

5-24-2016

## State v. Williams Appellant's Brief Dckt. 43423

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43423
	)	
v.	)	BONNEVILLE COUNTY
	)	NO. CR 2014-8632
	)	
CODY MILLER WILLIAMS,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Cody Miller Williams was sentenced to a unified term of ten years, with two years fixed, following his conviction for possession of a controlled substance, with a persistent violator enhancement. He contends the district court abused its discretion when it imposed this sentence considering the mitigating factors that exist in this case.

Statement of Facts and Course of Proceedings

Mr. Williams was stopped after a police officer observed him traveling approximately 43 miles per hour in a 35 mile per hour zone. (R., p.9.) The police officer

arrested Mr. Williams after learning there was a warrant out for his arrest. (R., p.10.) A search of Mr. Williams' person revealed methamphetamine in his pocket. (R., p.10.) Additional methamphetamine was found on Mr. Williams after he was transported to the local jail. (R., p.10.)

Mr. Williams was charged by Information with one count of possession of a controlled substance. (R., pp.15-16.) The State subsequently filed an Amended Information charging the same offense, along with a persistent violator enhancement. (R., pp.51-52.) Mr. Williams underwent a competency evaluation, and was determined to be competent to proceed. (R., pp.62-63, 64; 4/2/15 Tr., p.17, Ls.6-10.) Mr. Williams entered into an agreement with the State pursuant to which he agreed to plead guilty to possession of a controlled substance and to admit to being a persistent violator and the State agreed to dismiss other pending charges. (R., p.97.) The parties agreed to jointly recommend a unified sentence of ten years, with two years fixed. (R., p.97.) The district court accepted Mr. Williams' guilty plea. (R., p.98; 4/2/15 Tr., p.41, Ls.1-9; p.43, Ls.22-24.)

The district court sentenced Mr. Williams to a unified term of ten years, with two years fixed, to be served concurrent with time imposed for all prior felony convictions. (R., p.106.) The judgment was entered on May 28, 2015, and Mr. Williams filed a timely *pro se* notice of appeal on July 2, 2015, which was subsequently amended. (R., pp.108-09, 121-29.) On September 17, 2015, Mr. Williams filed a motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for reduction of sentence, which the State

opposed.<sup>1</sup> (Mot. to Aug., Exs. A, B.) The district court denied Mr. Williams' Rule 35 motion by order dated April 13, 2016. (Mot. to Aug., Ex. C.)

### ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Williams a unified sentence of ten years, with two years fixed, in light of the mitigating factors that exist in this case?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed Upon Mr. Williams A Unified Sentence Of Ten Years, With Two Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Williams asserts that, given any view of the facts, his unified sentence of ten years, with two years fixed, is excessive. Where, as here, the sentence imposed by the district court is within statutory limits, "the appellant bears the burden of demonstrating that it is a clear abuse of discretion." *State v. Williams*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). "When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). "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." *Id.* (citation omitted). "When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, 'having regard to the nature of the

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<sup>1</sup> The Clerk's Record does not contain copies of Mr. Williams' Rule 35 motion, the State's opposition to the motion, and the district court's order denying the motion. Simultaneously with the filing of this Brief, Mr. Williams is filing a Motion to Augment to include copies of these documents in the Clerk's Record.

offense, the character of the offender and the protection of the public interest.” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentence imposed on Mr. Williams by the district court was not reasonable considering the nature of Mr. Williams’ offense, his character and the protection of the public interest. Mr. Williams admitted to possessing methamphetamine. (PSI, p.24.) This crime, like most of his prior offenses, stems from his addiction, not from any defect in his character. (PSI, pp.3-11.) Possession of a controlled substance is not a crime of violence and Mr. Williams did not present a danger to anyone other than himself. Mr. Williams began using methamphetamine at the age of 15 and was 37 years old at the time of sentencing. (PSI, pp.16, 23.) Despite the duration of his addiction, Mr. Williams has never completed a community-based substance abuse treatment program. (PSI, pp.16, 23.)

Mr. Williams explained to the district court at sentencing, “You can send me to prison, and I can go out there, and it’s a drug world out there too, and then I get out. I’ll try and try. You know, it’s—I’m a drug addict.” (5/27/15 Tr., p.16, Ls.3-6.) He is clearly in need of intensive substance abuse treatment, which was the recommendation of the Drug and Alcohol Rehabilitation Specialist who assessed him as part of the presentence investigation. (PSI, p.20.) Mr. Williams is not in need of a lengthy period of incarceration and such a period of incarceration will not leave him any better equipped to function in society. Dr. Landers, a psychologist, performed an assessment of Mr. Williams prior to sentencing and concluded that “it is unlikely that time served in and of itself will create the practical skills and insight necessary [for Mr. Williams] to become

a productive member of society with a recognition of and investment in social norms, ethics, and moral behavior once returned to the community.” (PSI, p.22.)

Mr. Williams has the support of his mother and sister, who attended his sentencing hearing. (5/27/15 Tr., p.11, Ls.21-22.) He experienced a very difficult childhood and was physically abused and exposed to drugs and alcohol at a young age. (PSI, p.23.) He was recently diagnosed with a nonverbal learning disability which may explain some of his functional challenges. (PSI, p.21.) Notwithstanding his drug addiction and his learning disability, Mr. Williams obtained a GED and was gainfully employed at the time of his arrest. (PSI, p.23.) He would not present a danger to the public if he was able to overcome his addiction. In light of these mitigating factors, and notwithstanding the aggravating factors, the district court abused its discretion in imposing upon Mr. Williams a unified sentence of ten years, with two years fixed.

### CONCLUSION

Mr. Williams requests that the Court reduce his sentence as it deems appropriate or vacate his sentence and remand to the district court for resentencing.

DATED this 24<sup>th</sup> day of May, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24<sup>th</sup> day of May, 2016, 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:

CODY MILLER WILLIAMS  
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ISCI  
PO BOX 14  
BOISE ID 83707

JON J SHINDURLING  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas