

4-5-2017

## State v. Hubbard Appellant's Brief Dckt. 44402

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44402
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR 2015-10218
v.	)	
	)	
GREGORY ALLYN HUBBARD,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After a jury trial, Mr. Hubbard was found guilty of one count of battery on a law enforcement officer. The district court imposed a sentence of three years, with six months fixed. On appeal, Mr. Hubbard asserts that the district court abused its discretion when it imposed the sentence.

Statement of the Facts & Course of Proceedings

In July of 2015, Boise Police Officer Griffin responded to assist the fire department after someone called 911 to report that an attic was on fire. (Presentence

Report (*hereinafter*, PSI), p.4.)<sup>1</sup> Officer Griffin said Mr. Hubbard was acting unpredictably when arrived on scene. (PSI, p.4.) Officer Griffin also thought Mr. Hubbard was paranoid as he was describing “voids in the floor” and things in the attic. (PSI, p.4.) During the conversation, Officer Griffin told Mr. Hubbard to take his hands out of his pockets, but he continued to put his hands back in his pockets. (PSI, p.4.) Mr. Hubbard also refused to sit down. (PSI, p.4.) When Officer Griffin attempted to place Mr. Hubbard under arrest, he told him to place his hands behind his back. (PSI, p.5.) Mr. Hubbard refused to do so, and a struggle ensued during which Mr. Hubbard allegedly kicked Officer Griffin in the leg. (PSI, p.5.) A backup officer then deployed a taser, and Mr. Hubbard was taken into custody. (PSI, p.5.)

Subsequently, Mr. Hubbard was charged with one count of battery on a law enforcement officer and one misdemeanor count of resisting or obstructing officers. (R., pp.32-33.) Mr. Hubbard proceeded to trial. After the trial, the jury was hung on the battery charge but found Mr. Hubbard guilty of the misdemeanor charge. (Tr., p.389, L.21 – p.393, L.7; R., p.106.) As such, the district court declared a mistrial as to that charge. (Tr., p.393, Ls.13-14.) The State later opted to retry the case, and Mr. Hubbard was found guilty of the battery charge after a second trial. (Tr., p.858, Ls.2-10.)

At the sentencing hearing, the State recommended that the district court impose a five year sentence, with two years fixed. (Tr., p.862, Ls.6-20.) Mr. Hubbard’s counsel requested that the district court impose a sentence of five years, with zero years fixed, so that Mr. Hubbard could immediately pursue drug and alcohol treatment. (Tr., p.864, Ls.2-9.) The district court then imposed a sentence of three years, with six months

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<sup>1</sup> All citations to the PSI refer to the 443-page electronic document.

fixed, on the battery charge,<sup>2</sup> and a concurrent sentence of 180 days in the Ada County Jail on the misdemeanor charge. (Tr., p.869, Ls.16-18; R., p.190.) Mr. Hubbard filed a notice of appeal that was timely from the district court's judgment of conviction. (R., pp.195-97.)

### ISSUE

Did the district court abuse its discretion when it imposed a sentence of three years, with six months fixed, following Mr. Hubbard's conviction for battery on a law enforcement officer?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed A Sentence Of Three Years, With Six Months Fixed, Following Mr. Hubbard's Conviction For Battery On A Law Enforcement Officer

Based on the facts of this case, Mr. Hubbard's sentence of six months fixed, with two and one-half years indeterminate 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). In such a review, an appellate court considers "whether the court acted within the boundaries of

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<sup>2</sup> The district court ordered that this sentence run consecutively to Mr. Hubbard's sentence in CR-FE-2011-3345. (R., p.190.)

such discretion, consistent with any legal standards applicable to its specific choices, and whether the court reached its decision through an exercise of reason.” *State v. Hass*, 114 Idaho 554, 558 (Ct. App. 1988). 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 Mr. Hubbard’s sentence is excessive under any reasonable view of the facts. First, Mr. Hubbard admitted that he was struggling with a serious substance abuse problem and was under the influence of bath salts at the time he committed this offense. (PSI, p.7; Tr., p.865, L.18 – p.866, L.5.) Mr. Hubbard said he was experiencing drug-induced schizophrenia and hallucinating when he spoke with Officer Griffin. (PSI, p.7.) He said that he had never had to question his own thought processes before this incident, and he was terrified in the weeks leading up to this event. (Tr., p.865, L.23 – p.866, L.2.) A defendant’s substance abuse problem and how that abuse may have played a part in the crime should be considered as mitigating information. *State v. Nice*, 103 Idaho 89, 91 (1982) (reducing defendant’s sentence, in part, because “the trial court did not give proper consideration of the defendant’s alcoholic problem, the part it played in causing

defendant to commit the crime [the defendant had been drinking at the time of the offense] and the suggested alternatives for treating the problem”).

Additionally, Mr. Hubbard accepted responsibility for this offense. He said that he had no excuse; his intoxication was self-induced, and he felt that this offense would never have happened if he had been sober. (Tr., p.866, Ls.3-5.) He said that he never intended to hurt anyone, and he was “willing to take full responsibility” for his actions. (Tr., p.866, L.25 – p.867, L.1.) He also admitted that he understood how Officer Griffin must have felt because he could not keep his hands out of his pockets. (PSI, p.7.) A defendant’s acceptance of responsibility is also a long-recognized mitigating factor. *State v. Shideler*, 103 Idaho 593, 594 (1982) (reducing the defendant’s sentence, in part, because “the defendant has accepted responsibility for his acts”).

Finally, Mr. Hubbard has clearly been motivated to make a big change in his life after the birth of his daughter. He admitted that, despite remaining sober for two and one-half years after his rider, he decided to try bath salts and “immediately returned” to his addictive behaviors. (PSI, p.27.) He also admitted that he did not seek treatment and that the drug took everything from him. (PSI, p.27.) However, he said that he was now very motivated to change because he had a little girl and wanted to “move on into a sober life” with his daughter. (PSI, p.27.) Mr. Hubbard also acknowledged that he did not “fully engage” in the relationship with the mother of his child but said that he now wanted her to see that he was serious about recovery and could be a healthy father figure. (PSI, p.20.)

In light of this mitigating information, the district court abused its discretion when it imposed Mr. Hubbard's sentence because it did not adequately consider the information and therefore did not reach its decision through an exercise of reason.

CONCLUSION

Mr. Hubbard respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 5<sup>th</sup> day of April, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
REED P. ANDERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5<sup>th</sup> day of April, 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:

GREGORY ALLYN HUBBARD  
4908 N COLUMBINE  
BOISE ID 83713

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DISTRICT COURT JUDGE  
E-MAILED BRIEF

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ADA COUNTY PUBLIC DEFENDER  
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CRIMINAL DIVISION  
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\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

RPA/eas