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State v. Riggs Appellant's Brief Dckt. 44438

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44438
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2016-4777
v.)	
)	
SCOTT MAXWELL RIGGS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Scott Maxwell Riggs appeals from his judgment of conviction for sexual battery of a minor child sixteen or seventeen years of age. Mr. Riggs pleaded guilty and the district court imposed a unified sentence of fifteen years, with three years determinate. Mr. Riggs appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On April 14, 2016, Stephanie Anthony reported that her sixteen-year-old daughter had sexual contact with Mr. Riggs. (Presentence Investigation Report

(*hereinafter*, PSI), p.3.) The daughter, A.A., reported that she spent time with Mr. Riggs in his bedroom at his parents' house, where Mr. Riggs touched her breasts both over and under her shirt and had intercourse with her. (PSI, p.3.) Mr. Riggs acknowledged having sex with A.A twice. (PSI, p.5.) However, he stated that he believed that A.A. was eighteen years old because when they met she stated that she was seventeen and would turn eighteen on April 8, 2016. (PSI, p.4.)

Mr. Riggs was charged with two counts of sexual battery of a minor child sixteen or seventeen years of age. (R., p.21.) Mr. Riggs pleaded guilty to the first count and the second count was dismissed. (R., p.40.) The district court imposed a unified sentence of fifteen years, with three years determinate. (R., p.53.) Mr. Riggs appealed. (R., p.57.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fifteen years, with three years determinate, upon Mr. Riggs following his plea of guilty to sexual battery of a minor child sixteen or seventeen years of age?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fifteen Years, With Three Years Determinate, Upon Mr. Riggs Following His Plea Of Guilty To Sexual Battery Of A Minor Child Sixteen Or Seventeen Years Of Age

Mr. Riggs asserts that, given any view of the facts, his unified sentence of fifteen years, with three 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. Riggs does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Riggs 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)).

Mr. Riggs read a letter to the district court at sentencing. He stated,

I know what I did was wrong, and I take accountability for that. I know it's my responsibility to pay for the consequences of my poor decision-making skills. I feel bad for what I did, and I wish I could change it. I know I cannot change what I did in the past, but I can change the outcome of my future.

I feel that if you're kind enough and have mercy on me and give me a chance at a rider, that I can prove myself worthy. I do suffer from some severe mental health issues that have plagued me my entire life. I do feel these mental health issues do affect some of my decision-making skills. I do not feel prison would be appropriate for me. I believe with a retained jurisdiction and a little bit of faith, I can go a long ways.

From what I understand, I feel the rider program can help me and [improve] my decision-making skills.

Again, I am sorry for what I have done, and I feel bad for it. Before making – before my incarceration, I was making corrective steps to change my behavior patterns. I am willing to give up any or all substance, including marijuana, to make successful probation.

Thank you, Judge Scott, for hearing my ... letter. Also, I would like to add that I wasn't on my medications when I went on my rider the last time, and it really was a failure and a big disappointment. I was only 21 years old. I'm 32 now, and I'm a lot older and I know what I want and I know my freedom means more to me than anything else.

(Sent. Tr., p.14, L.15 – p.15, L.22.)

Counsel for Mr. Riggs emphasized that Mr. Riggs had been hospitalized numerous times for his mental health, which had plagued him his entire life. (Sent. Tr., p.8, Ls.8-15.) Mr. Riggs was also the victim of “a horrible amount of sex abuse from ages of 5 to 12, and it was something that he had never reported for a long, long time because of the threats that were made to him.” (Sent. Tr., p.8, Ls.16-22.) “So there’s definitely some psychological torture as well as the physical abuse that he – physical sexual abuse that he suffered.” (Sent. Tr., p.8, Ls.22-25.) Mr. Riggs reported that, when he was five years old, he was sexually abused by an adult male at least half a dozen times and did not report the abuse because the abuser had threatened to kill his father. (Psychosexual Evaluation (*hereinafter*, PSE), p.14.) The abuse occurred again, from the same abuser, when Mr. Riggs was twelve. (PSE, p.15.)

Mr. Riggs reported that he suffered from paranoid schizophrenia, PTSD, and bipolar disorder. (PSI, p.17.) The PSI investigator noted that Mr. Riggs, “has a long history of mental health services that began as a young child and have continued throughout his life to include counseling, medication management, case management,

psychosocial rehabilitation serves and psychiatric hospitalizations” (PSI, p.17.) He had a history of cutting himself and suicidal ideations that have led to suicide attempts by overdose and asphyxiation. (PSI, p.17.) However, due to recent incident in Washington, Mr. Riggs finally accepted and understood his need to be on medication. (PSI, p.17.) At the time of the instant offense, he had been participating in counsel and medication management with Access Behavioral Health. (PSI, p.17.)

In sum, Mr. Riggs apologized for his behavior and acknowledged having poor decision-making skills. He acknowledged that his mental health issues contributed to this problem and he knew that he needed his medications to help solve his problems. He believed that the rider program would help him address both his mental health issues and his decision-making problems. During his previous rider, he was not on his medications he knew that his rider was a disappointment for that reason. However, Mr. Riggs was now older and understood that he needed his medication. Considering this information, Mr. Riggs submits that the district court abused its discretion by imposing an excessive sentence and not retaining jurisdiction.

CONCLUSION

Mr. Riggs 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 22nd day of February, 2017.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of February, 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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_____/s/_____
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JMC/eas