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State v. Vega Appellant's Brief Dckt. 43517

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43517
)	
v.)	ADA COUNTY NO. CR 2014-10703
)	
RICHARD DANIEL VEGA,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Richard Vega appeals from the district court's order relinquishing jurisdiction and executing his unified sentence of six years, with two years fixed. He contends the district court abused its discretion by relinquishing jurisdiction and by denying his motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for a reduction of sentence.

Statement of the Facts and Course of Proceedings

While under the influence of alcohol, Mr. Vega smashed a window of a Jeep Grand Cherokee with a large rock or brick and took a backpack out of the vehicle.

(R., p.7; Presentence Investigation Report (“PSI”), pp.3, 22, 24.) A witness contacted the police, who recovered the backpack from Mr. Vega. (PSI, pp.3, 22, 24.)

Mr. Vega was charged with burglary, malicious injury to property, and petit theft. (R., pp.6-7, 25-26.) He waived a preliminary hearing and was bound over to the district court. (R., p.29.) The State then filed an Information charging Mr. Vega with these same crimes. (R., pp.30-31.) Mr. Vega pled guilty to burglary in exchange for dismissal of the remaining counts. (R., pp.34-41, 47.) The district court sentenced Mr. Vega to a unified term of six years, with two years fixed. (R., p.47.) It suspended the sentence and placed Mr. Vega on probation for a period of six years. (R., p.47.) Mr. Vega’s judgment of conviction was entered on October 16, 2014. (R., pp.46-53.)

Mr. Vega was released from custody on December 5, 2014, after completing a substance abuse treatment program. (R., pp.62, 80.) Only six days later, on December 11, 2014, Mr. Vega’s probation officer issued a warrant against Mr. Vega for violating his probation. (R., pp.66-67.) The State then filed a motion for probation violation, alleging that Mr. Vega violated his probation by failing to obtain permission from his probation officer before changing residence, failing to maintain full-time employment or complete his GED, consuming and/or possessing alcohol on December 11, 2014, and failing to pay fines and restitution as ordered by the court. (R., pp.74-76.) Mr. Vega admitted to failing to maintain full-time employment, failing to complete his GED and consuming and/or possessing an alcoholic beverage on December 11, 2014. (R., p.87; Tr., p.12, Ls.18-23.) The district court revoked Mr. Vega’s probation and executed the underlying sentence of six years, with two years fixed. (R., pp.88, 89-92; Tr., p.29, Ls.2-7) It retained jurisdiction for a period of 365

days to allow Mr. Vega to participate in a therapeutic community rider. (R., p.390; Tr., p.29, Ls.8-10; PSI, p.82.)

The district court held a rider review hearing on August 7, 2015. (R., p.93.) At the hearing, Mr. Vega made an oral Rule 35 motion for a reduction of sentence. The court denied Mr. Vega's Rule 35 motion and relinquished jurisdiction. (R., pp.94, 96; Tr., p.38, Ls.23-25, p.39, Ls.3-6.) It executed the original sentence of six years, with two years fixed. (R., p.96.) Mr. Vega filed a timely notice of appeal. (R., pp.99-101.)

ISSUES

1. Did the district court abuse its discretion when it relinquished jurisdiction?
2. Did the district court abuse its discretion when it denied Mr. Vega's Rule 35 motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

This Court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *See State v. Latneau*, 154 Idaho 165, 166 (2013); *see also* I.C. § 19-2601(4). The district court abused its discretion when it relinquished jurisdiction in light of Mr. Vega's behavior on his rider and his expressed desire to be successful.

Mr. Vega did not receive any formal disciplinary sanctions on his rider, and received only one written warning. (PSI, p.83.) Though his behavior was not always commendable, he did well in his math class and exhibited a strong religious faith. (PSI, pp.88, 89.) Mr. Vega acknowledged at his rider review hearing that his attitude "was terrible starting [his] rider program, and it didn't finish much better." (Tr., p.34, Ls.21-

24.) However, Mr. Vega stated he learned some “life-saving truth” about his addiction and understood that he “must be accountable for [his] actions and bad choices that affect people.” (Tr., p.35, Ls.8-13.) Mr. Vega “never wanted to quit” his rider and wanted a chance to “construct a new mental map” and learn not “to live like this anymore.” (Tr., p.34, Ls.23-24, p.35, Ls.17-18.) His attorney informed the court that Mr. Vega “want[s] to try it again” and “is hoping that the court would give him another chance.” (Tr., p.32, Ls.17-22.) Mr. Vega told the district court, “I know I need the help to learn how to live a life without alcohol and the crime that comes with it.” (Tr., p.35, Ls.4-7.)

In light of his behavior on his rider and his expressed desire to be successful, the district court abused its discretion when it relinquished jurisdiction.

II.

The District Court Abused Its Discretion When It Denied Mr. Vega’s Rule 35 Motion

Mr. Vega asserts that, given any view of the facts, his unified sentence of six 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. 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)).

The sentence imposed on Mr. Vega by the district court was not reasonable because it was not necessary to protect society or achieve the goals of deterrence, rehabilitation or retribution. Mr. Vega was homeless and unemployed when he committed the crime at issue. (PSI, pp.3, 32.) He had a "lethal" blood alcohol concentration and could not recall anything about the crime itself. (PSI, pp.3, 15.) This was his first felony conviction, and one for which he felt shame, embarrassment, and deep remorse. (PSI, pp.4-6, 15.) Mr. Vega's father was an alcoholic and Mr. Vega himself has been diagnosed as alcohol dependent. (PSI, pp. 7, 32.) He is deserving of substance abuse counseling and treatment, not a lengthy prison term. With respect to the public interest, Mr. Vega will pose the least amount of danger to the public if he learns to live without alcohol and the crime to which it leads him. The burglary that he committed did not involve violence to others and his violent tendencies appear to stem principally from his alcohol use. In light of these mitigating factors, the district court abused its discretion in denying Mr. Vega's Rule 35 motion.¹

¹ Mr. Vega acknowledges that he did not submit any new evidence or information to the district court in support of his Rule 35 motion.

CONCLUSION

Mr. Vega respectfully requests that the Court vacate the district court's order relinquishing jurisdiction and reduce his sentence as it deems appropriate. Alternatively, he requests that this case be remanded to the district court for a new rider review hearing and/or Rule 35 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:

RICHARD DANIEL VEGA
INMATE #112994
SICI
PO BOX 8509
BOISE ID 83707

JASON D SCOTT
DISTRICT JUDGE
EMAILED BRIEF

DAVID A STEWART
ADA COUNTY PUBLIC DEFENDER
EMAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
EMAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas