10-6-2015

State v. Farmer Respondent's Brief Dckt. 42316

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. THOMAS NELSON FARMER, Defendant-Appellant.	)	No. 42316 Kootenai Co. Case No. CR-2014-1046

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE LANSING L. HAYNES
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

SALLY J. COOLEY
Deputy State Appellate
Public Defender
P. O. Box 2816
Boise, Idaho 83701
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO, Plaintiff-Respondent, vs. THOMAS NELSON FARMER, Defendant-Appellant.	)	No. 42316 Kootenai Co. Case No. CR-2014-1046

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE LANSING L. HAYNES
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

SALLY J. COOLEY
Deputy State Appellate
Public Defender
P. O. Box 2816
Boise, Idaho 83701
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

RULES

STATEMENT OF THE CASE

Nature of the Case

Thomas Nelson Farmer appeals from the judgment of conviction entered upon his guilty plea to aggravated assault, and from the district court's order denying his I.C.R. 35 motion for reduction of sentence.

Statement of Facts and Course of Proceedings

In April 2014, officers were called to a Post Falls residence on the report of a physical domestic dispute. (PSI, pp.3-4.) There, officers observed Doris Williams standing across the street from the residence with physical injuries to her head, and with blood running down her face. (Id.) Officers then made contact with Williams' brother, Thomas Farmer, who was standing on the porch of the residence. (Id.) Farmer had blood on his hands and on his clothing. (Id.)

Officers spoke with Williams' and Farmer's mother, who was also at the residence. (Id.) Farmer had been drinking for the last couple of days, and physically attacked Williams when Williams told him that he could no longer live at the residence if he continued to drink. (Id.) Thomas pulled Williams' hair, pushed her down onto a bike, and pressed his forearm across her throat while stating, "I'll kill you Bitch." (Id.) Farmer's mother pulled Farmer's hair and hit him with a frying pan to get him off of Williams. (Id.) Williams reported to officers that she could not breathe while Farmer was pressing his forearm against her neck, and that she thought she was going to die. (Id.)

Officers arrested Farmer and noted the strong odor of an alcoholic beverage coming from Farmer's breath. (Id.) After receiving Miranda warnings,

Farmer acknowledged to the officer that he "grabbed" his sister, but stated that she "deserved it." (Id.) After the arrest, Williams told the officers that she did not want Farmer to return to the residence because she was afraid Farmer would kill her. (Id.)

The state charged Farmer with aggravated assault and the persistent violator sentencing enhancement. (R., pp.37-38.) Pursuant to a plea agreement, Farmer entered an Alford[1] plea to aggravated assault, and the state agreed to dismiss the sentencing enhancement. (R., p.61; 3/25/14 Tr., p.6, L.14 – p.16, L.5.) The agreement did not bind the sentencing recommendations of either party. (R., p.61; 3/25/14 Tr., p.6, L.20 – p.7, L.12.)

Prior to sentencing, but after the PSI, LSI-R assessment, and GAIN-I evaluation were completed, Farmer moved to withdraw his guilty plea on the ground that he was incorrectly informed of the terms of the plea agreement by his defense counsel. (5/12/14 Tr., p.35, L.19 – p.38, L.14; 5/16/14 Tr., p.42, L.2 – p.44, L.10.) After a hearing, the district court denied the motion. (R., pp.77-78; see generally, 5/16/14 Tr.) The district court imposed a unified five-year sentence with two years fixed. (R., pp.74-76.) The court denied Farmer's subsequent I.C.R. 35 motion for reduction of sentence. (R., pp.89-92; 10/14/14 district court order;[2] see generally 10/6/14 Tr.) Farmer timely appealed. (R., pp.79-82.)

---

[1] Alford v. North Carolina, 400 U.S. 25 (1970)

[2] The Idaho Supreme Court granted Farmer's motion to augment the record with the district court's order denying Farmer's I.C.R. 35 motion for reduction of sentence. (3/18/15 Order.)

ISSUES

Farmer states the issues on appeal as:

1. Did the district court err in denying Mr. Farmer's Motion to Withdraw Guilty Plea?

2. Did the district court abuse its discretion when it imposed upon Mr. Farmer a sentence of five years, with two years fixed, following his plea of guilty to aggravated assault?

3. Did the district court abuse its discretion when it denied Mr. Farmer's Rule 35 Motion for leniency?

(Appellant's brief, p.5.)

The state rephrases the issues on appeal as:

1. Has Farmer failed to demonstrate that the district court abused its discretion by denying his motion to withdraw his guilty plea?

