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State v. Clark Appellant's Brief Dckt. 43614

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43614
)	
v.)	SHOSHONE COUNTY NO.
)	CR 2015-517
SHAWN CLARK,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Shawn Clark was sentenced to a unified term of 20 years, with 12 years fixed, after he pled guilty to one count of sexual battery of a minor child 16 or 17 years of age. He contends the district court abused its discretion when it imposed upon him an excessive sentence in light of the mitigating factors that exist in this case, including his lack of criminal history and his assessed low risk to re-offend. He also contends the district court abused its discretion when it denied his motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for a reduction of sentence.

Statement of Facts and Course of Proceedings

In March 2015, Mr. Clark's 20-year-old stepdaughter disclosed that she had been sexually molested by Mr. Clark for a number of years. (Presentence Investigation Report ("PSI"), pp.3, 9.) Mr. Clark admitted the abuse, apologized to his stepdaughter, and immediately sought counseling. (PSI, pp.3, 13.) He was charged by Information with one count of lewd and lascivious conduct with a minor child under the age of 16 years, one count of sexual battery of a minor child 16 or 17 years of age, and one count of misdemeanor battery. (R., pp.29-31, 34-36.) All of the charges pertained to the same victim. (R., pp.29-31, 34-36.)

Mr. Clark entered into a plea agreement with the State pursuant to which he agreed to plead guilty to sexual battery of a minor child 16 or 17 years of age in exchange for dismissal of the other two counts. (R., pp.32, 48-49.) The district court accepted the plea and ordered a presentence investigation and a psychosexual evaluation, both of which were completed prior to sentencing. (R., p.37.) Despite the fact that Mr. Clark had no criminal history and presented an incredibly low risk to re-offend, the district court sentenced him to a unified term of 20 years, with 12 years fixed. (R., pp.44-45.) The judgment was entered on August 17, 2015, and Mr. Clark filed a timely notice of appeal on September 28, 2015. (R., pp.50-59.)

On December 14, 2015, Mr. Clark filed a Rule 35 motion for a reduction of sentence.¹ (Motion to Augment, Ex. A.) The district court held a hearing on Mr. Clark's

¹ The Record does not contain copies of Mr. Clark's Rule 35 motion and the district court's order denying Mr. Clark's Rule 35 motion. Simultaneously with the filing of this Brief, Mr. Clark is filing a Motion to Augment the Record to include copies of these two documents.

Rule 35 motion on January 20, 2016, and denied the motion on January 28, 2016.

(Motion to Augment, Ex. B.)

ISSUES

1. Did the district court abuse its discretion when it imposed upon Mr. Clark a unified sentence of 20 years, with 12 years fixed, in light of the mitigating factors that exist in this case?
2. Did the district court abuse its discretion when it denied Mr. Clark's Rule 35 motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed Upon Mr. Clark A Unified Sentence Of 20 Years, With 12 Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Clark asserts that, given any view of the facts, his unified sentence of 20 years, with 12 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. Clark by the district court was not reasonable considering Mr. Clark’s character and was not necessary to protect the public interest. When first confronted by his stepdaughter about his conduct, Mr. Clark did not deny it, but apologized. (PSI, p.2.) He immediately sought counseling, and did not contest his wife’s request for a divorce, even though they had been married for almost 20 years. (PSI, p.8.) Mr. Clark’s counseling appeared to be having a positive impact, and there was every indication that Mr. Clark would continue to make progress. In advance of sentencing, Mr. Clark submitted to the district court a letter from his counselor, who stated:

[Mr. Clark] desires to make a change in his life for the better and has demonstrated an ability to persevere in trying times. In the short time [Mr. Clark] has been attending counseling he has begun to recognize the pain he has caused those he loves and reflect on how his decisions affect others. He attends his scheduled appointments and follows through with treatment recommendations. [Mr. Clark] has a big heart; he is willing and able to be introspective for self-improvement and change.

(Exs.) Mr. Clark’s efforts at counseling do not negate the severity of his offense, but they are significant, and were not meaningfully considered by the district court.

Another factor that was not meaningfully considered by the district court was Mr. Clark’s lack of criminal history and his assessed low risk to re-offend. This was Mr. Clark’s first felony conviction and he was determined to present an extremely low risk to reoffend. (PSI, pp.6, 18.) He received an LSI score of 9 and a Static-99R score of -1, which is correlated to a five-year recidivism rate of less than two percent. (PSI, pp.15, 19.) The psychologist who conducted Mr. Clark’s psychosexual evaluation

recommended that Mr. Clark participate in a sex offender treatment program and a cognitive thinking program and noted that Mr. Clark “should not have any difficulty following the rules of any kind of supervised release he may be granted.” (PSI, p.19.)

Mr. Clark may be deserving of some form of retributive punishment but, on the facts presented, a unified sentence of 20 years, with 12 years fixed, is far too severe and constitutes an abuse of discretion. At sentencing, counsel for Mr. Clark recommended probation or a period of retained jurisdiction. (Tr., p.34, Ls.19-20, p.35, Ls.6-9.) This would have been a far more appropriate sentence.

II.

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

Mr. Clark also asserts that the district court abused its discretion when it denied his Rule 35 motion. “A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citations omitted). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*; see also *State v. Huffman*, 144 Idaho 201, 203 (2007).

At the hearing on Mr. Clark’s Rule 35 motion, counsel for Mr. Clark requested that the district court reduce Mr. Clark’s sentence to a unified term of 20 years, with one year fixed. (1/20/16 Tr., p.7, Ls.12-21.) Mr. Clark told the district court that he would

like to continue the counseling he had previously began, begin family counseling, and “volunteer as a counselor for others.” (1/20/16 Tr., p.8, Ls.1-3, 19-25.) He explained that he could live with his sister and brother-in-law and go back to work for the company he was working for before. (1/20/16 Tr., p.9, Ls.1-3, p.10, Ls.1-3.) Mr. Clark told the district court that he and his wife had divorced and that he had “done everything by the books and everything [he could] to help.” (1/20/16 Tr., p.11, Ls.2-8.) He said, “I believe, if given this chance to rejoin society, that I’ll be a constructive and useful member. I will help others with similar backgrounds as mine and show my family that I am a better man than before.” (1/20/16 Tr., p.9, Ls.14-17.)

The prosecutor opposed Mr. Clark’s request for a reduction of sentence noting, among other things, that Mr. Clark “is a high risk to reoffend.” (1/20/16 Tr., p.16, Ls.8-9.) In denying Mr. Clark’s Rule 35 motion, the district court stated, “[p]rotection of the public is the primary overriding goal.” (1/20/16 Tr., p.17, Ls.11-12.) The district court abused its discretion in denying Mr. Clark’s Rule 35 motion because the sentence it imposed on Mr. Clark was excessive originally and in light of the additional information submitted by Mr. Clark. Mr. Clark was assessed at an extremely low risk to reoffend and his behavior subsequent to sentencing only confirmed that he had placed the interests of his family first, and presented a very low risk to the general public. The district court should have granted Mr. Clark’s Rule 35 motion and reduced his sentence.

CONCLUSION

Mr. Clark 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 5th day of April, 2016.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of April, 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:

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OROFINO ID 83544

FRED M GIBLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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ATTORNEY AT LAW
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CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas