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State v. Cooper Appellant's Brief Dckt. 43794

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43794
Plaintiff-Respondent,)	
)	BANNOCK COUNTY NO. CR 2015-12552
v.)	
)	
MARK BRADFORD COOPER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Mark Cooper appeals, contending the district court abused its discretion when it executed his sentence rather than withholding judgment or suspending the sentence for a period of probation. In fact, the district court stated its sentence was focused on only one of the objectives: "you simply need to be punished for your conduct." (Tr., p.41, L.17.) That statement demonstrates the district court gave insufficient consideration to the mitigating facts in the record, such as the fact that Mr. Cooper took responsibility and pled guilty despite the fact that he had a potential self-defense claim. A sufficient consideration of the record shows the other goals of sentencing, such as protection of society, are not served by the imposed and executed sentence. Therefore, the district

court's focus on only one of the four sentencing objectives in its decision to execute Mr. Cooper's sentence constitutes an abuse of the court's discretion. This Court should remedy that abuse.

Statement of Facts and Course of Proceedings

Mr. Cooper, who was 62 at the time this case arose, has been on social security disability since suffering an injury on the job in 1990. (Presentence Investigation Report (*hereinafter*, PSI), pp.2, 9.) He has been married for twenty-five years. (PSI, p.8.) He only has two prior convictions on his record, one from 1988 and one from 2002 (both were felonies), and he completed probation both times. (PSI, pp.6-7.) He has no outstanding fines from those cases. (PSI, p.6.) He has no substance abuse issues requiring treatment. (PSI, pp.75, 84.) Mr. Cooper had been receiving treatment for depression, but has no mental health issues beyond that. (PSI, pp.10, 89.) The recommendation in that regard was for him to continue treatment with his care provider in the community. (PSI, p.89.)

Mr. Cooper also had a neighbor with an incessantly-barking dog. (Tr., p.19, Ls.14-16.) When he finally decided to confront his neighbor about the issue, they exchanged words, and Mr. Cooper admitted hitting his neighbor with his fist. (Tr., p.19, Ls.20-24; Tr., p.20, Ls.19-20.) The neighbor pushed Mr. Cooper to the ground and began pummeling him. (Tr., p.20, Ls.14-16.) Mr. Cooper could not get away, and, fearing for his life, stabbed his assailant in the torso with a knife. (Tr., p.20, Ls.20-22.) The victim suffered other injuries as they struggled for control of the knife of which Mr. Cooper was not initially aware. (PSI, p.5; see Tr., p.30, L.20 - p.32, L.10 (the victim describing injuries to this hand and face).)

Despite the potential affirmative defense available to him, Mr. Cooper wanted to plead guilty to aggravated battery because he wanted to accept responsibility for his actions, recognizing he should have handled the situation differently. (Tr., p.20, L.24 - p.21, L.18.) He admitted his poor decision-making had been fueled by alcohol and marijuana use that day. (PSI, pp.5, 13.) At the ensuing sentencing hearing, he apologized to the victim, expressing his remorse for his conduct. (Tr., p.37, Ls.14-17.) There was no sentencing agreement in exchange for his plea. (Tr., p.17, L.20.) Rather, the only agreement was that the State would drop an alleged enhancement for use of a deadly weapon. (Tr., p.12, Ls.20-21.)

In reviewing Mr. Cooper's case, the PSI author concluded, "[b]ased on the level of assessed risk and need, and other protective factors as discussed above, Mark Bradford Cooper appears to be a good candidate for an order of probation." (PSI, p.17.) Defense counsel joined that recommendation, asking for a withheld judgment, or, alternatively, a suspended sentence with an underlying sentence of six years, with two years fixed. (Tr., p.34, L.18 - p.35, L.2.) While accepting defense counsel's alternative recommendation as to the underlying sentence, the district court rejected the request for probation, saying "you need to simply be punished for your conduct." (Tr., p.41, L.17.) It also hoped that sentence might deter others in the future. (Tr., p.40, Ls. 21-24.)

Mr. Cooper filed a notice of appeal timely from the judgment of conviction. (R., pp.86, 92.)

ISSUE

Whether the district court abused its discretion by executing Mr. Cooper's sentence rather than withholding judgment or suspending the sentence for a period of probation.

ARGUMENT

The District Court Abused Its Discretion By Executing Mr. Cooper's Sentence Rather Than Withholding Judgment Or Suspending The Sentence For A Period Of Probation

Whether or not to grant a withheld judgment is a matter committed to the district court's discretion. *State v. Edghill*, 134 Idaho 218, 219 (Ct. App. 2000). The examination of whether a withheld judgment was appropriate turns on a similar analysis to the determination of whether an imposed sentence is excessive. *See State v. Geier*, 109 Idaho 963, 965-66 (Ct. App. 1985). In order to show an abuse of discretion in the imposition of sentence, the defendant must show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997).

The governing criteria, or sentencing objectives, 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. *Id.* The protection of society is the primary objective the court should consider. *State v. Charboneau*, 124 Idaho 497, 500 (1993). Therefore, a sentence that protects society and also accomplishes the other objectives will be considered reasonable. *Id.*; *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). This is because the protection of society is influenced by each of the other objectives, and as a result, each must be addressed in sentencing. *Charboneau*, 124 Idaho at 500; I.C. § 19-2521.