2. Has Farmer failed to show that the district court abused its sentencing discretion?

3. Has Farmer failed to show that the district court abused its discretion by denying his I.C.R. 35 motion?

ARGUMENT

I.
Farmer Has Failed To Demonstrate That The District Court Abused Its Discretion By Denying His Motion To Withdraw His Guilty Plea

A. Introduction

Farmer contends that the district court abused its discretion by denying his motion to withdraw his guilty plea to aggravated assault. (Appellant's brief, pp.6-12.) Farmer's contention fails because a review of the record reveals that Farmer failed to establish either that his plea was constitutionally invalid, or that there was any other just reason for the withdrawal of his plea.

B. Standard Of Review

"Appellate review of the denial of a motion to withdraw a plea is limited to whether the district court exercised sound judicial discretion as distinguished from arbitrary action." State v. Hanslovan, 147 Idaho 530, 535-536, 211 P.3d 775, 780-781 (Ct. App. 2008) (citing State v. McFarland, 130 Idaho 358, 362, 941 P.2d 330, 334 (Ct. App. 1997)). An appellate court will defer to the trial court's factual findings if they are supported by substantial competent evidence. State v. Holland, 135 Idaho 159, 161, 15 P.3d 1167, 1169 (2000); Gabourie v. State, 125 Idaho 254, 256, 869 P.2d 571, 573 (Ct. App. 1994).

C. The District Court Acted Well Within Its Discretion By Denying Farmer's I.C.R. 35 Motion For Reduction Of Sentence

A motion to withdraw a guilty plea may be made before sentence is imposed. I.C.R. 33(c). The presentence withdrawal of a guilty plea is not an automatic right, however. State v. Carrasco, 117 Idaho 295, 298, 787 P.2d 281,

284 (1990); Hanslovan, 147 Idaho at 535, 211 P.3d at 780. The defendant bears the burden of proving, in the district court, that the plea should be withdrawn. Hanslovan, 147 Idaho at 535, 211 P.3d at 780; Griffith v. State, 121 Idaho 371, 374-375, 825 P.2d 94, 97-98 (Ct. App. 1992).

In ruling on a motion to withdraw a guilty plea, the district court must determine, as a threshold matter, whether the plea was entered knowingly, intelligently and voluntarily. Hanslovan, 147 Idaho at 536, 211 P.3d at 781; State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990). As a matter of constitutional due process, a plea is knowing and voluntary if it is "entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel." Brady v. United States, 397 U.S. 742, 755 (1970).

If the plea was voluntary, in the constitutional sense, then the court must determine whether other just cause exists to allow the defendant to withdraw the plea. Hanslovan, 147 Idaho at 536, 211 P.3d at 781. The good faith, credibility, and weight of the defendant's assertions in support of his motion to withdraw his plea are matters for the trial court to decide. Id. at 537, 211 P.3d at 782.

When the I.C.R. 35 motion is presented after the defendant has learned of the content of the PSI or has received other information about the probable sentence, the district court may temper its liberality by weighing the defendant's apparent motive. State v. Mayer, 139 Idaho 643, 647, 84 P.3d 579, 583 (Ct. App. 2004).

In this case, Farmer asserted that his guilty plea was not knowing or voluntary because, he asserted, his defense counsel informed him that the state would recommend that the court place Farmer on probation. (5/12/14 Tr., p.35, L.19 – p.38, L.14; 5/16/14 Tr., p.42, L.2 – p.44, L.10.) Farmer's counsel represented to the court that she "advised [Farmer] that the state was going to be recommending probation," but did not provide any details regarding the timing of this advisement in relation to the change of plea hearing. (5/16/14 Tr., p.42, Ls.13-21.) Farmer's counsel also submitted to the court an email exchange between her and the prosecutor in which defense counsel expressed some confusion about the terms of the plea agreement. (5/12/14 Tr., p.42, L.22 – p.43, L.11.) This email was not admitted into evidence and is not a part of the appellate record. (See id.)

The district court cited the applicable legal standard, denied the motion, and concluded that "the issue of the state's recommendation was clear to [Farmer]." (R., pp.74-76; 5/16/14 Tr., p.47, L.14 – p.48, L.22.) The court generated a "rough transcript" of the change of plea hearing through its court reporter and noted that Farmer was specifically informed of the terms of the plea agreement, including that the state would be entitled to recommend any sentence up to the maximum sentence for aggravated assault. (5/16/14 Tr., p.41, Ls.12-18; p.48, L.16 – p.49, L.18.) The court also referenced a comment made by defense counsel in a prior argument for Farmer's release on his own recognizance that indicated that Farmer was aware that sentencing recommendations would be open. (5/16/14 Tr., p.49, L.19 – p.50, L.1.)

A review of the record supports the district court's determination. At the change of plea hearing, the court specifically informed Farmer that "[t]he parties for either side have open recommendations up to the statutory maximums or minimum recommendations as you may choose." (3/25/14 Tr., p.6, Ls.23-25.) Farmer indicated that he understood the agreement and that he had had enough time to discuss the agreement with his counsel. (3/25/14 Tr., p.7, Ls.17-24.) Later in the hearing, the court informed Farmer even more specifically that the state could "recommend anything it wants to up to five years in prison." (3/25/14 Tr., p.8, L.25 – p.9, L.2.) Farmer indicated that he was aware of this term of the plea agreement. (3/25/14 Tr., p.9, Ls.3-4.) Farmer also indicated to the court that other than the plea agreement that was discussed in open court, nobody promised him anything in order to compel his guilty plea. (3/25/14 Tr., p.17, Ls.2-5.) Further, the "sentence recommendation" entry on the state's pretrial settlement offer form signed by Farmer stated "Open Recs[.]" (R., p.61.) Neither the change of plea transcript nor the pretrial settlement offer form contain any confusing or contradictory information with regard to this term of the plea agreement. (See R., p.61; see generally 3/25/14 Tr.)

Additionally, at the conclusion of the change of plea hearing, in the course of Farmer's counsel's argument for Farmer's release on his own recognizance, counsel stated that "it's important to note this plea agreement is open and my client understands that his performance on an O.R. release would be a very strong piece of evidence that your Honor would consider at the time of

sentencing." (3/25/14 Tr., p.21, L.23 – p.22, L.2.) This indicates that Farmer was aware that the state was not bound to recommend any particular sentence.

Farmer moved to withdraw his guilty plea on the date of the scheduled sentencing hearing, after the PSI, LSI-R assessment, and GAIN-I evaluation had been completed and distributed to the court and to the parties. (5/12/14 Tr., p.23, L.10 – p.36, L.22.) The presentence investigator recommended that Farmer be sentenced to a prison term, and the LSI-R assessment concluded that Farmer was a "high risk" to re-offend. (PSI, p.32; LSI-R assessment, p.1.) Because Farmer was aware of this information prior to his motion to withdraw his guilty plea, the district court was entitled to "temper its liberality by weighing the defendant's apparent motive." Mayer, 139 Idaho at 647, 84 P.3d at 583. At the hearing on the motion to withdraw the guilty plea, the district court indicated that it was aware of its discretion to do so. (5/16/14 Tr., p.48, Ls.6-15.)

Finally, there was a lack of specific evidence in the record regarding what exactly defense counsel told Farmer about the nature of the terms of the plea agreement. While defense counsel represented to the court that she "might well have told" Farmer that the state's sentencing recommendation would be for probation (5/12/14 Tr., p.36, Ls.5-7), and later that she "advised [Farmer] that the state was going to be recommending probation," (5/16/14 Tr., p.42, L.13-21), it is unclear whether she was expressing her own memory of events or was relying on allegations made to her by Farmer. Further, it is unclear from these statements whether Farmer alleged that defense counsel specifically told him that the state would be bound by the plea agreement to recommend probation, or

whether this was simply defense counsel's expectation regarding the state's recommendation that she expressed to Farmer. Finally, as the district court concluded, even "notwithstanding the fact that [Farmer's] counsel may have given [Farmer] some erroneous information before the plea, at the time of the plea [Farmer] knew that the state could recommend up to five years in prison without a probation recommendation." (5/16/14 Tr., p.50, Ls.2-8.) As discussed above, this conclusion is supported by the record.

Farmer has failed to demonstrate that the district court abused its discretion in denying his motion to withdraw his guilty plea to aggravated assault. This Court must therefore affirm Farmer's conviction.

II.
Farmer Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Farmer contends that the district court abused its discretion by imposing an excessive sentence. (Appellant's brief, pp.12-14). Farmer has failed to establish that the district court's five-year unified sentence with two years fixed is excessive considering the objectives of sentencing, the nature of the crime, and Farmer's extensive criminal record.

B. Standard Of Review

When a sentence is within statutory limits, the appellate court will review only for an abuse of discretion. State v. Farwell, 144 Idaho 732, 736, 170 P.3d

397, 401 (2007). The appellant has the burden of demonstrating that the sentencing court abused its discretion. Id.

C. The District Court Acted Well Within Its Sentencing Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence is excessive. Id. To establish that the sentence is excessive, Farmer must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Id.

In this case, prior to imposing its sentence, the district court reviewed the PSI, the LSI-R assessment, and the GAIN-I evaluation. (5/12/14 Tr., p.33, L.15 – p.34, L.17.) The district court also specifically referenced the appropriate sentencing factors. (5/16/14 Tr., p.70, L.17 – p.71, L.1.) A review of the nature of Farmer's crime, his extensive criminal history, and a review of the relevant sentencing materials supports the district court's sentencing determination.

The violent nature of Farmer's crime warrants the sentence imposed. Both Farmer's sister and mother reported to officers that they believed Farmer was going to kill his sister when he pressed his forearm against her neck. (PSI, pp.3-4.) Farmer's sister reported that she was not able to breath during this attack, and Farmer's mother reported that she had to strike Farmer with a frying pan in order to get Farmer off of his sister. (Id.) The attack resulted in blood being splattered on both Farmer and his sister. (Id.) Farmer was heavily intoxicated at the time. (Id.) The nature of Farmer's attack on his sister

demonstrates that Farmer presents a significant risk to his family or the community-at-large when he is under the influence.

Farmer has an extensive criminal history. The PSI lists over 40 various criminal charges, and convictions for battery, assault, battery on a police officer or emergency personnel, taking a vehicle without the owner's consent, and possession of a controlled substance, among other charges. (PSI, pp.5-14.) The PSI also lists numerous probation and parole violations. (Id.) Farmer reported to the presentence investigator that he had spent a cumulative twelve years in prison. (PSI, p.14.)

Finally, Farmer has demonstrated a lack of appreciation for the significance of his criminal conduct. Farmer told the presentence investigator that his sister was "trying to look like the victim." (PSI, p.5.) The presentence investigator observed that Farmer "appeared to minimize and justify his past criminal history and drug abuse." (PSI, p.22.) Based upon "the level of assessed risk and need and other protective factors," the presentence investigator recommended that the district court impose a sentence of prison incarceration. (PSI, p.23.)

The district court's unified five-year sentence with two years fixed for aggravated assault was entirely reasonable in light of the objectives of sentencing, the nature of the crime, and Farmer's extensive criminal history. Farmer has therefore failed to demonstrate that the district court abused its sentencing discretion.

III.
Farmer Has Failed To Show That The District Court Abused Its Discretion By Denying His I.C.R. 35 Motion

A. Introduction

Farmer asserts that the district court abused its discretion by denying his I.C.R. 35 motion for reduction of sentence. (Appellant's brief, pp.15-16.) However, a review of the record reveals that the district court's original sentence was not excessive, even in light of the additional information presented by Farmer in support of his I.C.R. 35 motion.

B. Standard Of Review

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and the 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, Farmer 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.

C. The District Court Acted Well Within Its Sentencing Discretion In Denying Farmer's I.C.R. 35 Motion

Farmer filed an I.C.R. 35 motion for reduction of sentence approximately three months after his judgment of conviction was entered. (R., pp.89-92.) In support of the motion, Farmer submitted a letter in which he alleged: (1) his sister did not need medical attention after the aggravated assault; (2) he misunderstood the terms of the plea agreement; (3) he was currently on a waiting list to take an anger management course; (4) a defendant in a similar case had

received a lesser sentence; and (5) the Idaho state prison system has an "excellent pre-release program" that would help him find housing and employment when he was released. (Id.) At the subsequent hearing on the motion, Farmer clarified that he was requesting the court to reduce the fixed portion of his sentence so he could either be eligible for parole immediately, or so that he could have an earlier release date and thus be eligible for treatment immediately. (10/6/14 Tr., p.7, L.8 – p.8, L.8.)

The district court cited the applicable standard and denied Farmer's I.C.R. 35 motion. (10/14/14 district court order; 10/6/14 Tr., p.12, L.6 – p.13, L.11.) This determination is supported by a review of the record. First, much of the information presented by Farmer in support of his motion was already before the court at the time of sentencing (e.g., the fact that his sister did not need medical attention after the aggravated assault, his assertion that he misunderstood the terms of the plea agreement, the general nature of the Idaho Department of Correction "pre-release program.") The only "new" information provided by Farmer was that he was on a waiting list for treatment, and that he was currently attending church services. (See R., pp.89-92; see generally 10/6/14 Tr.) This information did not render the district court's original sentence excessive.

Further, by the time Farmer filed his I.C.R. 35 motion, he had only approximately 17 months to serve on his two-year fixed sentence. (See R., pp.89-92; 5/16/14 Tr., p.72, Ls.19-20.) An appellate court reviews the whole sentence on appeal and presumes that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722,

726, 170 P.3d 387, 391 (2007). The district court did not abuse its discretion by requiring Farmer to serve the remaining of his fixed term in the light of the circumstances of this case.

The district court acted well within its sentencing discretion in denying Farmer's I.C.R. 35 motion. This Court must therefore affirm the district court's order.

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction imposed upon Farmer's guilty plea to aggravated assault, and the district court's order denying Farmer's I.C.R. 35 motion for reduction of sentence.

DATED this 6th day of October, 2015.

MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of October, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

MARK W. OLSON
Deputy Attorney General

MWO/dd