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State v. Hayes Appellant's Brief Dckt. 43966

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43966
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2015-6991
v.)	
)	
SCOTT GREGORY HAYES,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Following Scott Gregory Hayes's guilty plea to attempted rape, the district court sentenced him to fifteen years, with two years fixed. Mr. Hayes appeals, asserting the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State filed a Criminal Complaint alleging Mr. Hayes committed the crimes of lewd conduct with a minor, in violation of I.C. § 18-1508, and sexual abuse of a minor, in violation of I.C. § 18-1506. (R., pp.6-7.) According to the presentence investigation report ("PSI"), Mr. Hayes had sexual contact with a fifteen-year-old girl after meeting her

late one night in his neighborhood. (PSI,¹ p.8.) Mr. Hayes did not know the victim was fifteen; he believed she was eighteen. (PSI, pp.9, 44, 175, 184–85.) The State subsequently filed an Indictment charging Mr. Hayes with lewd contact and sexual abuse. (R., pp.14–15.) Pursuant to a plea agreement, Mr. Hayes pled guilty to an amended charge of attempted rape, in violation of I.C. §§ 18-6101(1) and 18-306. (R., p.65 (Amended Information); Tr. Vol. I,² p.15, Ls.9–24, p.17, Ls.12–18.)

At sentencing, the State recommended a sentence of fifteen years, with two years fixed. (Tr. Vol. II, p.26, L.24–p.27, L.2, p.33, Ls.21–23.) The presentence investigator recommended the district court retain jurisdiction. (PSI, p.26.) Mr. Hayes requested probation. (Tr. Vol. II, p.42, Ls.10–13.) The district court sentenced Mr. Hayes to fifteen years, with two years fixed, without retaining jurisdiction or suspending the sentence for probation. (Tr. Vol. II, p.48, Ls.3–9.) Mr. Hayes filed a timely Notice of Appeal from the district court’s Judgment and Commitment. (R., pp.82–83, 87–89.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fifteen years, with two years fixed, upon Mr. Hayes, following his guilty plea to attempted rape?

¹ Citations to the PSI refer to the 263-page electronic document containing the confidential exhibits in this case.

² There are three transcripts in the record on appeal. The first, cited as Volume I, contains the entry of plea hearing. The second, cited as Volume II, contains the sentencing hearing. The third transcript contains a pre-trial conference, which is not cited herein.

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fifteen Years, With Two Years Fixed, Upon Mr. Hayes, Following His Guilty Plea To Attempted Rape

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Hayes’s sentence does not exceed the statutory maximum. See I.C. §§ 18-306(1), 18-6104. Accordingly, to show that the sentence imposed was unreasonable, Mr. Hayes “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

“The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant’s rehabilitative potential and

suitability for probation.” *State v. Jones*, 141 Idaho 673, 676 (Ct. App. 2005). The district court’s decision to retain jurisdiction is reviewed for an abuse of discretion. *Id.* Similarly, “[t]he choice of probation, among available sentencing alternatives, is committed to the sound discretion of the trial court” *State v. Landreth*, 118 Idaho 613, 615 (Ct. App. 1990).

Here, Mr. Hayes asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment, retained jurisdiction for further evaluation, or placed him on probation in light of the mitigating factors, including his issues with alcohol abuse, strong family support, employability, and low risk of reoffending.

Before committing the instant offense, forty-seven-year-old Mr. Hayes had been drug- and alcohol-free for thirteen years. (PSI, p.17.) Mr. Hayes began drinking alcohol at age fifteen. (PSI, p.17.) At age thirty-one, he started to use methamphetamine daily. (PSI, p.17.) He entered in-patient treatment eighteen months later, after his family lost their house due to his drug use. (PSI, p.17.) Mr. Hayes was sober for thirteen years after his treatment. (PSI, p.17.) Mr. Hayes regrettably decided to “test the waters” and started drinking alcohol again about two months before the instant offense. (PSI, pp.17, 18; Tr. Vol. II, p.42, L.19.) Mr. Hayes reported he had been drinking when he committed the offense. (PSI, p.9.) Since the offense, Mr. Hayes has regained his sobriety. (PSI, p.17.) Moreover, he recognized the severity of his relapse, stating at sentencing that drinking alcohol “is not different for me than doing meth.” (Tr. Vol. II, p.42, Ls.17–18.) He acknowledged the “poor judgment” on his behalf. (Tr. Vol. II, p.42, L.16.) Mr. Hayes

understood he could not drink alcohol again. (PSI, p.18.) The impact of Mr. Hayes's alcohol abuse on his criminal behavior and his commitment to sobriety are indicative of his rehabilitative potential and suitability for probation.

Despite his past struggles with drugs and alcohol, Mr. Hayes has a supportive wife, strong family values, and steady employment. Mr. Hayes and his wife have been married for over twenty years. (PSI, pp.14–15.) They have two children together. (PSI, p.15.) Their two children live at home, and Mr. Hayes has a good relationship with them. (PSI, p.15.) Mr. Hayes stated in the PSI that his wife and children were his “everything.” (PSI, p.18.) Further, his wife testified in support of him at the sentencing hearing. (See *generally* Tr. Vol. II, p.9, L.13–p.26, L.10.) She stated that Mr. Hayes “has always been upright, ready to help people, always available to help people.” (Tr. Vol. II, p.20, Ls.3–5.) She explained that they attended church together regularly since they started dating twenty-four years ago. (Tr. Vol. II, p.19, Ls.15–18.) Likewise, Mr. Hayes reported that he went to church and was actively involved in church activities. (PSI, pp.14, 25.) He also enjoyed charity work. (PSI, p.14.) In addition, Mr. Hayes was employed for two years as a maintenance technician before the instant offense. (PSI, p.16.) He had no difficulty holding steady employment. (PSI, p.16.) The support of Mr. Hayes's wife, his employability, and his stable family environment also demonstrate he is a suitable candidate for probation or a period of retained jurisdiction.

Finally, Mr. Hayes was found to be a low risk to reoffend. The PSI found Mr. Hayes was a low risk to reoffend based on the LSI-R. (PSI, p.19.) He had a minimal criminal history. (PSI, pp.9–11.) The Psycho-Sexual Evaluation (“PSE”) also found Mr. Hayes was a low risk to reoffend. (PSI, pp.3, 40, 72.) The PSE noted Mr. Hayes

was at the “upper end” of the low risk to offend—meaning only if Mr. Hayes resisted treatment or supervision should he be considered a moderate risk. (PSI, pp.3, 40, 72.) Mr. Hayes was moderately amenable to treatment, however. (PSI, pp.75, 80.) Additionally, the PSE found Mr. Hayes was likely to comply with supervision. (PSI, pp.78, 80.) Mr. Hayes’s classifications as a low risk to reoffend also show he is suitable for probation or at least a period of retained jurisdiction for further evaluation.

Based on the information provided for sentencing, including Mr. Hayes’s history with alcohol abuse, strong family support, employability, and low risk of offending, the district court should have placed Mr. Hayes on probation or retained jurisdiction. The district court abused its discretion by imposing an excessive sentence of fifteen years, with two years fixed, upon Mr. Hayes.

CONCLUSION

Mr. Hayes 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 11th day of August, 2016.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of August, 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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_____/s/_____
EVAN A. SMITH
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JCS/eas