

12-17-2015

State v. Mansfield Appellant's Brief Dckt. 43115

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43115
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2014-11390
v.)	
)	
ANTHONY JEAN MANSFIELD,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Anthony Mansfield pled guilty to one count of grand theft by deception. He received a unified sentence of fourteen years, with three years fixed. On appeal, Mr. Mansfield contends that the district court abused its discretion in sentencing him as his sentence is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

Between May 9, 2014, and June 26, 2014, Anthony Mansfield wrote several bad checks. (Confidential Exhibits,¹ pp.210-226.) Mr. Mansfield wrote checks to various merchants, including Costco, for a total amount of \$3,913.43. (Confidential Exhibits, pp.38, 210-226; 3/6/15 Tr., p.16, Ls.15-16.) Mr. Mansfield had insufficient funds in his checking accounts to cover the amount of the checks. (Confidential Exhibits, pp.210-226.)

Based on these facts, Mr. Mansfield was charged by Information with one count of grand theft by deception. (R., pp.61-62.) Pursuant to a plea agreement, Mr. Mansfield pled guilty to one count of grand theft by deception. (3/6/15 Tr., p.4, L.13 – p.8, L.10, p.14, L.10 – p.15, L.12, p.17, Ls.4-15; R., pp.76-80.) In exchange, the State agreed to dismiss two other Ada County cases, Ada County case number 2014-11388, in which Mr. Mansfield was charged with grand theft by deception, and Ada County case number 2014-11389, in which he was charged with forgery and petit theft by deception, and Mr. Mansfield agreed to pay restitution on the dismissed cases.² (3/6/15 Tr., p.4, L.19 – p.5, L.2; R., pp.76-80; Confidential Exhibits, pp.18-19, 75-76.) The State also agreed not to file a persistent violator sentencing enhancement. (3/6/15 Tr., p.7, Ls.1-9; R., p.77.) The State agreed to recommend a sentence of fourteen years, with three years fixed, and that the sentence in this case be served concurrently with the

¹ Appellant's use of the term "Confidential Exhibits" designates the electronic file containing various documents, including police reports, a Psychological Evaluation, and letters submitted in support of Mr. Mansfield.

² At the time Mr. Mansfield entered his plea, restitution had been calculated to be \$4,747.43. (3/6/15 Tr., p.5, Ls.8-17; R., p.79.) Pursuant to the plea agreement, Mr. Mansfield agreed to pay restitution on uncharged conduct as well. (3/6/15 Tr., p.5, Ls.3-7.) The final amount of restitution awarded was \$10,836.02. (R., pp.83-84.)

sentences in Mr. Mansfield's other cases, Ada County case number 2007-5071 and Ada County case number 2009-6138. (3/6/15 Tr., p.4, Ls.19-25; R., pp.77-78.) Mr. Mansfield was free to argue for a lesser sentence. (R., p.99.)

At the time Mr. Mansfield entered his guilty plea, the parties agreed that a PSI previously prepared approximately one year prior for an unrelated Ada County felony case would be utilized for Mr. Mansfield's sentencing in this case. (3/6/15 Tr., p.18, Ls.8-15.) The district court then set the matter for sentencing. (3/6/15 Tr., p.18, Ls.16-22.)

At the sentencing hearing, the prosecutor asked the district court to sentence Mr. Mansfield to a unified term of fourteen years, with three years fixed, and asked the district court to order restitution in the amount of \$10,836.02. (3/27/15 Tr., p.6, Ls.1-7.) Mr. Mansfield asked the district court to retain jurisdiction over him, or alternatively, for a lenient sentence. (3/27/15 Tr., p.10, Ls.11-15, p.11, Ls.6-11.) The district court sentenced Mr. Mansfield to a unified term of fourteen years, with three years fixed. (3/27/15 Tr., p.14, Ls.14-19; R., pp.85-88.) The district court also ordered restitution in the amount of \$10,836.02. (3/27/15 Tr., p.15, Ls.2-3; R., pp.83-84.)

Mr. Mansfield filed a timely Rule 35 motion asking the district court for leniency and requesting leave to supplement his motion with supporting documentation or evidence. (R., pp.95-96.) The district court denied Mr. Mansfield's Rule 35 motion and his request for leave to supplement the motion.³ (R., pp.97-99.) Mr. Mansfield filed a

³ On appeal, Mr. Mansfield is not asserting that the district court abused its discretion in denying his Rule 35 motion as no new evidence was submitted in support of the Rule 35 motion, and the motion for leave to supplement did not state what supporting evidence Mr. Mansfield intended to file. See *State v. Huffman*, 144 Idaho 201, 203 (2007) (holding that "[w]hen presenting a Rule 35 motion, the defendant must show that

notice of appeal which was timely from the judgment of conviction and the order denying his Rule 35 motion. (R., pp.90-92.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fourteen years, with three years fixed, upon Mr. Mansfield following his plea of guilty to grand theft by deception?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fourteen Years, With Three Years Fixed, Upon Mr. Mansfield Following His Plea Of Guilty To Grand Theft By Deception

Mr. Mansfield asserts that, given any view of the facts, his unified sentence of fourteen years, with three years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997)

the sentence is excessive in light of new or additional information subsequently provided to the district court” and absent the presentation of new evidence, “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence.”); see also *State v. Bayles*, 131 Idaho 624, 626-27 (Ct. App. 1987) (holding that district court did not err in denying motion for leave to supplement where defense counsel did not submit any evidence in support of the Rule 35 motion, did not advise the court of any then-unavailable evidence which would be forthcoming, the nature thereof, or an approximate date by which such evidence would be filed, or give any reason why he believed a hearing would be necessary).

(quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Mansfield does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Mansfield must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* The governing criteria or objectives of criminal punishment are: (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. *Id.*

In light of the mitigating factors present in this case, Mr. Mansfield's sentence is excessive considering any view of the facts.

An important fact that should have received the attention of the district court is that Mr. Mansfield has strong support from family members and friends. *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts). Mr. Mansfield received multiple supportive letters from the father figure in his life, Patrick Sutherland. (Confidential Exhibits, pp.14-16.) Mr. Sutherland was also present in the courtroom to show his support for Mr. Mansfield at his sentencing hearing. (3/27/15 Tr., p.8, Ls.19-24.) Mr. Mansfield is a good parent. He loves his kids and wants to be with them. (Confidential Exhibits, pp.8-9, 14-16.) Mr. Sutherland, Mr. Mansfield's childrens' foster father, observed that the children were happy and eager to see Mr. Mansfield, and that he called the kids every night to tell them good night. (Confidential Exhibits, p.14.) His caseworker reported that Mr. Mansfield had established a good relationship with the foster parents of his children and visits the children at the foster home. (Confidential Exhibits, p.10.) He "interacts positively with his children, manages challenging

behaviors in an appropriate manner, and he seems to have a natural ability to deal with his children's special needs." (Confidential Exhibits, p.10.) One of Mr. Mansfield's children is autistic and his youngest child is speech-delayed. (Confidential Exhibits, pp.8-9.)

Mr. Mansfield's own childhood was extremely traumatic and chaotic. (Confidential Exhibits, p.11.) He was placed in 42 different foster homes and experienced sexual, physical, and verbal abuse during childhood. (Confidential Exhibits, pp.3, 5-6.) A difficult and abusive childhood has been recognized as a mitigating factor. *State v. Gonzales*, 123 Idaho 92, 93 (Ct. App. 1993); *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001).

Mr. Mansfield served in the military and was deployed to Iraq. (Confidential Exhibits, p.4; PSI attached to November 12, 2015, Order Augmenting Record, p.23.) He received a decoration for his service in the "Global War on Terrorism" and was honorably discharged from the Marine Corps. (PSI attached to November 12, 2015, Order Augmenting Record, pp.23-24.) In *State v. Nice*, 103 Idaho 89, 90 (1982), the court found the defendant's honorable discharge from the military to be a factor in mitigation of sentence.

Further, Mr. Mansfield expressed remorse and accepted responsibility for his actions. (3/6/15 Tr., p.14, L.10 – p.15, L.12, p.17, Ls.4-15; 3/27/15 Tr., p. 7, Ls.14-24, p.9, L.24 – p.11, L.25; Confidential Exhibits, p.38.) In fact, Mr. Mansfield several times mentioned that he wanted to make right the damage he caused. (3/27/15 Tr., p.11, Ls.1-7, p.11, Ls.23-25.) Regarding the circumstances surrounding his offense, Mr. Mansfield read a letter of apology:

[T]o anyone and everyone who has been affected by a lack of maturity and by my lack of responsible judgments. There is nothing that I can say that will be able to completely make up for my wrongdoings, but my hope is that you can allow for me to admit that I was wrong and to start the process of making right the damage that I have done to everyone around me from my community to my family. From the bottom of my heart, I apologize.

(3/27/15 Tr., p.10, L.22 – p.11, L.5.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Mr. Mansfield asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his remorse, history of military service, and family and community support, it would have imposed a less severe sentence.

CONCLUSION

Mr. Mansfield respectfully requests that this Court remand his case to the district court for a new sentencing hearing. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 17th day of December, 2015.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of December, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

ANTHONY JEAN MANSFIELD
INMATE # 90332
ISCI
PO BOX 14
BOISE ID 83707

MELISSA MOODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

NICOLE OWENS
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas