

1-13-2016

State v. Walton Respondent's Brief Dckt. 43239

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Walton Respondent's Brief Dckt. 43239" (2016). *Not Reported*. 2467.
https://digitalcommons.law.uidaho.edu/not_reported/2467

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

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

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43239
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2008-15726
)	
JOSHUA JOSEPH WALTON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issues

Has Walton failed to establish that the district court abused its discretion either by imposing a unified sentence of 10 years, with five years fixed, upon his guilty plea to injury to a child, or by denying his Rule 35 motion for sentence reduction?

Walton Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Walton pled guilty to injury to a child and the district court imposed a unified sentence of 10 years, with five years fixed. (R., pp.78-80.) Walton timely appealed

from the judgment of conviction and timely filed a Rule 35 motion for sentence reduction, which the district court denied. (R., pp.81-82, 87-92.)

Walton asserts his sentence is excessive in light of “his acceptance of responsibility, remorse, and family support.” (Appellant’s brief, p.4.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for injury to a child is 10 years. I.C. § 18-1501(1). The district court imposed a unified sentence of 10 years, with five years fixed, which falls well within the statutory guidelines. (R., pp.78-80.) At sentencing, the district court articulated the correct legal standards applicable to its decision and set forth in detail its reasons for imposing Walton’s sentence. (03/18/2015 Tr., p.27, L.7 – p.32, L.25.) The

state submits that Walton has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Walton next asserts the district court abused its discretion when it denied his Rule 35 motion for sentence reduction. (Appellant's brief, pp.6-8.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this 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, Walton 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. Walton has failed to satisfy his burden.

Walton has not shown that he was entitled to a reduction of sentence. In support of his Rule 35 motion, Walton wrote a letter to the district court stating he had previously received his GED under a different name, had been attending AA meetings while in jail, and had been receiving counseling for his depression and anxiety. (See generally, "Defendant's Exhibit A.") Walton also testified at the Rule 35 hearing and admitted he had thrown the child on the bed "where she bounced and hit a wall." (04/08/2015 Tr., p.27, Ls.3-21.) This is not "new" information that would entitle Walton to a reduction in his sentence. His attendance at AA meetings and counseling while incarcerated, as well as his belated honesty with the district court regarding his actions in this matter, serve only to put Walton in a better light for earlier parole and demonstrate that his sentence is accomplishing the goal of rehabilitation. At the hearing on Walton's Rule 35 motions, the district court articulated its reasons for denying Walton's motion.

(04/08/2015 Tr., p.28, L.8 – p.31, L.3.) The state submits that Walton has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the Rule 35 hearing transcript, which the state adopts as its argument on appeal. (Appendix B.)

Conclusion

The state respectfully requests this Court to affirm Walton's conviction and sentence, and the district court's order denying his Rule 35 motion.

DATED this 13th day of January, 2016.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of January, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

27

1 THE COURT: Are you satisfied with the
 2 representation Mr. Barrett has provided to you?
 3 THE DEFENDANT: Yes, Your Honor.
 4 THE COURT: Do you know of any legal reason why I
 5 should not sentence you today.
 6 THE DEFENDANT: No, Your Honor.
 7 THE COURT: Mr. Walton, based upon your plea of
 8 guilty, it is the judgment of the Court that you are
 9 guilty of the crime of injury to a child, as set forth
 10 in the Prosecuting Attorney's Information.
 11 As I indicated, I've gone through your
 12 presentence report. And, in this case, your attorney
 13 and the State's attorney have addressed the bulk of
 14 those things contained within that report.
 15 The presentence report does recommend retained
 16 jurisdiction with a TC Rider.
 17 Your substance abuse evaluation requires that
 18 you -- or suggests that you're in need of a Level 3.5
 19 residential treatment. The mental health evaluation in
 20 this case recommends that -- it doesn't feel that you
 21 meet the criteria for -- to require an additional mental
 22 health evaluation, and they simply suggest that you
 23 participate in counseling to treat your past diagnosis
 24 and gain knowledge and appropriate coping mechanisms.
 25 In addition to the arguments of your attorney,

29

1 history starting -- which actually starts on page 6.
 2 But, in 1994, you had malicious injury to
 3 property, and, in '95, you had malicious injury to
 4 property as juvenile offenses.
 5 You had an unlawful entry in 1999.
 6 Then you had another battery. You had a
 7 battery in 2000, resisting officers in 2004, resisting
 8 officers in 2007, and then this injury to child in 2008.
 9 You then have disorderly conduct in 2009,
 10 disorderly conduct in 2011, and disturbing the peace in
 11 2013.
 12 Those are just a few of the things that I
 13 highlighted that, not in and of themselves, may be
 14 violent offenses, but they deal with anger issues and
 15 those types of -- a lack of ability to control your
 16 emotion, when I go back and look at those.
 17 Page 15 indicates that you have had more than
 18 30 convictions for -- as indicated, most of those are
 19 misdemeanors.
 20 You've had several probation violations.
 21 You've been given the opportunity on probation, but
 22 you've not been successful in those terms.
 23 The second paragraph on page 15 also states
 24 that you seem to be unconcerned with the consequences of
 25 not following the criteria of probation, based upon the

