

5-25-2016

State v. Tomlinson Appellant's Brief Dckt. 43814

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Tomlinson Appellant's Brief Dckt. 43814" (2016). *Not Reported*. 3005.
https://digitalcommons.law.uidaho.edu/not_reported/3005

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

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

ERIC D. FREDERICKSEN
Chief, Appellate Unit
I.S.B. #6555

BEN P. MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43814
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2015-8891
v.)	
)	
TYLER ROSS TOMLINSON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, the jury found thirty-two-year-old Tyler Ross Tomlinson guilty of felony eluding a peace officer and misdemeanor resisting or obstructing officers. For eluding a peace officer, the district court imposed a unified sentence of five years, with three years fixed. On appeal, Mr. Tomlinson asserts the district court abused its discretion when it imposed his sentence.

Statement of the Facts & Course of Proceedings

Corporal Ward of the Idaho State Police attempted to stop a silver car on eastbound Interstate 84 for driving 80 MPH in a 65 MPH zone and failing to display a front license plate. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) The driver did not stop for the officer but left the interstate, at times driving the wrong way on Ten Mile Road and Chinden Boulevard and reaching 90 MPH in a 50 MPH zone. (See PSI, p.3; State's Ex. 1.) The driver of the silver car then tried to re-enter Interstate 84 in the wrong direction. (PSI, p.3.) Corporal Ward used the Pursuit Intervention Technique to stop the silver car, hitting the silver car with his patrol car. (See PSI, p.3.)

The driver, identified as Mr. Tomlinson, left the stopped silver car and began to flee on foot. (PSI, p.3.) Corporal Ward pursued Mr. Tomlinson on foot and tackled him to the ground. (PSI, p.3.) Mr. Tomlinson continued to try to get away and was handcuffed. (PSI, p.3.) Meanwhile, a Boise Police Department drug detection dog alerted on the silver car. (PSI, p.3.) Corporal Ward found in the driver's side door a sunglass case containing a hypodermic needle, glass smoking pipes, and a white crystal-like substance that Mr. Tomlinson identified as bath salts. (PSI, p.3.)

The State charged Mr. Tomlinson with one count of eluding a police officer, felony, Idaho Code § 49-1404(2)(a) and/or (c), one count of possession of drug paraphernalia, misdemeanor, I.C. § 37-2734A, and one count of resisting or obstructing officers, misdemeanor, I.C. § 18-705.¹ (R., pp.91-92.) The matter proceeded to a jury

¹ The State had also charged Mr. Tomlinson with one count of possession of a controlled substance, misdemeanor, I.C. § 37-2732(c). (R., pp.87-89.) After the State notified the district court the chemist witness for that count would not be available on the day of trial, the district court ruled the count would not be part of the trial. (See Tr., Oct. 13, 2015, p.50, L.17 – p.52, L.25.)

trial, where the jury heard testimony from Corporal Ward and Mr. Tomlinson. (R., pp.93-95, 127-28.) The State also admitted into evidence Corporal Ward's dash cam video from the date of the incident. (Tr., Oct. 13, 2015, p.171, L.4 – p.172, L.15; see State's Ex. 1.) The jury found Mr. Tomlinson guilty of eluding a peace officer and resisting or obstructing officers, and not guilty of possession of drug paraphernalia. (R., pp.125-26.)

At the sentencing hearing, the State recommended the district court impose a unified sentence of five years, with three years fixed, for the eluding charge, and a concurrent sentence of 180 days jail time for the resisting and obstructing officers charge. (Tr., Dec. 4, 2015, p.29, L.8 – p.30, L.3.) Mr. Tomlinson recommended the district court impose a unified sentence of two-and-one-half years fixed. (Tr., Dec. 4, 2015, p.32, L.23 – p.33, L.14.) The district court, for the eluding charge, imposed a unified sentence of five years, with three years fixed. (R., pp.130-33.)²

Mr. Tomlinson filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.134-36.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of five years, with three years fixed, upon Mr. Tomlinson, following his conviction for eluding a peace officer?

