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State v. Oseguera Appellant's Brief Dckt. 44145

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44145
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NO. CR 2015-10879
v.)	
)	
ALVARO OSEGUERA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Alvaro Oseguera appeals from his judgment of conviction for kidnapping in the second degree. Mr. Oseguera pleaded guilty and the district court imposed a unified sentence of twenty-five years, with ten years fixed. Mr. Oseguera now appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On August 27, 2015, a woman called 911 and reported hearing a man screaming for help. (Presentence Investigation Report (*hereinafter*, PSI), p.4.) The man later made it to her house and reported that he had been hit with a hatchet. (PSI, p.4.) The man was identified as Brandon Bykonen. (PSI, p.4.)

Mr. Bykonen reported that Ivan Sandoval had called him and asked for a ride to a trailer in the Mobile Home Estates. (PSI, p.4.) Mr. Bykonen stated that he went inside the trailer and was confronted by several individuals who accused him of being a “narc.” (PSI, p.4.) According to Mr. Bykonen, these individuals pointed guns at him, ordered him to the ground, broke his cell phone, tied his hands, and blindfolded him. (PSI, p.4.) He was then put in a car, with Mr. Sandoval driving and Devin Crawford in the passenger seat. (PSI, p.4.) Mr. Bykonen said that he was removed from the car, placed face down on the ground, and several of his fingers were chopped. (PSI, p.4.)

A man named Tito, later identified as Mr. Oseguera, allegedly told Mr. Bykonen to use his blindfold to wrap his hands; he also reportedly threatened to kill Mr. Bykonen and his wife and children. (PSI, p.4.) Mr. Bykonen was left on the road. (PSI, p.4.) At the hospital, Mr. Bykonen reported that Devin Crawford blindfolded him and that Tito was in charge of the situation. (PSI, p.4.)

When he was interviewed by the police in this case, Mr. Oseguera stated that he was in the wrong place at the wrong time and that he never touched Mr. Bykonen. (PSI, p.5.) He acknowledged that he was high during the incident and that the events that took place were disjointed and convoluted. (PSI, p.5.) Mr. Oseguera stated that Mr. Bykonen had texted him wanting to trade items for drugs and that Sarah Oden told them

that Mr. Bykonen was a “narc.” (PSI, p.5.) When Mr. Bykonen arrived, Devin Crawford pointed a gun at him and told him to get down; Mr. Oseguera stated that he did not that was how the situation was going to go down. (PSI, p.5.) Mr. Oseguera stated that the last time he saw Mr. Bykonen was when he was taken from the trailer and put in the car and that he did not threaten Mr. Bykonen or his family. (PSI, p.5.)

Mr. Oseguera was charged with kidnapping in the first degree, aggravated battery, and possession of a controlled substance, methamphetamine. (R., pp.61-62.) He pleaded guilty to kidnapping in the second degree and the State dismissed the remaining charges. (R., p.84; 96.) The district court imposed a unified sentence of twenty-five years, with ten years fixed. (R., p.223.) Mr. Oseguera appealed. (R., p.250.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of twenty-five years, with ten years fixed, upon Mr. Oseguera following his plea of guilty to kidnapping in the second degree?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Twenty-Five Years, With Ten Years Fixed, Upon Mr. Oseguera Following His Plea Of Guilty To Kidnapping In The Second Degree

Mr. Oseguera asserts that, given any view of the facts, his unified sentence of twenty-five years, with ten years fixed, is excessive. 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 consideration to the nature of the

offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

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) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Oseguera does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Oseguera must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

When asked about the instant offense, Mr. Oseguera stated that he was, “very remorseful for everything [I] wish I could have that day back. Brandon is a good person and didn’t deserve to be hurt the way he was. I hope he can forgive me for my part in the situation.” (PSI, p.6.) Mr. Oseguera also acknowledged that he was under the influence of drugs and alcohol when the incident occurred. (PSI, p.6.) At the sentencing hearing, he informed the court, “Your Honor, I didn’t honestly know what was going to happen to Brandon. I truly am sorry for what happened to him. It doesn’t

take anything away. I never disliked Brandon. What happened should have never happened, and I am truly sorry.” (Sent. Tr., p.41, L.23 – p.42, L.2.)

Counsel emphasized at the sentencing hearing that “I think that it’s evident that [Mr. Oseguera’s] involvement was somewhat limited as to the physical harm at the end of the – of the situation in which he found himself.” (Sent. Tr., p.26, Ls.10-14.) Counsel noted that while the PSI indicated that Mr. Oseguera was present when Mr. Bykonen’s fingers were cut, “it appears that after further investigation that he, indeed, was not there.” (Sent. Tr., p.27, Ls.15-25.) Counsel noted that the main concern in this case was Mr. Oseguera’s background and childhood, which “kind of created a perfect storm for Mr. Oseguera being present in this Court today.” (Sent. Tr., p.26, Ls.14-19.)

Regarding his childhood, Mr. Oseguera wrote that when he was four or five his uncle committed suicide and that his mother was never home. (PSI, p.11.) Both his aunt and his aunt’s husband died from drug overdoses. (PSI, p.11.) His grandmother took care of him and his brothers and sisters until she was no longer able to do so. (PSI, p.11.) When Mr. Oseguera was fifteen his mother kicked him out of the house because he did not get along with her boyfriend. (PSI, p.11.) As a result, he had to live on the street and fend for himself. (PSI, p.11.) Mr. Oseguera had a child at the age of sixteen and tried to do the right thing but eventually did time in California. (PSI, p.11.) He met his wife in 2007 and had a good job and family and moved to Idaho in 2012 but things fell apart and he started using drugs. (PSI, p.11.) He still had the support of his wife and kids to help him with his addiction. (SPI, p.11.)

With regard to his substance abuse issues, Mr. Oseguera recognized that his needed both drug and alcohol treatment. (Sent. Tr., p.27, Ls.7-14.) Mr. Oseguera

started using drugs at the age of 14 and at the time of his arrest was using alcohol, marijuana, and methamphetamine on a daily basis. (PSI, p.16.) He recognized that he needed treatment for his methamphetamine addiction. (PSI, p.16.)

Considering that Mr. Oseguera acknowledged his role in the crime at hand, had a background that created a “perfect storm” for being in court, and the fact that he recognized that his drug and alcohol addiction fueled his criminal behavior in this case, Mr. Oseguera respectfully submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Oseguera 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 10th day of January, 2017.

_____/S/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of January, 2017, 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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