28

1 the State's attorney, the victim impact statement, and
 2 the presentence report, I've considered the objectives
 3 of criminal punishment adopted by the Idaho Supreme
 4 Court. Those include protection of society, deterrence,
 5 rehabilitation, and punishment. And I'm not required to
 6 give any particular weight to any of those, but in all
 7 cases, protection of society is paramount.
 8 I'm looking at your age.
 9 Much has been said about your LSI score. It's
 10 a 46, which puts you in the high-risk category.
 11 Mr. Barrett has pointed out that this is your
 12 first felony offense, which is correct.
 13 He's also correct in his statement that most
 14 first-time felons get probation. In any case, this
 15 Court is required to consider probation first, under the
 16 statute, before looking at incarceration. And there are
 17 criteria under Idaho Code 19-2521 that I have looked at.
 18 But certain facts and certain charges, even if
 19 it is a first time felony conviction, don't guarantee
 20 probation right off of the bat.
 21 I go back and I look at your criminal history.
 22 And it was interesting that Ms. Freeman had pointed this
 23 out, because it's some of the things that I had
 24 highlighted in this case.
 25 I went back in going through your criminal

30

1 number of warrants that have been issued for your
 2 failure to appear and other issues of noncompliance.
 3 You've been disciplined several times since
 4 your incarceration in Bonneville County, in 2014, which
 5 tells me you still have issues even in the jail setting,
 6 with the following basic rules.
 7 So when I look at all of the issues here --
 8 and then we go and look at your substance abuse issues.
 9 You're in need of Level 3.5 inpatient treatment. There
 10 are very few that are able to obtain that type of
 11 residential treatment in a community setting just
 12 because of the costs.
 13 And so when I factor all those things
 14 together, probation is not an option in your case.
 15 At the time when this incident occurred -- and
 16 you had even stated this here. One of the things that
 17 has bothered me somewhat in this case is there's been
 18 talk about you taking responsibility. And I would say
 19 that you have not taken full responsibility, because I
 20 still think there's some denial going on here.
 21 And having been in this profession for a long
 22 time and having sat where Mr. Barrett is sitting and
 23 having sat where Ms. Shaul is sitting and dealt with
 24 these types of cases in those positions and as a judge,
 25 one of the things that I find is that it is awful hard

31

1 for those persons who have injured a child to actually
2 come to grips that they've harmed a child under the
3 circumstances.

4 But a child falling off of a bed and receiving
5 the type of injuries that she had is just not plausible.
6 And if you think that's what happened, you're
7 daydreaming. That's all I've got to say about it. It's
8 just not plausible. There's something more that
9 happened there.

10 There's interesting information from the
11 neighbor on the crash that she heard. And I can make
12 some speculations, based upon the evidence. But I think
13 Ms. Freeman even said it. The only person who really
14 knows what happened on that day is you.

15 But this child has suffered some severe
16 permanent injuries because of your actions in this case.

17 Your failure to appear and having been
18 basically on the run for the past six to six and a half
19 years also has an impact on whether probation is
20 appropriate and the other factors that this Court
21 considers.

22 Therefore, based on all of those factors, and
23 the crime, that this Court is required to follow, it is
24 the judgment of this Court that you be sentenced to the
25 Idaho Department of Corrections for a fixed and

33

1 Anything else?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: All right. You have the right to
4 appeal this decision.

5 Oh, on the restitution, the Court will hold
6 restitution in abeyance.

7 Ms. Shaul, you'll have 30 days to file your
8 request for restitution.

9 Mr. Barrett, after that is filed, you'll have
10 45 days to file any objection.

11 If there is no objection filed, the Court will
12 consider that a stipulation, and I'll enter the
13 restitution as requested. If there is an objection,
14 then I'll set a hearing on the restitution request.

15 Mr. Walton, you have the right to appeal this
16 appeal. That decision has to be filed within 42 days.
17 You have the right to be represented by counsel on that
18 appeal. If you cannot afford counsel, you apply to this
19 Court to have counsel appointed to represent you at
20 public expense. Just remember you only have 42 days in
21 which to file that appeal.

22 You also have the right to seek relief under
23 Idaho Criminal Rule 35. That has to be filed 120 days
24 of entry of the judgment.

25 And you also have the right to seek relief

32

1 determinate period of five years and an indeterminate
2 period of five years -- In other words, not less than
3 five, no more than ten.

4 You're fined the amount of \$2,000.

5 You're ordered to pay court costs, pursuant to
6 statute.

7 Under Idaho Code 19-5307, you're ordered to
8 pay a civil penalty that will work in favor of the
9 victim in the amount of \$5,000.

10 You're ordered to reimburse the services for
11 the county public defender in the amount of \$500.

12 Under the circumstances, I do not feel that
13 retained jurisdiction is appropriate either; so I'm
14 going to simply impose the sentence. I will recommend,
15 however, that you participate in the TC program in the
16 prison setting.

17 Do you understand the sentence that I've
18 imposed here today?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you have any questions about it?