² For the resisting or obstructing officers charge, the district court imposed a concurrent sentence of 168 days jail time, with credit for 168 days served. (R., p.131.)

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Three Years Fixed, Upon Mr. Tomlinson, Following His Conviction For Eluding A Peace Officer

Mr. Tomlinson asserts the district court abused its discretion when it imposed his unified sentence of five years, with three years fixed, because his sentence is excessive considering any view of the facts. The district court should have instead followed Mr. Tomlinson's recommendation by imposing a unified sentence of two-and-one-half years fixed.

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving "due regard to the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Strand*, 137 Idaho 457, 460 (2002).

The Idaho Supreme Court has held that, "[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence." *State v. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Mr. Tomlinson does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Tomlinson must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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. *Id.* An appellate court, "[w]hen reviewing the length of a sentence . . . consider[s] the defendant's entire sentence." *State v. Oliver*, 144 Idaho 722, 726

(2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. Tomlinson submits that, because the district court did not give adequate consideration to mitigating factors, the sentence imposed by the district court is excessive considering any view of the facts. Specifically, the district court did not adequately consider that a lesser sentence would allow Mr. Tomlinson to work upon his release. During the presentence investigation, Mr. Tomlinson stated, “I want job skills,” and that he wanted to be incarcerated at a community release center where he could “hold the same job and maybe have it when I get out.” (PSI, p.12.)

At the sentencing hearing, Mr. Tomlinson’s defense counsel explained that Mr. Tomlinson wanted to enter a community work center program “so that he can get a job within that structured environment that has been recommended . . . and then use that as a way to transition into permanent employment upon his release.” (Tr., Dec. 4, 2015, p.31, Ls.16-24.) Mr. Tomlinson wanted to develop his skills and contacts with the employer, get used to working again, and have a regular schedule. (Tr., Dec. 4, 2015, p.31, L.25 – p.32, L.9.) Mr. Tomlinson had the goal of obtaining a commercial driver’s license and perhaps becoming a heavy equipment operator. (PSI, p.12; Tr., Dec. 4, 2015, p.32, Ls.12-15.) Defense counsel told the district court “we’re trying to fashion here a sentence that will enable Mr. Tomlinson, as I said, to get out and work upon his release.” (Tr., Dec. 4, 2015, p.33, Ls.5-8.)

Mr. Tomlinson, in his comments to the district court at the sentencing hearing, stated, “I think it would be good for me to get that work structure.” (Tr., Dec. 4, 2015, p.34, Ls.22-23.) He continued: “I think it would be best to get that structure, because I

have had all the programs out there, and I do have those tools, and I just haven't been putting those tools into use." (Tr., Dec. 4, 2015, p.34, L.24 – p.35, L.4.)

The district court also did not adequately consider Mr. Tomlinson's remorse and acceptance of responsibility. In the Presentence Investigation Questionnaire, Mr. Tomlinson wrote, "I regret what I did and wish I would have made the right choice to pull over." (PSI, p.3.) At the sentencing hearing, Mr. Tomlinson told the district court, "I just want to apologize for what I did to the community on the high-speed chase. I did risk some lives doing that and, thank God, nothing did happen to anyone." (Tr., Dec. 4, 2015, p.34, Ls.14-17.)

The district court did not adequately consider the above mitigating factors. Thus, Mr. Tomlinson asserts the district court abused its discretion when it imposed his unified sentence of five years, with three years fixed, because his sentence is excessive considering any view of the facts. The district court should have instead imposed a unified sentence of two-and-one-half years fixed.

CONCLUSION

For the above reasons, Mr. Tomlinson 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 25th day of May, 2016.

/s/
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th 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:

TYLER ROSS TOMLINSON
INMATE #86323
ISCC
PO BOX 70010
BOISE ID 83707

JASON D SCOTT
DISTRICT COURT JUDGE
E-MAILED BRIEF

MICHAEL W LOJEK
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas