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State v. Williams Appellant's Brief Dckt. 43127

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43127
Plaintiff-Respondent,)	
)	BINGHAM COUNTY NO. CR 2014-5608
v.)	
)	
DANIEL EPPS WILLIAMS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, thirty-six-year-old Daniel Epps Williams pleaded guilty to two counts of felony sexual abuse of a minor. The district court imposed, on each count, a unified sentence of twenty-five years, with nine years fixed, to be served consecutively. On appeal, Mr. Williams asserts the district court abused its discretion when it imposed his sentence.

Statement of the Facts & Course of Proceedings

L.M. and L.R., two girls who were seven years old at the time, reported to their parents that a mutual friend, Mr. Williams, had touched them inappropriately. (Presentence Report (*hereinafter*, PSI), p.3.) In an interview with a forensic investigator

retained by the Bingham County Sheriff's Office, L.R. reportedly stated Mr. Williams touched her genitals on two occasions. (PSI, p.3.) Another forensic investigator interviewed L.M., and L.M. reportedly stated Mr. Williams touched her genitals on at least three occasions. (PSI, p.3.)

The State filed a Criminal Complaint alleging Mr. Williams had committed five counts of lewd conduct with a child under sixteen, felony, in violation of Idaho Code § 18-1508. (R., pp.7-9.) Counts I and II alleged manual-genital contact with L.R., and Counts III, IV, and V alleged manual-genital contact with L.M. (R., pp.8-9.) Mr. Williams waived a preliminary hearing, and the magistrate bound him over to district court. (R., p.68.) The State then filed a Prosecuting Attorney's Information charging Mr. Williams with the above five counts. (R., pp.74-76.) Mr. Williams initially entered a not guilty plea to the charges. (R., pp.81-82.)

Pursuant to a plea agreement, the State agreed to amend Counts I and III to charges of sexual abuse of a minor, felony, in violation of I.C. § 18-1506, and to dismiss Counts II, IV, and V. (R., pp.92-96.) Mr. Williams agreed to plead guilty to the amended charges of sexual abuse. (R., pp.84-92.) The district court accepted Mr. Williams' plea. (R., pp.99-101.) The district court also ordered Mr. Williams to complete a psychosexual evaluation. (R., pp.128-29.)

At the sentencing hearing, the State recommended that the district court impose, on each count, a unified sentence of twenty-five years, with twenty years fixed. (Tr., Mar. 3, 2015, p.54, L.24 – p.55, L.2.) Mr. Williams recommended that the district court retain jurisdiction so he could get the treatment he needed but did not receive in the past. (Tr., Mar. 3, 2015, p.49, Ls.8-16.) The district court imposed, on each count,

a unified sentence of twenty-five years, with nine years fixed. (R., pp.139-42.) The sentences were to be served concurrently. (R., p.140.)

Mr. Williams filed a Notice of Appeal timely from the district court's Judgment of Conviction/Order of Commitment. (R., pp.157-60.)

ISSUE

Did the district court abuse its discretion when it imposed two consecutive unified sentences of twenty-five years, with nine years fixed, upon Mr. Williams, following his plea of guilty to two counts of sexual abuse of a minor?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Two Consecutive Unified Sentences Of Twenty-Five Years, With Nine Years Fixed, Upon Mr. Williams, Following His Plea Of Guilty To Two Counts Of Sexual Abuse Of A Minor

Mr. Williams asserts the district court abused its discretion when it imposed his consecutive unified sentences of twenty-five years, with nine years fixed, because his sentence is excessive considering any view of the facts.

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 "due regard to the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Strand*, 137 Idaho 457, 460 (2002).

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) (internal quotation marks omitted). The decision to have a sentence run concurrently with or consecutively to other sentences "is within the sound discretion of the trial court."

State v. Elliott, 121 Idaho 48, 52 (Ct. App. 1991). Mr. Williams does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Williams 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. Williams submits that, because the district court did not give adequate consideration to mitigating factors, the sentence imposed by the district court is excessive considering any view of the facts. Specifically, the district court did not adequately consider Mr. Williams’ own difficult childhood. Mr. Williams reported growing up relatively poor, and described times where he lacked access to hot water at home. (Specialized Psychosexual Evaluation (*hereinafter*, Psychosexual Eval.), p.6.) When Mr. Williams was approximately six or seven years old, one of his older brothers started physically and sexually abusing him. (Psychosexual Eval., p.9.) The older brother had Mr. Williams masturbate him and perform oral sex on him. (Psychosexual Eval., p.15.) The sexual molestation lasted until Mr. Williams was about twelve years old. (Psychosexual Eval. ,p.15.) The older brother would also physically hit Mr. Williams. (Psychosexual Eval., p.9.)

Further, when Mr. Williams was twelve years old, his father was diagnosed with terminal prostate cancer. (PSI, p.9.) Mr. Williams' father died about two years later. (PSI, p.10.)

The district court also did not adequately consider Mr. Williams' mental health issues. A district court must consider evidence of a defendant's mental condition offered at the time of sentencing. See I.C. § 19-2523(1). Mr. Williams' diagnosis in the psychosexual evaluation reflected he suffered from, among other disorders, "Major Depression, recurrent, moderate to severe, with suicidal ideation," as well as "Post-Traumatic Stress Disorder, chronic . . . probable." (Psychosexual Eval., p.31.)

The psychosexual evaluation reported Mr. Williams indicated he had "recently given quite a bit of thought to killing himself," and that he felt "thoroughly demoralized about his life and his future." (Psychosexual Eval., p.28.) The psychosexual evaluation also stated: "This state of feeling defeated in life does not appear to be primarily reactive to the index allegations and the substantial changes in life circumstances that await him in the near future. Rather, it is a more enduring problem that likely dates back to the problematic early childhood and the traumatic sexual and physical abuse he reports" (Psychosexual Eval., p.28.)

The psychosexual evaluation also tied Mr. Williams' post-traumatic stress disorder to his childhood. It stated: "The same early childhood trauma could be responsible for the long-standing anxiety that Mr. Williams also reports" (Psychosexual Eval., p.28.) Mr. Williams became "easily lost in the entrained dysfunctional thought processes and negative beliefs about himself, about others, and about the future that had haunted him since his childhood years." (Psychosexual Eval.,

p.28.) Those preoccupations occupied Mr. Williams throughout his day, and he also reported experiencing nightmares several times per week. (Psychosexual Eval., p.28.) According to the psychosexual evaluation, “[t]his suggests that trauma from childhood is at least partly responsible for the anxiety Mr. Williams reports. He would thus appear to show Post-Traumatic Stress Disorder.” (Psychosexual Eval., p.28.) The psychosexual evaluation reported “Mr. Williams shows rather limited coping skills for managing the foregoing, especially during periods when the anxiety is more prominent and the depression more intense.” (Psychosexual Eval., p.28.)

The psychosexual evaluation additionally diagnosed Mr. Williams with “Pedophilia, not otherwise specified . . . rule out.” (Psychosexual Eval., p.31.) Mr. Williams reported sexually molesting his sister’s nine-year-old daughter when he was fourteen years old. (Psychosexual Eval., p.19.) As a juvenile, he was convicted for lewd conduct with a child under sixteen, placed on probation, and completed the JOG program with Bannock County Juvenile Probation. (PSI, p.8.) However, the psychosexual evaluation reported that sex offender treatment programs in the 1990s, when Mr. Williams underwent treatment while on juvenile probation, “were, on the whole, less comprehensive and less effective than they are today.” (Psychosexual Eval., p.31.) The psychosexual evaluation continued: “It is unlikely Mr. Williams’ juvenile sex offender treatment program had incorporated many of the new interventions. It is thus not unreasonable to conclude that he has undergone only a modicum of sex offender treatment, that being around 20 years ago.” (Psychosexual Eval., p.31.)

While Mr. Williams has undergone only a modicum of sex offender treatment, he sought effective treatment as part of his greater remorse and acceptance of responsibility. However, the district court did not adequately consider Mr. Williams' remorse and acceptance of responsibility. The psychosexual evaluation stated "Mr. Williams showed significant regret and remorse about this offense conduct. He reports feeling guilty about what he has done, is ashamed of it, and feels sorry for the victims." (Psychosexual Eval., p.31.) Mr. Williams was "near-desperate in begging to be free of the deviant sexual obsessions, indeed, all sexual obsessions. He thus acknowledges that he needs help to control his sexual behavior and is eager and highly motivated to undergo sex offender treatment programming." (Psychosexual Eval., p.31.) The evaluator observed that "in my 22 years of providing psychosexual evaluation and sex offender treatment services, I cannot recall an offender who so badly wanted treatment as does Mr. Williams." (Psychosexual Eval., p.31.)

Mr. Williams also highlighted his desire for treatment, remorse, and acceptance of responsibility at the sentencing hearing. In his statement to the district court, he first addressed his comments to the families of L.M. and L.R.:

I can't begin to express how sorry I am for the trials, burden, and most of all, the hurt that I have caused you and your families—trials, burdens, and hurt that may become easier to bear in time but probably last the rest of your lives. I know I can never say or do anything to make up for that.

I pray that today may be at least the beginning of some sort of closure for you and your families. I pray that not only L.M. and L.R. can get the help they need to try to have normal lives but that you and the rest of your families can do so as well.

I hate that I have caused this pain in all of our lives. You showed me love, and I can't express how much I hate that I abused it. I fully regret my actions and the damage that it caused. I really am sorry. It is my fault and my fault alone.

(Tr., Mar. 3, 2015, p.62, L.14 – p.63, L.4.) He then told the district court, “I know that I’ve committed some very heinous acts. Again, I can’t express the regret or how much I hate that I’ve hurt those families I love so dearly and showed me so much love.” (Tr., Mar. 3, 2015, p.63, Ls.19-22.) Mr. Williams stated, “I know that I have a serious problem and want to change. I want to take full responsibility for my actions, and I am ready and willing to face these consequences for those heinous acts.” (Tr., Mar. 3, 2015, p.63, L.25 – p.64, L.4.)

Mr. Williams asserts the district court did not adequately consider the above mitigating factors. Thus, the sentence imposed by the district court is excessive considering any view of the facts, and the district court abused its discretion.

CONCLUSION

For the above reasons, Mr. Williams respectfully requests that this Court reduce his sentence as it deems appropriate, or that his case be remanded to the district court for a new sentencing hearing.

DATED this 5th day of November, 2015.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of November, 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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DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas