

2-21-2017

State v. Ogren Respondent's Brief Dckt. 44428

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO, |) | |
| |) | NO. 44428 |
| Plaintiff-Respondent, |) | |
| |) | Bonneville County Case No. |
| v. |) | CR-2016-1076 |
| |) | |
| JEREME DALE OGREN, |) | |
| |) | RESPONDENT'S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

Issue

Has Ogren failed to establish the district court abused its discretion by imposing a unified sentence of seven years, with two and one-half years fixed, upon his guilty plea to felony domestic battery?

Ogren Has Failed To Establish The District Court Abused Its Sentencing Discretion

In February 2016, the state charged Ogren with attempted strangulation and domestic violence in the presence of a child. (R., pp.40-42.) Pursuant to a plea agreement, Ogren pled guilty to an amended charge of felony domestic battery and the state dismissed the charge for domestic violence in the presence of a child and agreed

to “recommend consistent with the PSI and no worse than a rider.” (R., pp.46-49, 56-57, 62-64.) The district court imposed a unified sentence of seven years, with two and one-half years fixed. (R., pp.77-79.) Five days later, Ogren filed a Rule 35 motion for a reduction of sentence, which the district court subsequently denied. (R., pp.91-92, 96-97.) Ogren filed a notice of appeal timely from the judgment of conviction. (R., pp.98-101.)

Ogren asserts his sentence is excessive in light of the nature of the offense; his eventual acceptance of responsibility; his anger, substance abuse, and mental health issues; his prior completion of inpatient treatment, outpatient treatment, and domestic violence court; and because, although the state believed Ogren was not an appropriate candidate for community supervision, it recommended the retained jurisdiction program as stipulated in the plea agreement. (Appellant’s brief, pp.3-6; 5/18/16 Tr., p.36, Ls.2-5.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant’s probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the

facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for felony domestic battery is 10 years. I.C. § 18-918(2)(b). The district court imposed a unified sentence of seven years, with two and one-half years fixed, which falls well within the statutory guidelines. (R., pp.77-79.) At sentencing, the state addressed the seriousness of the offense, the harm done to the victim, Ogren's ongoing criminal offending and repeated acts of domestic violence in the presence of children, his disregard for no contact and civil protection orders, the risk he presents to the community, and his failure to rehabilitate or be deterred despite multiple prior treatment opportunities and legal sanctions. (5/18/16 Tr., p.32, L.3 – p.36, L.14.) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Ogren's sentence. (5/18/16 Tr., p.39, L.9 – p.43, L.10.) The state submits Ogren has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Ogren's conviction and sentence.

DATED this 21st day of February, 2017.

/s/
JESSICA M. LORELLO
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of February, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
JESSICA M. LORELLO
Deputy Attorney General

