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State v. Harkins Appellant's Brief Dckt. 44194

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

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44194
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR 2015-6056
v.)	
)	
VONNIE LYNN HARKINS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After a jury trial, Ms. Harkins was convicted of one count of battery upon a law enforcement officer. The district court imposed a sentence of four years, with two years fixed, but suspended the sentence and placed Ms. Harkins on probation. On appeal, Ms. Harkins asserts that the district court abused its discretion when it imposed the underlying sentence.

Statement of the Facts & Course of Proceedings

In March of 2015, Ms. Harkins and her boyfriend Coby spent the night at Betty Anderson's home; Ms. Anderson is Coby's aunt. (7/21/15 Tr., p.41, L.16 – p.44, L.25;

Presentence Report (*hereinafter*, PSI), pp.8-9.)¹ At some point, Ms. Harkins called the police to report that she had been the victim of a battery. (7/21/15 Tr., p.49, Ls.8-17; PSI, p. 8.) Deputy Shearn of the Canyon County Sheriff's Office was dispatched to Ms. Anderson's home. (PSI, pp.8-9.) When he arrived, he spoke with Ms. Harkins who appeared intoxicated. (PSI, pp.8-9.) Ms. Harkins told Deputy Shearn that she was an undercover police officer, a military attorney, and that she was married to the Homedale Police Chief. (PSI, p.9.) At one point, Ms. Harkins became aggressive and stood up from where she was sitting and brought her hands up towards Deputy Shearn's neck. (PSI, p.9.) Deputy Shearn then subdued Ms. Harkins and arrested her. (PSI, p.9.)

Ms. Harkins was charged, by Information, with one count of battery upon a law enforcement officer. (R., pp.22-23.) Ms. Harkins elected to proceed to trial, and at the jury trial, Deputy Shearn testified that Ms. Harkins stood up and "grabbed ahold" of his neck, so he "grabbed her and then twisted her arm back and then pushed her up against the house." (7/21/15 Tr., p.85, L.21 – p.86, L.8.) However, on cross-examination, Deputy Shearn admitted that Ms. Harkins did not grab his neck but only touched it. (7/21/15 Tr., p.94, L.20 – p.95, L.14.) He admitted that he wrote this in his police report and testified to it at the preliminary hearing.² (7/21/15 Tr., p.94, L.23 – p.97, L.17.) He also acknowledged that he was not injured, and there were no marks

¹ All references to the PSI refer to the 164-page electronic document. The PSI was updated after Ms. Harkins was deemed fit to proceed following an extended mental health commitment after her jury trial. (See R., pp.61, 78, 82.)

² Based on this information, prior to trial, Ms. Harkins' counsel moved for a lesser included instruction to inform the jury that "unlawful touching" is a misdemeanor battery only, but the district court denied the motion. (7/21/15 Tr. (Voir Dire) p.5, L.9 – p.14, L.25; 7/21/15 Tr., p.12, L.9 – p.18, L.5.) Defense counsel objected to the verdict form for the same reasons. (7/21/15 Tr., p.108, Ls.6-25.)

left on his neck from the touch. (7/21/15 Tr., p.97, Ls.20-22.) Ms. Harkins was subsequently found guilty of one count of battery upon a law enforcement officer. (R., p.98.)

Prior to sentencing, the district court ordered a mental health evaluation pursuant to I.C. § 18-211. (R., p.61.) After an extended mental health commitment, Ms. Harkins was deemed fit to proceed, and a sentencing hearing was held on May 5, 2016. (R., pp.61-78; 5/5/16 Tr., p.16, Ls.4-23.) At that hearing, the State recommended that the district court place Ms. Harkins on probation and require that she participate in mental health court; the State did not recommend an underlying sentence. (5/5/16 Tr., p.15, L.21 – p.16, L.21.) Ms. Harkins' counsel requested that the district court impose an underlying sentence of three years, with one year fixed, and place Ms. Harkins on probation. (5/5/16 Tr., p.18, L.6 – p.20, L.9.) The district court imposed a sentence of four years, with two years fixed, but suspended the sentence and placed Ms. Harkins on probation for three years, and required that she attend mental health court. (5/5/16 Tr., p.23, L.25 – p.27, L.15; R., pp.98-100.) Subsequently, Ms. Harkins filed a Notice of Appeal that was timely from the district court's judgment of conviction. (R., pp.91-93.)

ISSUE

Did the district court abuse its discretion when it imposed an underlying sentence of four years, with two years fixed, following Ms. Harkins' conviction for battery upon a law enforcement officer?

ARGUMENT

The District Court Abused Its Discretion When It Imposed An Underlying Sentence Of Four Years, With Two Years Fixed, Following Ms. Harkins' Conviction For Battery Upon A Law Enforcement Officer

Based on the facts of this case, Ms. Harkins' underlying sentence of four years, with two years fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, the appellate court will conduct an independent examination 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).

Independent appellate sentencing examinations are based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). When a sentence is unreasonable based on the facts of the case, it is an abuse of discretion. *State v. Nice*, 103 Idaho 89, 90 (1982). Unless it appears that confinement was necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case," a sentence is unreasonable. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). Accordingly, if the sentence is excessive, "under any reasonable view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Ms. Harkins' sentence is excessive under any reasonable view of the facts. First, it is clear from the record that Ms. Harkins struggles with significant mental health issues. Her psychological evaluation revealed that she was "extremely delusional," and she believed that she was "working undercover in an internal investigation mission with the military since the 1980's (she was born in 1984) and that her current court case should only be heard in a military court." (PSI, p.53.) Later, the evaluator noted that Ms. Harkins believed that

“she is in every branch of the military and that her lowest rank in every branch is the Commanding Officer.” (PSI, p.57.) This was consistent with the information that she gave Deputy Shearn when he initially spoke with her on the night of the offense. (PSI, p.9.) In summary, the psychological evaluator wrote that Ms. Harkins was “seriously mentally ill and in need of psychiatric intervention.” (PSI, p.57.) A defendant’s mental health condition can be a significant mitigating factor. *State v. Odiaga*, 125 Idaho 384, 391 (1994) (“Idaho Code § 19–2523, which requires that the trial court consider the defendant’s mental illness as a sentencing factor, was an integral part of the legislature’s repeal of mental condition as a defense.”).

Additionally, Ms. Harkins struggles with serious substance abuse problems. Her mother stated that Ms. Harkins used to be an intelligent woman and a great mother, but her drug use had dramatically affected her mental health. (PSI, pp.69-70.) A defendant’s substance abuse problems should also be considered as mitigating information. *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981) (“While the ingestion of drugs or alcohol by appellant on the evening of the offense is not sufficient in itself to raise a defense to the crime, it is our conclusion that any arguable impact of such substance abuse is a proper consideration in mitigation of punishment upon sentencing.”).

This was Ms. Harkins’ first felony conviction. (PSI, pp.10-15.) This is also a long-recognized mitigating factor. *State v. Nice*, 103 Idaho 89, 91 (1982). Finally, Deputy Shearn was not injured at all by Ms. Harkins; she only touched his neck in the altercation. (7/21/15 Tr., p.97, Ls.20-22.)

In light of all the mitigating information and the facts of this case, Ms. Harkins asserts her underlying sentence was excessive because it was not necessary to achieve the goals of sentencing outlined in *Toohill* and was therefore unreasonable and an abuse of discretion.

CONCLUSION

Ms. Harkins respectfully requests that this Court reduce her underlying sentence as it deems appropriate.

DATED this 10th day of January, 2016.

_____/S/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

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

VONNIE LYNN HARKINS
2123 PLEASANTON STREET
CALDWELL ID 83605

JUNEAL C KERRICK
DISTRICT COURT JUDGE
E-MAILED

DAVID J SMETHERS
CANYON COUNTY PUBLIC DEFENDER
E-MAILED

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED

_____/S/_____
MAGALI CEJA
Administrative Assistant

RPA/mc