in an envelope, with postage prepaid, on this 5th day of October, 2014.



JOHN PRIOR