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State v. Reyna Appellant's Brief Dckt. 43536

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SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43536
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NO. CR 2015-2707
v.)	
)	
ESTEVAN JUNIOR REYNA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Estevan Reyna appeals contending the district court abused its discretion when it imposed and executed his sentences in this case. Specifically, he asserts that the district court's sentencing decision does not effectively serve the goals of sentencing because it runs contrary to the presentence evaluators' recommendation for in-patient treatment, which was available through the rider program. Therefore, this Court should remand this case for a new sentencing determination by the district court, or, alternatively, reduce Mr. Reyna's sentence as it deems appropriate.

Statement of the Facts & Course of Proceedings

Mr. Reyna was married, had a good job, and was supporting his wife and three children. (Presentence Investigation Report (*hereinafter*, PSI), p.12.)¹ He was active in his children's lives. (PSI, p.63.) He was proud of the life he was building in that regard. (PSI, p.63.) However, he also had his struggles, primarily with alcohol abuse. (See, e.g., PSI, p.16.) His wife explained that, when he drank, his demeanor changed, and he would act out. (PSI, p.63.) Nevertheless, he was able to complete the drug court program in 2008, which seemed to help him deal with that issue somewhat. (PSI, pp.12, 16.)

Then, in 2012, Mr. Reyna was involved in an accident which broke some discs in his back. (PSI, pp.12, 15.) The accident left Mr. Reyna on disability and unable to continue working at his job. (PSI, pp.12, 15.) He and his wife divorced. (PSI, p.12.) He had to declare bankruptcy.² (PSI, p.17.) He moved back in with his parents. (PSI, p.12.) He began suffering symptoms of depression and anxiety. (PSI, p.12.) And, as one evaluator noted, Mr. Reyna "appears to have difficult handling emotionally charged situations and often seems to turn to alcohol." (PSI, p.16)

As a result of Mr. Reyna's return to alcohol abuse, he began having more encounters with the legal system. (See PSI, pp.9-10, 15.) One such encounter resulted

¹ PSI page numbers correspond with the page numbers of the electronic PDF file "PSI." Included in this file are the PSI report and all the documents attached thereto (police reports, presentence evaluations, etc.).

² The exact date of that declaration is not articulated in the record, saying just that he declared bankruptcy "several years ago," (*i.e.*, several years prior to 2015). (PSI, p.17.) Given the representations of both Mr. Reyna and his wife about his employment prior to the accident, it therefore appears the bankruptcy happened sometime after the accident in 2012, which prevented him from continuing to work at that job. (See PSI, pp.12, 63.)

in him completing a CAPP Rider program. (PSI, p.11.) His ex-wife pointed out that, during that program, Mr. Reyna had been receiving medications to help him control his depression and anxiety. (PSI, p.63.) However, when he completed that program, he was no longer taking those medications, and that change in medication affected his behavior. (PSI, pp.63-64.) Everything culminated when, while experiencing an episode of depression, he received medication from the emergency room and followed that by drinking alcohol, which resulted in Mr. Reyna driving under the influence in a high speed chase with police. (PSI, p.5; R., pp.10-11; 5/7/15 Change of Plea Tr., p.20, Ls.5-6.)³ He ultimately pled guilty to felony DUI (a second DUI within fifteen years), and eluding.⁴ (See R., pp.39-42.)

Presentence evaluations for substance abuse treatment and mental health treatment opportunities concluded that Mr. Reyna suffers from alcohol dependence. (PSI, pp.34, 39.) They also revealed Mr. Reyna likely suffers from some sort of mental health condition or mood disorder, such as anxiety, post-traumatic stress disorder, acute stress disorder, or major depressive disorder. (PSI, pp.39, 61 (giving “rule out” diagnoses for those conditions); PSI, p.50 (explaining that, by using the term “rule out,” the evaluator felt the condition was likely present, but she was not authorized to actually diagnose Mr. Reyna in that respect).) Most of the presentence evaluators

³ Unless otherwise indicated, citations to “Tr.” refer to the volume containing the transcript of the sentencing hearing held on July 2, 2015.

