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State v. Brotherton Appellant's Brief Dckt. 43622

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43622
Plaintiff-Respondent,)	
)	WASHINGTON COUNTY NO. CR 2014-4735
v.)	
)	
TYLER JACOB BROTHERTON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Tyler Brotherton pled guilty to felony eluding a police officer and the district court imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. After the court relinquished jurisdiction, Mr. Brotherton filed a timely Notice of Appeal and a timely Rule 35 motion. The district court partially granted his Rule 35 motion reducing his sentence to a unified term of four and one-half years, with one and one-half years fixed. Mr. Brotherton asserts that the court abused its discretion by not further reducing the fixed portion of his sentence by an additional six months.

Statement of the Facts & Course of Proceedings

Tyler Brotherton was charged with felony eluding a police officer. (Aug. R., pp.34-35.)¹ Mr. Brotherton pled guilty as charged and his case was transferred into the Canyon County Veteran's Court; however, Mr. Brotherton was permitted to withdraw his guilty plea when he was removed from the Veteran's Court due to picking up new charges in Canyon County. (Aug. R., pp.40-53, 64-65, 70-71.) Pursuant to a new plea agreement with the State, Mr. Brotherton again pled guilty as charged to felony eluding; in exchange, the State agreed to recommend that the district court retain jurisdiction concurrently with the district court's order retaining jurisdiction in the Canyon County case.² (Tr. 4/20/15, p.5, L.1 – p.12, L.2.) The district court followed the recommendation of the State and imposed a unified term of five years, with two years fixed, and retained jurisdiction. (Aug. R., pp.83-86.)

After initially recommending that the district court grant Mr. Brotherton probation, the Department of Correction recommended that the district court relinquish jurisdiction after discovering that Mr. Brotherton had continued to make contact with his victim in two separate Canyon County cases.³ (APSI, letter from DOC dated 8/3/2015; letter from DOC dated 8/18/15.) The district court relinquished jurisdiction in all three cases.

¹ The district court produced both a "Record on Appeal" and an "Augmented Record." The documents in the Record on Appeal appear in reverse chronological order, i.e., the most recently created documents appear in the front of the record, and the earlier created documents appear in the back. The Augmented Record is more akin to a customary Clerk's Record. All citations to the record in this case will be to the Augmented Record and will include the designation "Aug. R."

² The Canyon County case referred to by the parties is case number CR-2014-22010, and Mr. Brotherton is currently pursuing an appeal in that case in Supreme Court docket number 43137.

(Aug. R., pp.94-96; Tr. 8/26/15, p.37, Ls.22-23.) Mr. Brotherton filed a timely Notice of Appeal in the present case. (R., pp.97-101.)

Mr. Brotherton then filed a timely Rule 35 motion asking the district court to reduce the fixed portion of his sentence from two years to one year, in large part because he did not receive credit for time served when he was awaiting trial in Canyon County, but also because of his desire to have an earlier parole eligibility date. (Aug. R., pp.113-129.) The district court partially granted Mr. Brotherton's motion by reducing his fixed term from two years to one and one-half years, but leaving the indeterminate term at three years, for a total unified term of four and one-half years, with one and one-half years fixed. (Aug. R., pp.130-134.)

ISSUE

Did the district court abuse its discretion by not further reducing Mr. Brotherton's fixed term upon partially granting his Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion By Not Further Reducing Mr. Brotherton's Fixed Term Upon Partially Granting 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), citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984). "The criteria for examining rulings

³ Mr. Brotherton pled guilty in a second Canyon County case (CR-2014-27208), and the district court initially retained jurisdiction in that case as well. It appears that Mr. Brotherton did not file an appeal in that case.

denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* (citing *Lopez*, 106 Idaho at 450.) “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.* (citing *State v. Hernandez*, 121 Idaho 114 (Ct. App. 1991)). The governing criteria or objectives of criminal punishment are: (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. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Tyler Brotherton suffered from physical and mental abuse at the hands of his father, and he was placed in foster care during his teenage years. (PSI, p.7.) He joined the Army not long after he graduated from high school and his service to his country caused him to suffer even more physical and mental trauma. (PSI, pp.7, 10-11.) Mr. Brotherton was a forward observer and he was “blown up twice” and suffered a head injury when his parachute inverted in a storm. (PSI, p.10.) He has a traumatic brain injury, had shrapnel removed from his right thigh, and had surgery on his chest. (PSI, p.10.) He has problems with his heart, may need surgery to fuse his neck, needs surgery on his clavicle, needs a new hip, and he suffers chronic right leg pain, left knee instability, balance problems, memory loss, speech problems, and vestibular damage. (PSI, p.10.)

Mentally, Mr. Brotherton suffers Post-Traumatic Stress Disorder (100% disabled), depression, anxiety, and moral injury. (PSI, pp.10-11.) He attempted suicide on one

occasion, and turned himself into the Veteran's Hospital on three other occasions seeking mental health treatment. (PSI, pp.10-11.) Dr. Robert Stanulis, Ph.D. in forensic psychology and neuropsychology, opined that "Mr. Brotherton's war-related injuries of PTSD and TBI are causally related to his involvement in the criminal justice system." (Tr. 8/26/15, p.17, L.25 – p.20, L.14.) Mr. Brotherton takes Trazodone to help him sleep and Effexor to help with his PTSD and depression. (PSI, p.10.) He realizes that he has mental health issues and desires to continue with treatment. (PSI, p.4.)

Mr. Brotherton has sacrificed greatly for his country and, as Dr. Stanulis noted, the emotional damage he suffered as a result of that sacrifice directly contributed to his criminal behavior. Idaho Courts recognize that military service and mental health problems are mitigating factors that should counsel a court to impose a less severe sentence. See *State v. Nice*, 103 Idaho 89, 91 (1982); *Hollon v. State*, 132 Idaho 573, 581 (1999). In light of his military service and the emotional injuries he suffered as a result, Mr. Brotherton asserts that the district court abused its discretion by not further reducing the fixed portion of his sentence to one year.

CONCLUSION

Mr. Brotherton respectfully requests that this Court reduce his sentence to a unified term of four years, with one year fixed, or for whatever relief this Court deems justice.

DATED this 24th day of May, 2016.

_____/s/_____
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of May, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

TYLER JACOB BROTHERTON
INMATE #114300
ISCC
PO BOX 70010
BOISE ID 83707

SUSAN E WIEBE
DISTRICT COURT JUDGE
E-MAILED BRIEF

SHANE DARRINGTON
ATTORNEY AT LAW
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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCP/eas