

10-28-2015

State v. Walker Appellant's Brief Dckt. 42937

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 42937
)	
v.)	BONNEVILLE CO. NO. CR 2010-1409
)	
DANNY KAYE WALKER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Danny Kaye Walker pleaded guilty to one count of grand theft. The district court imposed a sentence of five years, with two years fixed, but suspended the sentence and placed Mr. Walker on probation. Subsequently, Mr. Walker admitted to violating the terms of his probation, and the district court revoked his probation and executed his original sentence. On appeal, Mr. Walker asserts that the district court abused its discretion when it revoked his probation.

Statement of the Facts & Course of Proceedings

In January of 2010, the owner of a retail business reported to Idaho Falls Police that he lost a deposit bag containing cash, checks, and other paperwork. (Presentence

Investigation Report (*hereinafter*, PSI), p.2.). The owner of the business said that Mr. Walker called him and said he had found the bag. (PSI, p.2.) Mr. Walker was living at the Friends and Family Assisted Living Center at the time. (PSI, p.2.) When interviewed, Mr. Walker said he found the money in a parking lot and tried to turn it into the clerk at the Maverick gas station. (PSI, p.2.) He also said that he tried to contact the owner seven times, but no one ever returned his calls. (PSI, p.2.) Mr. Walker hid the money in a heat vent in his room, and the Administrator at the center told him that he would have to give it back. (PSI, p.2.) Mr. Walker gave some cash to the Administrator, but said that he had loaned some of it to another resident at the center. (PSI, p.2) The remainder of the cash was never recovered. (PSI, p.2.)

Mr. Walker was subsequently charged with one count of grand theft. (R., p.17.) Mr. Walker entered into a plea agreement and agreed to plead guilty to the charge in exchange for the State recommending felony probation and no upfront jail time. (R., p.32.) In September of 2010, the district court imposed a sentence of five years, with two years fixed, but suspended the sentence and placed Mr. Walker on probation for five years. (R., pp.40-42.)

In January of 2011, Mr. Walker's probation officer filed a report of a probation violation. (R., pp.49-50.) Thereafter, Mr. Walker admitted to consuming alcohol and having a pocket knife in his possession. (R., pp.49-50.) After a hearing, the district court continued Mr. Walker's probation and required that he participate in the Bonneville County Felony Drug Court program. (R., p.59.) He was subsequently suspended from Drug Court for using marijuana and alcohol and failing to attend treatment, and another report of a probation violation was filed. (R., pp.75, 80-81.) Mr. Walker admitted to

some of the violations, and the district court executed his previously imposed sentence but retained jurisdiction and recommended that Mr. Walker participate in a CAPP Rider program. (R., pp.87-88.)

Mr. Walker successfully completed the Rider, and the district court suspended his sentence and placed him on probation for five years in September of 2012. (R., pp.91-92.) However, in June of 2014, Mr. Walker's probation officer filed another report of probation violation, and Mr. Walker admitted to those allegations. (R., pp.96, 105.) Prior to the disposition hearing, the district court ordered a psychological evaluation for Mr. Walker. (R., p.111; Tr. 10/15/14, p.4, Ls.15-18.) In December of 2014, the district court revoked Mr. Walker's probation and executed his original sentence. (R., pp.124-25; Tr. 12/10/14, p.8, Ls.19-24.) Mr. Walker filed a Notice of Appeal that was timely from the district court's judgment and commitment on conviction of a probation violation. (R., pp.126-29.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Walker's probation and executed his underlying sentence of five years, with two years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Walker's Probation And Executed His Underlying Sentence Of Five Years, With Two Years Fixed

Mr. Walker asserts that the district court abused its discretion when the court revoked his probation and executed his original sentence of five years, with two years fixed. When the appellate courts review a sentence that is executed following the revocation of probation, they base their "review upon the facts existing when the

sentence was imposed as well as events occurring between the original sentencing and the revocation of probation.” *State v. Hanington*, 148 Idaho 26, 29 (Ct. App. 2009). As such, the factors that are to be considered in excessive sentencing cases must naturally be considered when reviewing the reasonableness of a sentence executed upon revocation of probation. And the facts surrounding Mr. Walker’s probation violations tie directly to the mitigating information in this case.

First, Mr. Walker’s conviction for grand theft in this case was his first felony conviction. (PSI, pp.2-4.) This is a long-recognized mitigating factor. See *State v. Nice*, 103 Idaho 89, 91 (1982).

Additionally, Mr. Walker suffers from severe health problems. He was diagnosed with chronic obstructive pulmonary disease in 2007, and he needs oxygen for this condition. (PSI, p.7.) He also suffers from chronic back pain as he broke six vertebrae in his back. (PSI, p.7; Addendum to PSI (hereinafter, APSI), p.6.) As a result, he has been on disability since 2008. (Psychological Assessment (dated Oct. 28, 2014), p.1.) A defendant’s poor health is also a recognized mitigating factor. *State v. James*, 112 Idaho 239, 243-44 (Ct. App. 1986) (holding that the health problems of the defendant are a factor for the district court to consider in evaluating a motion for a sentence reduction).

Mr. Walker also suffers with an “alcohol use disorder” and an “antisocial personality disorder.” (Psychological Assessment (dated Oct. 28, 2014), p.2.) Indeed, as his case manager noted in the APSI, “Mr. Walker has been dealing with alcoholism and addiction in his family since he was a child and has personally been an active alcoholic since he was a teenager.” (APSI, p.6.) A defendant’s substance abuse

problems should also be considered as mitigating information. *State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008).

Finally, despite his problems, Mr. Walker managed to do very well on his Rider. This shows that with the proper treatment, he can overcome his problems, and he still has potential to succeed. In fact, one of his instructors in the CAPP program, Ms. Videen, said that Mr. Walker “completed all of his assigned community work and did not have to repeat or re-present any of his assignments.” (APSI, p.5.) Ms. Videen went on to say that Mr. Walker “maintained a positive attitude in class,” and “verbalized a desire for healthier life, free from addiction.” (APSI, p.6.) She said, “this is possible if he is connected with treatment and resources to help him meet everyday needs.” (APSI, p.6.)

All of the mitigating information in this case makes it clear that Mr. Walker simply needs consistent treatment and help to overcome his problems. He does not need to be incarcerated. His probation violations appeared to be largely a result of his problems with addiction, and potentially his health issues, and did not indicate that he was a danger to society. The district court failed to adequately consider this information and, therefore, abused its discretion when it revoked Mr. Walker’s probation and executed his underlying sentence.

CONCLUSION

Mr. Walker respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new probation violation hearing.

DATED this 28th day of October, 2015.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of October, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
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RPA/eas