⁴ Mr. Reyna was on probation in two other cases at the time. (See R., p.54 (identifying the two cases).) The online repository indicates that motions for probation violations were filed in those cases. The violation out of Bingham County appears to have been resolved, but not appealed. However, the violation out of Ada County remains pending and a bench warrant for an allegation of probation violation against Mr. Reyna remains outstanding.

recommended that Mr. Reyna attend a residential, or in-patient, treatment program to address the issues presenting in that dual diagnosis. (See PSI, pp.35, 49, 52-53, 61; *but see* PSI, p.22.) At the sentencing hearing, defense counsel pointed out that, while Idaho does not have many programs offering that sort of in-patient treatment, one that did was the rider program available at IDOC's Cottonwood facility. (Tr., p.7, Ls.19-20.)

Mr. Reyna's family, including his ex-wife, also expressed their continuing support for him, as well as their desire to see him afforded meaningful treatment that would help him get his life back in order, particularly so he could continue being a father to his children. (PSI, pp.12-13, 63-66.) His brother also indicated that he had found a potential job opportunity for Mr. Reyna upon his eventual release. (PSI, p.15.)

Nevertheless, the district court decided to not retain jurisdiction in this case, instead imposing and executing a unified sentence of ten years, with three years fixed, for the DUI, and a unified sentence of five years, with two years fixed, for the eluding. (Tr., p.21, Ls.6-18.) It ordered those sentences to be served concurrent to each other, as well as the two cases for which Mr. Reyna had been on probation. (Tr., p.21, Ls.19-22; R., p.54.) It explained the reason it was not retaining jurisdiction was "I don't feel like . . . a rider would give you long enough treatment." (Tr., p.22, Ls.9-13.) Mr. Reyna filed a notice of appeal timely from the Judgment of Conviction. (R., pp.64-66)

ISSUE

Whether the district court abused its discretion when it imposed and executed Mr. Reyna's sentence.

ARGUMENT

The District Court Abused Its Discretion When It Imposed And Executed Mr. Reyna's Sentence

A sentence, including the decision of whether or not to retain jurisdiction, should be crafted so that it serves the four recognized objectives of sentencing: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *State v. Charboneau*, 124 Idaho 497, 500 (1993). The protection of society is the primary objective the court should consider. *Id.* However, each of the other objectives influences whether the sentence will protect society in a particular case. See *id.*; I.C. § 19-2521. As such, the Idaho Supreme Court has held that rehabilitation "should usually be the initial consideration in the imposition of the criminal sanction." *State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

In this case, the presentence evaluators agreed that Mr. Reyna was suffering from some fairly significant mental health issues besides his alcohol abuse. (See *generally* PSI.) Notably, one evaluator indicated that Mr. Reyna's alcohol use appeared to be an effort to self-medicate those symptoms in emotionally-charged situations. (PSI, p.16.) Another evaluator specifically characterized Mr. Reyna's situation as a "dual diagnosis." (PSI, p.49.) The recognition that Mr. Reyna's alcohol abuse is tied to his mental health issues is an important one because, in order to

effectively rehabilitate a person with that sort of dual diagnosis, the treatment needs to address both aspects of the condition. See, e.g., National Alliance on Mental Illness, *Dual Diagnosis Fact Sheet*, p.1 http://www2.nami.org/factsheets/dualdiagnosis_factsheet.pdf (“the treatment of people with co-occurring substance abuse (or dependence) and mental illness is more complicated than the treatment of either condition alone.”) (last accessed March 2, 2016). Thus, the idea that, simply because Mr. Reyna had received some substance abuse treatment in the past, the district court should opt against a rehabilitation-focused sentence in this case (see, e.g., Tr., p.10, Ls.18-19), fails to address all the sentencing objectives with a complete understanding of Mr. Reyna’s character. The previous treatment opportunities either did not or could not address Mr. Reyna’s mental health issues, and so, did not or could not be effective in addressing his dual diagnosis.