APPENDIX A

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| <p>1 THE COURT: All right. Thank you, sir.</p> <p>2 Ms. Kirkham, the State's recommendation?</p> <p>3 MS. KIRKHAM: Thank you, Your Honor.</p> <p>4 I'd first like to kind of review the facts of</p> <p>5 this case.</p> <p>6 I take what Mr. French indicated to the Court.</p> <p>7 The State does acknowledge that Mr. Ogren has been</p> <p>8 remorseful for his actions since this incident occurred.</p> <p>9 Although he was initially deceptive to police, he has</p> <p>10 been very forthcoming. And I highlighted the same</p> <p>11 points that Mr. French raised regarding his remorse that</p> <p>12 he's expressed from his actions.</p> <p>13 But, here, this case came about -- Mr. Ogren</p> <p>14 went to Chelsea's house, the victim of this case. They</p> <p>15 have a child in common. He went to her house. He</p> <p>16 offered to fix her car. The car needed a new battery.</p> <p>17 And they were going to go get coffee so he could spend</p> <p>18 time with his minor child.</p> <p>19 They left her house. They were running</p> <p>20 errands. While they were driving around, they engaged</p> <p>21 in an argument. Chelsea reported to law enforcement</p> <p>22 that she received a text message that the defendant</p> <p>23 became curious about, and that's how the argument</p> <p>24 ensued.</p> <p>25 Chelsea ended up pulling the car over on Old</p> | <p>1 Butte Road near the soccer complex, and Jereme continued</p> <p>2 to call Chelsea a bad mom and threatened to take her</p> <p>3 daughter away. They further engaged in a verbal</p> <p>4 argument, and he then -- and it should also be noted,</p> <p>5 Your Honor, that, at this time, both their minor child</p> <p>6 [REDACTED] (phonetic) and another minor child were in the</p> <p>7 backseat of the car at the time this argument ensued.</p> <p>8 Jereme reached over and slapped Chelsea in the</p> <p>9 head and then placed his hands on her throat -- placed</p> <p>10 his hand, one hand, on her throat and began to squeeze</p> <p>11 her throat until she felt like she was going to pass</p> <p>12 out. While he was doing this, Chelsea remembered him</p> <p>13 saying, quote, "Do you want to be a dead bitch? I will</p> <p>14 kill you."</p> <p>15 He then exited the car. He let go of her,</p> <p>16 exited the car, came around. Chelsea got out of the</p> <p>17 driver's seat and got in the passenger's seat, and</p> <p>18 Jereme took over driving the car. And he refused to</p> <p>19 take Chelsea home until she promised that she would not</p> <p>20 call law enforcement about what had just happened.</p> <p>21 Eventually, Chelsea agreed not to call law enforcement.</p> <p>22 Jereme then went to the police station on his</p> <p>23 own accord and told law enforcement that she's going to</p> <p>24 be calling but that it's not true what she's going to</p> <p>25 reporting. That was his initial deceptiveness, though I</p> |
| 34 | 35 |
| <p>1 do acknowledge that he has come forward since then.</p> <p>2 Police went and met with Chelsea, and they did</p> <p>3 notice four obvious finger marks of his bruising on her</p> <p>4 neck, consistent with her story.</p> <p>5 And while Jereme's version is largely</p> <p>6 consistent with Chelsea's report to law enforcement, he</p> <p>7 does assert on page 18 of the PSI that, quote, "He lost</p> <p>8 his temper and grabbed her by the collar of the shirt</p> <p>9 and started yanking it violently back and forth. He</p> <p>10 does admit that he lied to the police initially and</p> <p>11 says, quote, "The cops believed her story because it was</p> <p>12 the truth," as Mr. French pointed out.</p> <p>13 I would agree with Mr. French that the</p> <p>14 defendant does have a long history of substance abuse.</p> <p>15 And on page 20 of the PSI, it indicates that the</p> <p>16 defendant reported -- it's the second to last full</p> <p>17 paragraph -- that he began using drugs again in the past</p> <p>18 year, consuming alcohol about three months prior to his</p> <p>19 arrest. He expressed the alcohol and drugs cause severe</p> <p>20 problems in his life and cause him to become violent.</p> <p>21 He has previously attended both inpatient and outpatient</p> <p>22 treatment, and yet his current DVI still recommends a</p> <p>23 2.1 -- or a 2 -- level 2 intensive outpatient treatment.</p> <p>24 The police report indicates that law</p> <p>25 enforcement could smell marijuana at his house at the</p> | <p>1 time that he was arrested; however, he had denied the</p> <p>2 existence of any marijuana in his home at the time.</p> <p>3 As the Court has indicated, the defendant does</p> <p>4 have a lengthy criminal record, which does include two</p> <p>5 prior felony convictions, one for child abuse and</p> <p>6 another for delivery of a controlled substance.</p> <p>7 His 2013 domestic violence conviction was</p> <p>8 against the same victim. It started out as an attempted</p> <p>9 strangulation but ultimately resulted in a misdemeanor</p> <p>10 resolution. And he was sentenced to the Domestic</p> <p>11 Violence Court at that time, and he successfully</p> <p>12 completed that court.</p> <p>13 And I think it's also of significance that</p> <p>14 that incident also occurred in the presence of a child.</p> <p>15 In fact, a child corroborated the victim's story at the</p> <p>16 time of that offense.</p> <p>17 He has, also, several other drug and alcohol</p> <p>18 related charges as well as No Contact Order and Civil</p> <p>19 Protection Order violations.</p> <p>20 During his time on probation, he has been</p> <p>21 charged with several probation violations, and as a</p> <p>22 result of probation violation while previously on felony</p> <p>23 probation, he was ordered to serve a period of retained</p> <p>24 jurisdiction.</p> <p>25 But consistent with our plea agreement, the</p> |

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| <p>1 State is recommending a retained jurisdiction at this 2 time. He is not an appropriate candidate for community 3 supervision, given his continued violent behavior in the 4 presence of children and despite having undergone 5 treatment already.</p> <p>6 The State would ask for an underlying sentence 7 of four-plus-six, but ask the Court to retain 8 jurisdiction.</p> <p>9 And it should also be noted that he has 10 applied for Domestic Violence Court again, but he was 11 denied acceptance into that court because he has already 12 completed the program. And it was the team's belief 13 that a higher level of treatment was needed at this 14 time.</p> <p>15 Thank you.</p> <p>16 THE COURT: Thank you.</p> <p>17 Mr. Ogren, do you wish to make a statement on 18 your own behalf?</p> <p>19 THE DEFENDANT: Yes, please.</p> <p>20 THE COURT: Go ahead.</p> <p>21 THE DEFENDANT: I've come to realize over the past 22 hundred days in jail that I have an anger issue and it 23 revolves around my substance abuse problem, my alcohol 24 abuse problem, and me staying stable on my medications.</p> <p>25 And I think that the rider program is set up</p> | <p>1 for me perfectly. I mean, I'd go there. I'd do 2 treatment. I'd work on myself. And I realized that I 3 have an anger problem, and I addressed issues that I 4 have had in the past that I've never addressed and 5 that's what brings up these anger issues.</p> <p>6 I'm very remorseful that I would lay my hands 7 on my daughter's mom. It's ridiculous. I shouldn't -- 8 I don't know what drives me to do that. I want to fix 9 myself. I don't want to live that life. I want to live 10 a happy life, not an angry life.</p> <p>11 And that's all I really have to say. I just 12 want to live a happy life, and I'm sick of being mad all 13 of the time. And I want to figure out what's going on 14 with me that causes me to strike out like that, because 15 I don't want to be an angry person.</p> <p>16 THE COURT: Anything else, sir?</p> <p>17 THE DEFENDANT: No, sir.</p> <p>18 THE COURT: Are you satisfied with the 19 representation Mr. French has provided to you?</p> <p>20 THE DEFENDANT: Yes, sir.</p> <p>21 THE COURT: Do you know of any legal reason why I 22 should not sentence you today?</p> <p>23 THE DEFENDANT: No, sir.</p> <p>24 THE COURT: Mr. French, do you?</p> <p>25 MR. FRENCH: No, Your Honor.</p> |
| 38 | 39 |
| <p>1 THE COURT: Ms. Kirkham, do you?</p> <p>2 MS. KIRKHAM: No, Your Honor.</p> <p>3 THE COURT: Mr. Ogren, when I go back and I look 4 at your criminal history and everything that's happened 5 to basically intervene and try to rehabilitate you, 6 you've been on probation, you've done a rider, you've 7 been in Domestic Violence Court. Everybody agrees here, 8 including myself, probation is not the option.</p> <p>9 But what's going -- what's a retained 10 jurisdiction going to do when you've already had most of 11 the programs?</p> <p>12 THE DEFENDANT: It's going to -- those past times 13 I didn't realize that I had an anger issue. Now I 14 realize I have a problem. Now that I know and I admit 15 that I have a problem, I can address it.</p> <p>16 THE COURT: So you go through Domestic Violence 17 Court and never figured that out?</p> <p>18 THE DEFENDANT: I did. But at that time, I was 19 working on staying with my baby's mom. Now I want to be 20 single. I don't want to be in a relationship. I want 21 to focus on myself, be single, and figure out what's 22 going on in my head.</p> <p>23 When I was in Domestic Violence Court, I was 24 working on being in a relationship with Chelsea. I 25 don't want to be in a relationship anymore. I want to</p> | <p>1 focus on myself and fix myself foremost.</p> <p>2 I don't want to -- we're not talking Domestic 3 Violence Court -- the whole Domestic Violence Court was 4 wrapped around me and her getting back together, and so 5 all of the treatment was me figuring what I needed to do 6 to fix our relationship.</p> <p>7 Now I'm in a position where I need to fix 8 myself, not the relationship.</p> <p>9 THE COURT: All right. Mr. Ogren, based upon your 10 plea of guilty to the amended charge of battery, 11 domestic violence, it is the judgment of this Court that 12 you are guilty of that offense.</p> <p>13 Having reviewed your presentence report and 14 considering the information contained in that, having 15 listened to the arguments of your attorney, the State's 16 attorney, and your statements, the Court has applied 17 that information and its weight in how I deal with 18 sentencing.</p> <p>19 And I have to take all those factors and 20 consider them in relation to the objectives of criminal 21 punishment, which includes protection of society, 22 deterrence, rehabilitation, and punishment.</p> <p>23 Protection of society obviously takes the -- 24 is the prominent concern.</p> <p>25 Then I also have to weigh the factors under</p> |

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| <p>1 Idaho Code 19-2521 relative to that question of whether 2 I should confine you to prison or place you on 3 probation. 4 Both the State's attorney and your attorney 5 have covered basically everything that I've had 6 highlighted in the presentence report that either spoke 7 good of you or were concerns to this Court. 8 There's no doubt that the report and the 9 reports from the State's attorney, based on their 10 reading of the report, and Mr. French's report based on 11 his dealings with you and reading the report, and your 12 statements here today would indicate that you're -- you 13 are. You're remorseful about what's happened, and 14 hopefully you truly are remorseful. And hopefully 15 that's really what you want to do. 16 The problem with me sitting here and trying to 17 judge those is I don't get to see you very much to try 18 and make a judgment for myself on how credible you are, 19 whether you're saying things just to say them or whether 20 you're truly genuine. From all appearances, you appear 21 to be genuine in what you're saying. But I have a 22 concern with your history and what's been done and where 23 you're at now. 24 Your criminal history is quite lengthy, and 25 it's been addressed here today. You have several</p> | <p>1 substance abuse convictions. You've got the child 2 abuse, neglect charge in Utah that resulted in a felony. 3 You've got another felony for delivery. You've got the 4 violation of the protection order, the domestic violence 5 charge back in 2013, violation of No Contact Order, and 6 now you're sitting here on a domestic battery charge, 7 which is going to be your third felony conviction. 8 And as has been indicated, you've been on 9 felony probation, and that started in 2002. And you 10 reported you had no probation violations, but your 11 record does show that there was at least a petit theft 12 conviction while you were on supervision. 13 In 2010, on your delivery charge, you were 14 placed on probation. You violated that probation, and 15 it was revoked. And you did a retained jurisdiction. 16 You then completed probation successfully in 2012. 17 But, in 2013, you have that domestic violence 18 charge, and you got into Domestic Violence Court. And 19 you did well in that program and completed mental health 20 wellness, which included anger management and some of 21 the other courses there and domestic violence treatment. 22 You have some mental health issues that also 23 need to be addressed. As has been pointed out, the 24 domestic violence evaluator recommends the 52-week 25 course.</p> |
| 42 | 43 |
| <p>1 As far as substances, not only have you 2 completed the rider program, you completed an inpatient 3 program at ARA in 2008. And then you did the outpatient 4 treatment at Mental Wellness in 2013. And currently 5 you're at a level 2.1 need for treatment. 6 Your LSI score, which has been talked about as 7 well, is a 29, which puts you in the moderate risk 8 category. 9 The presentence report writer indicates that, 10 because of your continued violent behavior and in the 11 presence of children, they feel that you are a threat to 12 community safety and recommend a retained jurisdiction. 13 I do concur that you are a community risk at 14 this time. 15 Based on all of the circumstances, it is the 16 judgment of the Court that you be sentenced to the Idaho 17 Department of Corrections for a fixed and determinate 18 period of three years -- actually, I'm going to go two 19 and a half years fixed, followed by an indeterminate 20 period of four and a half -- so, in other words, not 21 less than two and a half, nor more than seven. 22 You're fined the amount of \$2,000. 23 You will be assessed court costs, pursuant to 24 statute. 25 You will reimburse the services for the public</p> | <p>1 defender in the amount of \$500. 2 Was there any request for restitution in this 3 matter? 4 MS. KIRKHAM: No, Your Honor. 5 THE COURT: As indicated, I don't feel that 6 probation is appropriate. But under the circumstances 7 and given the history that you present to this Court, 8 this Court is not convinced that retained jurisdiction 9 is appropriate either. And so the Court is going to 10 impose that sentence. 11 Do you understand that, sir? 12 THE DEFENDANT: So I'm not getting a rider? 13 THE COURT: No, sir. 14 THE DEFENDANT: Okay. 15 THE COURT: Do you understand that? 16 THE DEFENDANT: Yes. 17 THE COURT: All right. You're advised you have 18 the right to appeal this judgment. That appeal has to 19 be filed within 42 days. You have the right to be 20 represented by counsel on that appeal. If you cannot 21 afford counsel, you can apply to this Court to have 22 counsel appointed to represent you at public expense. 23 Just remember you only have 42 days in which to file 24 that appeal. 25 You also have the right to seek relief under</p> |