21 THE DEFENDANT: Will you please reconsider the
22 retained jurisdiction? I know if I do a rider, I can
23 come back and be a better person.

24 THE COURT: Well, I've thought about it, but I
25 don't think it's appropriate under the circumstances.

34

1 under the Idaho Uniform Post-Conviction Relief Act.

2 That would have to be filed within one year from the
3 date your appellate time expires.

4 Do you understand those rights?

5 THE DEFENDANT: No. But I'll check on them.

6 THE COURT: Okay. The important thing is that you
7 understand the time frames. So you've got 42 days to
8 file the appeal.

9 Do you understand that?

10 THE DEFENDANT: (Defendant nodded head.)

11 THE COURT: I need you to answer out loud.

12 THE DEFENDANT: Yes.

13 THE COURT: And you have the right to be
14 represented by counsel on that.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Your Rule 35 has to be filed within
18 120 days of entry of the judgment. That judgment will
19 most likely be entered tomorrow.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: And then you have one year from the
23 date your appellate time expires in order to seek the
24 Post-Conviction Relief Act, should you desire to pursue
25 that remedy.

APPENDIX B

28

1 shouldn't say more severe crimes, because a crime is a
2 crime, you know. But it is pretty customary that people
3 get a rider on their first felony. And I just ask -- I
4 beg you for that one chance. If you give me that one
5 chance at a rider, I will not let you down.

6 THE COURT: Anything else, sir?

7 THE DEFENDANT: No. Thank you, Your Honor.

8 THE COURT: All right. Mr. Walton, as I've
9 thought about this and I've gone through and I've read
10 through your letter, there are some things that stick
11 out.

12 First of all, there's a handful of things that
13 you've acknowledged here today that weren't available to
14 the Court at the time it did the sentencing. But a few
15 of them don't impact my decision in a great deal: for
16 instance, the GED.

17 A person who doesn't have a GED doesn't impact
18 whether they go to prison or get probation, but it is an
19 element that I can use in any regard in trying for -- to
20 fashion a sentence towards rehabilitation, because there
21 is benefits to you by having either a high school
22 diploma, a GED, or even a college education that your
23 employment abilities then open up somewhat, which helps
24 in addiction cases to occupy time and make you
25 productive.

30

1 And it's kind of like I said to you the day I
2 sentenced you, when I looked at the reports and the
3 medical records in this case, having seen enough of
4 these cases, the story that was given and the story that
5 was given at the time to the police doesn't add up to
6 the types of injuries the child received. What you've
7 stated here today, those are the types of injuries that
8 would be consistent with those types of actions.

9 In a Rule 35, you're asking for leniency. And
10 you're not alleging that the sentence is illegal, and
11 the Court notes that it is not illegal.

12 As I've gone back through and looked at
13 this -- you know, I spent an awful lot of time thinking
14 about what should happen in this case. And when I
15 initially did sentencing, I went through the PSI
16 completely, listened to you, your attorney, and the
17 State's attorney. And I continue to take into those --
18 those factors into consideration even today as well as
19 the objectives of criminal punishment, which includes
20 protection of society, deterrence, rehabilitation, and
21 punishment and the factors under Idaho Code 19-2521.

22 And I hear what you're saying, but I don't
23 think what I'm hearing today is sufficient for me to
24 reconsider the sentence that I imposed. I think the
25 sentence that I imposed was appropriate under the facts

29

1 And so it's more of a rehabilitative concern
2 than, okay, should this person do a rider, should this
3 person do prison, or should this person do probation?

4 I'm glad that you're getting to AA meetings in
5 the jail and that you're seeking counseling. That tells
6 me you're working on two of the issues that you need to
7 work on.

8 At the time of sentencing, the Court was aware
9 of the alcohol problem. There was not the direct same
10 statement made here today, but there were references to,
11 you know, you're older now than you were in 2008. And
12 most people do change behavior and mature, to some
13 degree, over the period of years.

14 But at the same time, we had to find you, and
15 the case had to be pursued even once you were back here
16 in Idaho.

17 The Court notes that the presentence report
18 and the parties recommended retained jurisdiction, and I
19 was aware of that at the time.

20 The thing that has probably shocked me here
21 today is your more-detailed allocution of what happened.
22 That at least gives, I would assume, the victim and the
23 victim's family some comfort in knowing what actually
24 happened. It doesn't change the outcome, but at least
25 they know what happened.

31

1 and circumstances of this case and applying those
2 objectives.

3 So the motion for Rule 35 relief is denied.

4 Mr. Barrett, anything further in this matter?

5 MR. BARRETT: No, Your Honor. Thank you.

6 THE COURT: Mr. Walton, you can appeal that
7 decision. That appeal has to be filed within 42 days,
8 and you have the right to be represented by counsel on
9 that appeal.

10 Anything further, Mr. Barrett?

11 MR. BARRETT: No, Your Honor. Thank you.

12 THE COURT: Mr. Crowther?

13 MR. CROWTHER: No, Your Honor. Thank you.

14 THE COURT: All right. Court will be in

15 recess.

16 (The hearing concluded at 2:04 P.M.)

17 -oo0oo-