For example, the drug court program, which Mr. Reyna completed in 2008, and which helped him address his substance abuse issues for a time, was completed before the mental health issues fully presented. Rather, the mental health issues really presented themselves as Mr. Reyna’s life fell apart following his injury in 2012, and some were not even recognized until 2014. (See PSI, pp.16, 38.) Similarly, the 90-day CAPP rider Mr. Reyna completed in 2014 did not provide sufficient depth of treatment to successfully address the dual diagnosis. (See *also* Tr., p.14, Ls.1-4 (the prosecutor noting that the CAPP rider program would not be sufficient to address the seriousness of Mr. Reyna’s behavior in this case).) As a result, while those previous opportunities at rehabilitation may have provided some beneficial treatment regarding the substance abuse part of Mr. Reyna’s dual diagnosis, they would not have addressed the whole

diagnosis, and so, do not constitute a valid reason for the district court to forego an adequate treatment plan in a rehabilitation-focused sentence in this case.

Furthermore, as defense counsel pointed out, the rider program available at the Cottonwood facility qualified as the type of program most of the presentence evaluators recommended. (Tr., p.7, Ls.19-20.) As such, the idea that it would not provide “long enough treatment” (Tr., p.22, Ls.9-13), is unsupported – the program at Cottonwood would provide the treatment recommended by the evaluators, and so, would serve the goals of sentencing in Mr. Reyna’s case.⁵

Providing such an opportunity for rehabilitation would also address the long term issue of protection of society because the rehabilitation would facilitate Mr. Reyna’s rehabilitation in a timely manner. See, e.g., *State v. Nice*, 103 Idaho 89, 91 (1982) (recognizing timing of the rehabilitation is an important consideration); *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App. 2008) (same). As defense counsel pointed out, the Department of Correction’s own statistics indicate, if Mr. Reyna were afforded this opportunity of rehabilitation, his risk of recidivism could drop nearly twenty percent. (Tr., p.8, L.22 - p.9, L.9.)

And it is not as if Mr. Reyna has shown an inability to be successful in such situations. He completed prior programming opportunities. (PSI, pp.11-12.) He maintained a job as long as he was physically able to perform the work. (PSI, pp.15, 63.) He earned his GED. (PSI, p.14.) He earned a certificate for welding, which broadened the scope of his employment opportunities. (PSI, p.14.) Therefore, his

⁵ Besides, if it turned out that Mr. Reyna had not sufficiently rehabilitated to have earned probation by the end of that program, the district court would still have the ability to relinquish jurisdiction at that point.

ability to be successful in such a program, if actually given the opportunity to participate, is high. Additionally, he has already taken the first steps toward that rehabilitation, expressing remorse and accepting responsibility for his actions. (Tr., p.16, Ls.3-12.) The fact that he has a strong support network from his family also indicates he will more likely be successful in his rehabilitation.

As a result, the district court's decision to forego an available rehabilitation program, which was recommended by most of the presentence evaluators and would properly address his dual diagnosis, and instead execute Mr. Reyna's sentences, constitutes an abuse of its discretion. It fails to serve all the goals of sentencing to their best available result, and therefore, this Court should grant relief in this case.

CONCLUSION

Mr. Reyna respectfully requests that this Court remand his case to the district court for a new sentencing determination. Alternatively, he requests this Court reduce his sentence as it deems appropriate.

DATED this 8th day of March, 2016.

/s/
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of March, 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:

ESTEVAN JUNIOR REYNA
ISCI
PO BOX 14
BOISE ID 83707

BRUCE PICKETT
DISTRICT COURT JUDGE
E-MAILED BRIEF

SCOTT J DAVIS
BONNEVILLE COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas