

9-12-2016

## State v. Richey Appellant's Brief Dckt. 43942

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Richey Appellant's Brief Dckt. 43942" (2016). *Not Reported*. 3112.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/3112](https://digitalcommons.law.uidaho.edu/not_reported/3112)

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](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
Interim State Appellate Public Defender  
I.S.B. #6555

MAYA P. WALDRON  
Deputy State Appellate Public Defender  
I.S.B. #9582  
P.O. Box 2816  
Boise, ID 83701  
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43942
Plaintiff-Respondent,	)	
	)	BONNEVILLE COUNTY NO. CR 2014-14008
v.	)	
	)	
KEITH ALLEN RICHEY,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Keith Allen Richey pled guilty to lewd conduct, the district court sentenced him to a unified term of twenty-three years, with five years fixed. Mr. Richey appeals from his judgment of conviction and asserts that his sentence is excessive in light of the mitigating factors in his case.

Statement of Facts and Course of Proceedings

In 2011, Mr. Richey and his girlfriend had a sexual encounter with a girl who was thirteen. (PSI, p.36.) Mr. Richey was twenty-one at the time. (PSI, p.45.) In 2015, he pled guilty to lewd conduct. (R., pp.140–43; Tr., p.5, L.3–p.18, L.6.) At sentencing, the State

recommended a twenty-year term, with five years fixed. (Tr., p.27, Ls.17–21.) Defense counsel asked that the court impose credit for time served, which was one year and seventy-four days. (Tr., p.23, Ls.23–25, p.25, Ls.20.) The court sentenced him to a unified term of twenty-three years, with five years fixed. (R., pp.173–74; Tr., p.37, Ls.4–7.) Mr. Richey timely appealed. (R., pp.183–85.)

### ISSUE

Did the district court abuse its discretion when it sentenced Mr. Richey to a unified term of twenty-three years, with five years fixed, for lewd conduct?

### ARGUMENT

#### The District Court Abused Its Discretion When It Sentenced Mr. Richey To A Unified Term Of Twenty-Three Years, With Five Years Fixed, For Lewd Conduct

When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “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.” *Miller*, 151 Idaho at 834. Mr. Richey’s sentence is excessive in light of the mitigating evidence in this case.

The horrific sexual abuse Mr. Richey suffered as a child is the strongest mitigating factor. Mr. Richey lived with his mother, who was a drug addict, until he was ten or eleven. (PSI, p.27.)

She sexually abused him by engaging him in vaginal, anal, and oral sex when he was between the ages of four and nine. (PSI, p.33.) She also “prostituted him out” to men and women during that time. (*Id.*) Mr. Richey was often required to engage the children of those adults in sex. (*Id.*) He estimates that he had as many as three-hundred sexual partners as a child. (*Id.*) If Mr. Richey refused to participate, he was punished. (PSI, p.37.)

Mr. Richey described his first sexual experience at the age of four. (PSI, p.36.) He said his mother “played dress up with him” by putting him in a girl’s dress. (*Id.*) She then took him to a man’s house where he had to perform oral sex and lick the man’s anus. (*Id.*) The man also anally raped him. (*Id.*)

Mr. Richey has not seen his mother since he was ten or eleven; he believes she died from a drug overdose at some point. (PSI, pp.27, 33.) Mr. Richey’s situation improved some when he went to live with his father and step-mother. (PSI, p.27.) His father provided financially for the family, but he was an alcoholic and physically abused Mr. Richey. (PSI, pp.27, 33.) Mr. Richey remembers trying to kill himself many times as a child. (PSI, pp.34, 68.)

Mr. Richey’s difficulties with addiction and his mental health problems, which stem from his abusive childhood, also mitigate his sentence. Mr. Richey was first introduced to drugs during one of the sexual encounters described above—he was injected with methamphetamine when he was seven or eight as part of a “sexual game.” (PSI, pp.35, 69.) He is addicted to amphetamine and marijuana. (PSI, p.3.) Further, he likely suffers from anxiety disorder, PTSD, ADHD, schizophrenia, bipolar disorder, borderline personality disorder, and depressive personality disorder. (PSI, pp.3, 38–39, 48, 72–73.) Fortunately, he is willing to get treatment for both his mental health problems and his substance abuse. (PSI, pp.3, 72.)

Finally, Mr. Richey's accountability and remorse stands in mitigation. At sentencing, he told the court: "I recognize that I made mistakes, lots of mistakes, throughout my life. And I recognize that I do need help. I need some treatment." (Tr., p.33, Ls.7-9.) In light of these mitigating factors, the district court abused its discretion by sentencing Mr. Richey to twenty-three years, with five years fixed.

#### CONCLUSION

Mr. Richey respectfully requests that this Court reduce the fixed portion of his sentence to his credit for time served, or, alternatively, reduce his sentence as it sees fit.

DATED this 12<sup>th</sup> day of September, 2016.

\_\_\_\_\_  
/s/  
MAYA P. WALDRON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12<sup>th</sup> day of September, 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:

KEITH ALLEN RICHEY  
INMATE #104124  
ISCC  
PO BOX 70010  
BOISE ID 83707

DANE H WATKINS JR  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KELLY D MALLARD  
ATTORNEY AT LAW  
E-MAILED BRIEF

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

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

MPW/eas