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State v. Melendez Appellant's Brief Dckt. 43488

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43488
)	
v.)	ADA COUNTY NO. CR 2015-5438
)	
ALEXANDER STEVEN MELENDEZ,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Alexander Steven Melendez pled guilty to one count of injury to a child and was sentenced to a unified term of eight years, with one year fixed. The district court abused its discretion by imposing an excessive sentence on Mr. Melendez in light of the nature of the offense, the character of the offender, and the protection of the public interest.

Statement of Facts and Course of Proceedings

While under the influence of alcohol, Mr. Melendez contacted a fifteen-year-old relative (his step-niece) through Snapchat (a messaging application), and exchanged

explicit photos and text messages with her.¹ (Presentence Investigation Report (“PSI”), pp.2-4.) The exchange continued for approximately one hour, and Mr. Melendez told the victim that she was “really cute” and expressed interest when the victim asked if “maybe we could make [three-way sex] happen.” (PSI, pp.3, 78.) The victim’s mother saw the text messages and contacted the police. (PSI, pp.2, 77.)

Mr. Melendez was charged with one count of sexual abuse of a child under the age of sixteen years. (R., pp.5-6.) He waived a preliminary hearing and was bound over to the district court. (R., p.20.) The State filed an Information charging Mr. Melendez with this crime. (R., pp.21-22.) The State then filed an amended Information charging Mr. Melendez with one count of felony injury to a child. (R., pp.27-28.) Mr. Melendez pled guilty to this offense. (R., pp.26, 29-36.) The district court sentenced Mr. Melendez to a unified term of eight years, with one year fixed. (R., p.42.) The court suspended the sentence and placed Mr. Melendez on probation for a period of eight years. (R., p.42.) The judgment of conviction and order of probation was entered on July 24, 2015. (R., pp.41-45.) Mr. Melendez filed a timely notice of appeal.² (R., pp.52-54.)

¹ This is a practice commonly referred to as “sexting.” See *Miller v. Mitchell*, 598 F.3d 139, 143 (3d Cir. 2010) (describing “sexting” as “the practice of sending or posting sexually suggestive text messages and images, including nude or semi-nude photographs, via cellular telephones or over the Internet”).

² After filing his notice of appeal, Mr. Melendez filed a motion for reconsideration of sentence pursuant to Idaho Criminal Rule 35. (R., p.57.) The district court denied Mr. Melendez’s motion, noting, *inter alia*, that he did not provide any additional evidence or information supporting his motion. (R., pp.58-59.) Mr. Melendez does not challenge this decision on appeal in light of *State v. Huffman*, 144 Idaho 201, 203 (2007).

ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Melendez a unified sentence of eight years, with one year fixed, in light of the nature of the offense, the character of the offender, and the protection of the public interest?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Mr. Melendez A Unified Sentence Of Eight Years, With One Year Fixed, In Light Of The Nature Of The Offense, The Character Of The Offender, And The Protection Of The Public Interest

Mr. Melendez asserts that, given any view of the facts, his unified sentence of eight years, with one year 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. Miller*, 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 offense, the character of the offender and the protection of the public interest.’” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

1. The Nature Of The Offense

In determining whether the district court’s sentence was reasonable, the first factor for this Court to independently examine is the nature of the offense. *See Miller*,

151 Idaho at 834. Mr. Melendez recognizes that his communications with the victim were “inappropriate, illicit and foolish.” (PSI, p.4.) Indeed, they were. However, the offense was not as serious as it could have been, and did not warrant the sentence imposed.

Most importantly, the conversation between Mr. Melendez and the victim was consensual and mutual. The following exchange took place after the victim sent an explicit photograph to Mr. Melendez:

[Victim]: Yeah you like girl on girl action?

[Mr. Melendez]: gah [sic] and that ass of yours is the best thing I've seen in awhile! but of course! girl in girl [sic] on guy preferably [emoji]

[Victim]: Hehe maybe we could make that happen [emojis]

[Mr. Melendez]: haha yeah I wish! lol

[Victim]: Right ugh! stupid age [emoji]

[Mr. Melendez]: could we ever keep it secret? idk

[Victim]: I'd be willing too I mean damn I still think your sexy as hell [emojis]

(PSI, p.78.) Mr. Melendez did not threaten the victim in any way and his actions were in fact encouraged by the victim. The district court should have considered the victim's active participation in determining the appropriate sentence. See *State v. Nice*, 103 Idaho 89, 91 (1982) (reducing the defendant's sentence for lewd conduct, in part, based on “the circumstances surrounding the case,” which included the fourteen-year-old victim's active pursuit of the defendant and, ultimately, removal of her clothing and statement to the defendant that she wanted to have sex); see also I.C. § 19-2521(2)(e)

(identifying as a ground that shall be accorded weight at sentencing, “[t]he victim of the defendant’s criminal conduct induced or facilitated the commission of the crime”).

The offense was not as serious as it could have been because Mr. Melendez did not pose any threat to the victim. There was never any physical contact between Mr. Melendez and the victim, and their conversation took place remotely, over cell phones. (PSI, p.73.) There were also no nude photographs exchanged—the victim only sent pictures of herself in her bra and underwear. (PSI, p.73.) And Mr. Melendez contacted the victim while under the influence of alcohol. While these circumstances do not excuse Mr. Melendez’s conduct, they are certainly factors that the district court should have, and did not, consider. See, e.g., *Nice*, 103 Idaho at 91 (1982) (reducing the defendant’s sentence for lewd conduct, in part, because “the trial court did not give proper consideration [to] the defendant’s alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem”).

2. The Character Of The Offender

In determining whether the district court’s sentence was reasonable, the second factor for this Court to independently examine is the character of the offender. See *Miller*, 151 Idaho at 834. Mr. Melendez’s character does not warrant the sentence imposed.

Mr. Melendez is a high-school graduate who completed one semester of college and was employed at the time of his arrest. (PSI, pp.10-12, 56.) He comes from a supportive and loving family and has a “very strong bond” with his mother. (PSI, pp.8, 42.) Numerous family members, friends, and colleagues wrote letters to the district court to attest to Mr. Melendez’s good character. (PSI, pp.40-51.) This was

Mr. Melendez's first felony conviction, and his only offense relating in any way to sexual conduct. (PSI, pp.4-6, 17.) These factors weigh in favor of a lesser sentence. See *Nice*, 103 Idaho at 91 (reducing the defendant's sentence for lewd conduct, in part, because the present conviction "was the defendant's first felony with no prior history of any sexual violations"); *State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing the defendant's sentence for armed robbery, in part, because "[t]he overwhelming impression from this record is that except for this particular incident the defendant's character was good").

3. The Protection Of The Public Interest

The third factor for this Court to independently examine is the protection of the public interest. See *Miller*, 151 Idaho at 834. Mr. Melendez cooperated with the presentence investigation and participated in a psychosexual evaluation. (PSI, p.83.) The latter evaluation revealed that Mr. Melendez presents only a moderate risk to reoffend, and that any future offense is likely to be opportunistic rather than predatory. (PSI, pp.115-16.) Mr. Melendez was determined to be moderately amendable to treatment, which treatment would likely reduce the possibility of his reoffending. (PSI, p.119.)

The district court did not discuss any of these mitigating factors at sentencing, and imposed a sentence that was not reasonable. The district court seemed to be concerned principally with Mr. Melendez's statement that Internet access is a "basic human right" and was also concerned that Mr. Melendez did not appear to understand the—unspecified—harm he had caused to the victim. (Tr. p.26, Ls.7-11; p.27, Ls.5-10; p.31, Ls.8-15.) While it was not improper for the court to consider these factors, it

abused its discretion in imposing a unified sentence of eight years, with one year fixed, in light of the nature of the offense, the character of the offender and the protection of the public interest.

CONCLUSION

Mr. Melendez respectfully requests that the Court reduce his sentence as it deems appropriate. Alternatively, he requests that this case be remanded to the district court for a new sentencing hearing.

DATED this 9th day of December, 2015.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of December, 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:

ALEXANDER STEVEN MELENDEZ
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas