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State v. Villa-Linares Appellant's Brief Dckt. 43091

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43091
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR 2014-14414
v.)	
)	
GABINO VILLA-LINARES,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Gabino Villa-Linares pled guilty to a felony for driving under the influence of alcohol and the persistent violator enhancement, the district court sentenced him to twenty years, with five years fixed. Mr. Villa-Linares now appeals his judgment of conviction, contending that the district court imposed an excessive sentence.

Statement of the Facts & Course of Proceedings

On June 22, 2014, Mr. Villa-Linares was pulled over for driving under the influence of alcohol. (R., pp.8–9; Presentence Investigation Report (“PSI”),¹ pp.3–4.)

¹ Citations to the PSI refer to the fifty-seven-page electronic document titled “Villa PSI #43091.”

Law enforcement conducted the “Walk and Turn” field sobriety test, which Mr. Villa-Linares failed. (R., p.9; PSI, p.4.) Eventually, Mr. Villa-Linares was arrested and transported to Canyon County Jail. (R., p.9; PSI, p.4.) After obtaining a search warrant, law enforcement administered a blood draw, which indicated a blood alcohol content of 0.182. (PSI, pp.35, 37, 38.)

On June 23, 2014, the State filed a Criminal Complaint alleging that Mr. Villa-Linares committed a felony for driving under the influence of alcohol, plus the persistent violator sentencing enhancement. (R., pp.11–14.) On July 15, 2015, Mr. Villa-Linares waived a preliminary hearing, and the magistrate court bound him over to district court. (R., pp.21–22.) The State filed a three-part Information. (R., pp.24–29.) The State alleged that Mr. Villa-Linares committed the crime of driving under the influence, in violation of Idaho Code §§ 18-8004 and -8005, a felony, due to two prior convictions of driving under the influence within fifteen years. (R., pp.24–27.) The State also charged Mr. Villa-Linares with the persistent violator enhancement under Idaho Code § 19-2514 for two previous felony convictions. (R., pp.28–29.)

On February 5, 2015, Mr. Villa-Linares pled guilty as charged. (R., pp.61–67; Tr. Vol. I,² p.40, L.18–p.48, L.3.) The district court accepted his guilty plea. (R., pp.66–67; Tr. Vol. I, p.48, Ls.3–17.)

On March 19, 2015, the district court held a sentencing hearing. (R., pp.82–85.) The presentence investigator recommended a period of retained jurisdiction. (PSI, p.18.) The State recommended the imposition of a twenty-year sentence, with five years

² There are two transcripts on appeal. The first is an electronic copy of the entry of plea hearing on February 5, 2015, cited as Volume I. The second is an electronic copy of the sentencing hearing on March 19, 2015, cited as Volume II.

fixed. (R., p.83; Tr. Vol. II, p.7, Ls.10–13.) The district court followed the State’s recommendation, sentencing Mr. Villa-Linares to twenty years, with five years fixed. (Tr. Vol. I, p.23, Ls.21–23, p.24, Ls.8–10.) On March 26, 2015, the district court entered a judgment and commitment. (R., pp.93–94.)

On April 8, 2015, Mr. Villa-Linares filed a notice of appeal. (R., pp.95–98.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of twenty years, with five years fixed, upon Mr. Villa-Linares, following his guilty plea to a felony charge of driving under the influence and the persistent violator enhancement?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Twenty Years, With Five Years Fixed, Upon Mr. Villa-Linares, Following His Guilty Plea To A Felony Charge Of Driving Under The Influence And The Persistent Violator Enhancement

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Villa-Linares’s sentence does not exceed the statutory maximum. See I.C. §§ 18-8004, -8005(6), (9), 19-2514. Accordingly, to show that the sentence imposed was unreasonable, Mr. Villa-Linares “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Mr. Villa-Linares asserts that the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends that the district court should have sentenced him to a lesser indeterminate term of imprisonment in light of the mitigating factors, including his issues with alcohol abuse, his mental health condition, his age and poor health, and the substantial grounds to justify his criminal conduct.

Mr. Villa-Linares’s substance abuse issues and his need for treatment are strong factors in favor of mitigation. A sentencing court should give “proper consideration of the defendant’s alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho 89, 91 (1982). The impact of substance abuse on the defendant’s criminal conduct is “a proper consideration in mitigation of punishment upon sentencing.” *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Here, fifty-seven-year-old Mr. Villa-Linares began drinking

alcohol at the age of twenty-one or thirty-one. (PSI, pp.14, 48.) In the GAIN Recommendation and Referral Summary (“GRRS”), Mr. Villa-Linares was diagnosed with alcohol dependence and met the lifetime criteria for substance dependence. (PSI, pp.47–48.) The GRRS recommended Level II.I Intensive Outpatient Substance Abuse Treatment. (PSI, p.56.)

Mr. Villa-Linares is also very amenable to treatment. During the presentence investigation, he stated, “I recognize I have a drinking problem and want[] an intense program like Drug Court.” (PSI, p.14.) He further explained:

I would like to ask you to please give me the opportunity of the Drug Court Program. I feel that it would be much more beneficial for me and my life to straighten up and be more beneficial to stop for good my problem with drinking that’s why I need help to be better person for my family that is most important to me in my life and I don’t want to lose them.

(PSI, p.15.) Similarly, he stated at sentencing, “I do need help. I am an alcoholic.” (Tr. Vol. II, p.19, Ls.12–13.) He again asked the district court for treatment and the opportunity to participate in the drug court program. (Tr. Vol. II, p.19, Ls.19–21.) Moreover, he demonstrated his commitment to treatment while he awaited sentencing. Mr. Villa-Linares received twelve certificates for a total of eighty-six classes with a substance abuse educator in the Canyon County Support Group Program. (PSI, p.15; Villa Obj. to R.,³ Letter from Dana Schuck.) Based on these facts regarding his issues with alcohol abuse and desire for treatment, Mr. Villa-Linares submits that the district

³ On August 12, 2015, the district court granted Mr. Villa-Linares’s objection to the record and provided the requested documents on a CD with an electronic file titled “Villa Objection to Record.” Citations to these electronic documents will refer to the document’s name.

abused its discretion by imposing an excessive sentence of twenty years imprisonment, with five years fixed.

Mr. Villa-Linares's age, poor health, and mental health issues also support a lesser sentence. See *State v. Cobell*, 148 Idaho 349, 356 (Ct. App. 2009) (acknowledging district court's consideration of defendant's old age and health problems as mitigating factors); *State v. Turner*, 136 Idaho 629, 636 (Ct. App. 2001) (district court considered defendant's poor health as a basis for not following State's sentencing recommendation). Mr. Villa-Linares grew up in Mexico, but he is a legal permanent resident of the United States. (PSI, pp.10–11.) He has not visited his family in Mexico for thirteen years because he fears getting killed. (PSI, p.10.) Growing up, Mr. Villa-Linares and his family had to move around a lot "due to his father being harassed." (PSI, p.13.) He did not go to school past the sixth grade because his family had to move so often and "a lack of money." (PSI, p.13.) Mr. Villa-Linares's father was murdered when he was thirteen years old. (PSI, p.11.) Two of his brothers were also murdered, and another one of his brothers is missing, likely murdered as well. (PSI, p.11.) While in the United States, Mr. Villa-Linares has maintained steady employment. (PSI, p.17.)

Likely related to his experiences growing up in Mexico and the multiple murders in his family, Mr. Villa-Linares suffers from anxiety and depression. (PSI, p.51.) He scored in the moderate range of the Internal Mental Distress Scale in the GRRS. (PSI, p.50.) Mr. Villa-Linares has other health issues as well. He has lower back problems and requires surgery on his knee. (PSI, pp.14, 49–50.) At the time of sentencing, he was under the care of Canyon County Jail and was prescribed medication for his pain.

(PSI, p.14.) Mr. Villa-Linares's attorney submitted a recent medical request form wherein Mr. Villa-Linares complained of a burning pain or possible infection in his mouth, throat, eyes, and ears. (Villa Obj. to R., Medical Request Form.) Based on Mr. Villa-Linares's age and poor health, his attorney explained at sentencing:

If he goes to prison for five years, he -- it's probably more or less somewhat of a death sentence for him at his age. He has very poor health. He's been there before. It wasn't easy. It wasn't fun. And ultimately he felt -- and he communicated with me over and over again that if he goes back, he's probably going to die there. And that's a scary prospect for this man, as it would be for anybody. But he wants to get treatment. He wants to get help.

(Tr. Vol. II, p.13, Ls.2–10.) As recognized by his attorney, Mr. Villa-Linares's twenty-year sentence, with five years fixed, is the equivalent of a life sentence due to his health problems and old age. In light of this information, Mr. Villa-Linares submits that the district court erred by imposing an excessive sentence.

Finally, although Mr. Villa-Linares accepts complete responsibility for the crime and regrets his actions, he submits that his behavior was justified under the circumstances. In general, "substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense," weigh in favor of avoiding a sentence of imprisonment. I.C. § 19-2521(2)(d). During the presentence investigation and at sentencing, Mr. Villa-Linares explained that he acted out of necessity. (PSI, pp.4–5; Tr. Vol. II, p.17, Ls.1–7.) Mr. Villa-Linares was being threatened by his girlfriend's daughter, who had a baseball bat, and the daughter's husband, who had a gun. (PSI, p.5; Tr. Vol. II, p.17, Ls.1–7; see *also* Tr. Vol. I, p.13, Ls.5–19.) They threatened to kill him, so he drove away in his vehicle, even though he was under the influence of alcohol. (PSI, p.5; Tr. Vol. II, p.17, Ls.1–7; see *also* Tr. Vol. I, p.13, Ls.5–

19.) He explained, “I saw myself forced to having to drive because I felt that my life was in danger.” (Tr. Vol. II, p.17, Ls.11–12.) The daughter and husband then chased after him in their vehicle and followed him until he was pulled over by law enforcement. (Tr. Vol. II, p.18, Ls.2–7.) Mr. Villa-Linares was worried they were going to shoot him. (Tr. Vol. II, p.18, Ls.5–6.) Mr. Villa-Linares contends that his criminal conduct was justified due to this threat of immediate harm by the daughter and husband.

Despite the justification for his actions, Mr. Villa-Linares has acknowledged the great risk he posed to the community and expressed remorse. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). He stated during the presentence investigation, “Well I feel real bad and I can’t do anything else but ask for forgiveness. Even if I didn’t cause anyone harm but I feel bad.” (PSI, p.18.) The very first statement he made at sentencing was: “I want to apologize for all of this. I ask to be forgiven, and I apologize.” (Tr. Vol. II, p.16, Ls.23–25.) He further stated, “I respect everything, and it’s true. I want to apologize. And -- and it’s like [my attorney] said. I do need help. I am an alcoholic. I try to respect everything.” (Tr. Vol. II, p.19, Ls.11–13.) In summary, Mr. Villa-Linares submits that the justification for his criminal actions—along with his acceptance of responsibility and remorse in spite of this justification—stand in favor of mitigation. He contends that the district court abused its discretion by failing to adequately consider these mitigating circumstances at sentencing.

CONCLUSION

Mr. Villa-Linares 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 sentencing hearing.

DATED this 22nd day of September, 2015.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of September, 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:

GABINO VILLA-LINARES
INMATE #37083
GEM COUNTY JAIL
410 EAST FIRST
EMMETT ID 83617

JUNEAL C KERRICK
DISTRICT COURT JUDGE
E-MAILED BRIEF

AARON J BAZZOLI
BAZZOLI AND JAMES PLLC
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas