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State v. Ashford Appellant's Brief Dckt. 43341

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43341
Plaintiff-Respondent,)	
)	ELMORE COUNTY NO. CR 2014-3383
v.)	
)	
GARRETT RAY ASHFORD,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
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BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ELMORE

HONORABLE CHERI C COPSEY
District Judge

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STATEMENT OF THE CASE

Nature of the Case

After Garrett Ray Ashford pled guilty to lewd conduct, the district court sentenced him to life in prison, with twenty years fixed, and entered a no contact order that purported to be in effect until Mr. Ashford's death. Mr. Ashford argues that his sentence is excessive in light of the mitigating factors in his case, and that the district court's no contact order is invalid because it does not expire on a specific date.

Statement of Facts and Course of Proceedings

In January 2015, Mr. Ashford pled guilty to lewd conduct for molesting his fifteen-year-old daughter, C.H. (R., pp.25–32; Tr., p.1, L.3 – p.18, L.25.) In exchange for his guilty plea, the State agreed to recommend an indeterminate life sentence, with ten years fixed, so long as the psychosexual evaluation did not find that Mr. Ashford posed a high risk to reoffend. (R., p.32; Tr., p.5, Ls.9–16, p.6, Ls.20–23.)

At sentencing, the State stood by its agreement and recommended an indeterminate life sentence, with ten years fixed. (Tr., p.27, Ls.18–24.) Defense counsel explained that Mr. Ashford understood he needed treatment, and asked for an underlying sentence of sixteen years, with six years fixed, and a period of retained jurisdiction. (Tr., p.28, L.24 – p.29, L.10.)

The district court imposed an indeterminate life sentence, with twenty years fixed. (R., pp.43–48; Tr., p.35, Ls.16–22.) Mr. Ashford will not be eligible for parole until 2034, when he will be sixty-four years old. The court also ordered that Mr. Ashford have no contact with C.H. “until further order of the Court or when the Defendant dies, whichever occurs first.”

(No Contact Order,¹ p.2; *see also* Tr., p.37, Ls.19–22). Mr. Ashford timely appealed.
(R., pp.50–52.)

¹ Mr. Ashford attached the no contact order to his motion to augment the record, which he filed along with this brief.

ISSUES

- I. Did the district court err by failing to include a specific expiration date for its no contact order?
- II. Did the district court abuse its discretion when it sentenced Mr. Ashford to life in prison, with twenty years fixed, for lewd conduct?

ARGUMENT

I.

The District Court Erred By Failing To Include A Specific Expiration Date For Its No Contact Order

Where the lower court's decision turns on the interpretation of a criminal rule, this Court exercises free review. *State v. Castro*, 145 Idaho 173, 175 (2008). Idaho Criminal Rule 46.2(a)(3) ("Rule 46.2") requires that no contact orders state "[t]hat the order will expire at 11:59 p.m. on a specific date, or upon dismissal of the case." The Idaho Supreme Court has made clear that no contact orders must contain an expiration date as set forth in Rule 46.2. *State v. Hillbroom*, 158 Idaho 789, 352 P.3d 999, 1002 (2015) ("We urge the lower courts, including the judge in this case, to follow the directive in Idaho Criminal Rule 46.2(a)(3) to provide for a *specific expiration date* in all no contact orders.") (emphasis added); *State v. Herren*, 157 Idaho 722, 725 (2014) ("Idaho Criminal Rule 46.2 is a procedural rule that sets forth the minimum requirements for a valid no contact order."). The reason for this requirement is to avoid "confusion, false arrests, and lawsuits," which were common when the rule only required that no contact orders would "remain in effect until further order of the court." *Castro*, 145 Idaho at 175.

The district court here did not provide a specific expiration date as required by Rule 46.2(a)(3). The court ordered that Mr. Ashford have no contact with C.H. "until further order of the Court or when the Defendant dies, whichever occurs first." (No Contact Order, p.2; *see also* Tr., p.37, Ls.19–22). Although the district court's order avoids the problems associated with orders that simply remain in effect until further order of the court, *see Castro*, 145 Idaho at 175, it does not comply with the plain, unambiguous mandate of Rule 46.2 that no contact orders provide "[t]hat the order will expire at 11:59 p.m. on a specific date." This Court should vacate the no contact order and remand to the district court for further proceedings.

II.

The District Court Abused Its Discretion When It Sentenced Mr. Ashford To Life In Prison, With Twenty Years Fixed, For Lewd Conduct

When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “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.” *Miller*, 151 Idaho at 834.

First and foremost, Mr. Ashford wants to acknowledge the indiscernible weight of the poor choices he has made. He takes full accountability for the damage he has caused, and in no way intends for this appeal to minimize his actions or their consequences. (*See Tr.*, p.30, Ls.6–24.) Mr. Ashford has described this crime as “heinous and unforgivable.” (*Tr.*, p.30, L.8.) This is all the more true since this was not his first sexual offense—he molested three other girls before C.H. (PSI, p.19.) Two were his biological daughters and one was the daughter of his girlfriend. (PSI, pp.3, 8–9, 19; Psychosexual Evaluation, p.1.) Given the magnitude of Mr. Ashford’s crime, it is hard to see something other than the monster in him. But he asks that the Court do just that. Specifically, Mr. Ashford asks that the Court consider his accountability and remorse, his potential for rehabilitation, and his potential for successfully reintegrating back into the community once he is released. In light of these mitigating factors, his sentence is excessive. He requests that, consistent with the State’s recommendation at sentencing, the Court reduce the fixed portion of his sentence to ten years.

Mr. Ashford has taken accountability for his actions and regrets the damage he has caused. As he told the court at sentencing:

Your honor, please know that I need to be here today. The crimes I committed are heinous and unforgiveable and I take full responsibility.

I'm trying to reconcile how I hurt and made victims out of the people that I love so much and supposed to protect [sic].

I'm asking for the opportunity to start my treatment on a rider. I will work extremely hard. There is nothing I want to accomplish that I won't accomplish to be reunited with my family.

If given the opportunity on this rider, I would ask for a very long indeterminate portion to my sentence. I would rather spend the rest of my life in prison than to reoffend. To the people I've hurt, please believe me when I say that I do love you, I love you so much. I'm sorry. And that there should have never been any blame anywhere but placed on me. . . .

(Tr., p.30, Ls.6–24.)

Next, Mr. Ashford is motivated to address his problems through sex offender treatment and has only a moderate risk of reoffending. According to the psychosexual evaluator, Dr. Chad Sombke:

Mr. Ashford appears to be highly amenable to treatment in that he is asking for sexual offender specific treatment and he understands that he needs that kind of treatment in order to keep himself from offending in the future. He scored in the Low to Moderate risk category on all of the risk assessments and he possesses a number of static (12) and dynamic (9) risk factors for engaging in future unlawful sexual behavior. He is very capable of benefitting from treatment and he appears to want to change his sexually abusive behavior. Therefore, as a result of the observations and information obtained in this examination, individuals with similar risk factors and characteristics as Mr. Ashford can be considered a Moderate risk to engage in future unlawful sexual behavior.

(Psychosexual Evaluation, pp.1–2.)

Finally, Mr. Ashford has the potential to successfully reintegrate back into the community once he is released. He has a stable work history, will have the support of some of his children so long as he stays in treatment, and he will participate in AA or an inpatient treatment program. (PSI, pp.7, 11, 15.) He plans to move to Montana with his son so that he can

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