As the PSI author pointed out, society did not need protection by incarcerating Mr. Cooper: “Based on the level of assessed risk and need, and other protective factors as discussed above, Mark Bradford Cooper appears to be a good candidate for an order of probation.” (PSI, p.17.) For example, Mr. Cooper only scored a 23 on his LSI-R which, while it was in the moderate range for reoffending, as trial counsel noted, is at the lower end of the moderate range. (PSI, p.14; Tr., p.36, Ls.6-10.) Thus, the need to incarcerate Mr. Cooper is not present.

In fact, Mr. Cooper’s record demonstrates that he can be successful on probation, that placing him on probation does not create a significant risk to society. (See PSI, pp.6-7.) He has completed periods of probation following each of his two prior convictions, including one that ended on unsupervised probation despite serving a period of discretionary jail time for absconding supervision. (PSI, pp.6-7, 16.) The fact that he was placed on unsupervised probation after the absconding indicates Mr. Cooper is not a risk in that regard, and that he can successfully complete probation. (See PSI, p.7.) In fact, Mr. Cooper’s admission about why the discretionary time had been imposed is demonstrative of his good character since the PSI author noted there were no longer records of his performance on probation. (PSI, pp.15-16.) His disclosure shows a willingness to be honest and accept responsibility, as well as an amenability to rehabilitative efforts in the probation context.

Additionally, it is not as if Mr. Cooper has a history of consistent run-ins with law enforcement. In his 62 years, he only has two prior convictions. (PSI, pp.2, 6.) The Idaho Supreme Court has “recognized that the first offender should be accorded more lenient treatment than the habitual criminal.” *State v. Shideler*, 103 Idaho 593, 595

(1982) (quoting *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971)). While this might not be Mr. Cooper's first felony offense, he certainly is not the habitual criminal the *Shideler* Court was contrasting against, as there are decades between each of those convictions and the instant offense. (See PSI, p.6.) Therefore, leniency in sentencing was appropriate in this case.

After all, sentences are to be crafted so that they do not force the prison system to detain people once rehabilitation or age have decreased the risk of recidivism. *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App. 2008); see also S1357, 62nd Legislature (2014) (enacted) (the justice reinvestment legislation designed, in part, to reduce inefficient or unnecessary incarceration). Mr. Cooper's case falls into this category. He accepted responsibility for his actions and recognized the factors, such as his alcohol and marijuana use, which led to them. (PSI, pp.5, 13.) He gave up a potential trial defense because of his desire to do so. (Tr., p.20, L.24 - p.21, L.10.) Those factors all indicate he is amenable to treatment, and thus, less of a risk. See, e.g., I.C. 19-2521(d) (listing the fact that there were substantial grounds to justify the defendant's actions, while not rising to the level a legal defense, as one of several facts which indicate an imposed sentence should not be executed); *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981) (explaining that, while not constituting a defense, the fact that ingestion of drugs and alcohol contributed to the offense should be considered as a mitigating factor). To that point, the PSI author concluded Mr. Cooper is a good candidate for "behavior modification programming" to help avoid this situation in the future, and that treatment could be best obtained on probation. (PSI, p.17.)

Therefore, the factors present in this case, demonstrate that neither the primary goal of protecting society, nor the goals of rehabilitation or specific deterrence require Mr. Cooper's incarceration. And, while general deterrence is one of the goals of sentencing, research suggests it is not effective in increasing the protection to society. See, e.g., Gary Kleck, *et. al.*, *The Missing Link in General Deterrence Research*, *Criminology*, Vol.43, No.3, 2005, at 647-48, 653-54. Therefore, basing a harsher sentence on that factor while the others indicate probation is appropriate, fails to serve all the goals of sentencing.

That leaves the district court's emphasis on punishment. (Tr., p.41, L.17.) In light of all these mitigating factors, the district court's focus on punishment in this case runs contrary to the Legislature's determination as to the proper focus of sentencing: the general rule is to not incarcerate unless doing so is appropriate for protecting the public. I.C. § 19-2521(1). Since execution of the sentence is not necessary to protect the public in this case, a sufficient examination of the record shows the decision to execute Mr. Cooper's sentence, based primarily on punishment, was an abuse of the district court's discretion. A suspended sentence would have sufficiently addressed that objective in this case. *Compare State v. Crockett*, 146 Idaho 13, 14-15 (Ct. App. 2008) (discussing how a sentence for a period of probation addresses all the sentencing objectives and how the court's continuing jurisdiction affects those objectives). The district court should either have granted Mr. Cooper's request for a withheld judgment or, consistent with the PSI, suspended Mr. Cooper's sentence for a period of probation.

CONCLUSION

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

DATED this 9th day of May, 2016.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of May, 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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ROBERT C NAFTZ
DISTRICT COURT JUDGE
EMAIL BRIEF

RANDALL D SCHULTHIES
BANNOCK COUNTY PUBLIC DEFENDER
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_____/s/_____
MARY ANN LARA
Administrative Assistant

BRD/mal