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## State v. Crawford Appellant's Brief Dckt. 44503

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	S.Ct. No. 44503
	)	D.Ct. No. CR-2015-10877
Plaintiff-Respondent,	)	(Bonneville County)
	)	
v.	)	APPELLANT'S
	)	OPENING BRIEF
DEVIN CLAYTON CRAWFORD,	)	
	)	
Defendant-Appellant.	)	
_____	)	

*A. Nature of the Case*

This is an appeal from a judgment of conviction pursuant to a guilty plea to kidnapping in the second degree, I.C. §§ 18-4501, 18-4503, and an admission to use of a deadly weapon, I.C. § 19-2520. R 240-42, 252-56.

Relief should be granted because the sentence is excessive.

*B. Procedural History and Statement of Facts*

According to the PSI, Ivan Sandoval asked Brandon Bykonen to drive him to a trailer in Idaho Falls. When they arrived, Mr. Bykonen went inside and was confronted by several people who accused him of being a narc based upon police

reports they had in their possession. They pointed guns at him, ordered him to the ground, tied his hands, and blindfolded him. Mr. Sandoval and Mr. Crawford took him back to his car. Mr. Sandoval drove, Mr. Bykonen was in the backseat, and Mr. Crawford was in the front seat. Others followed in separate cars. PSI p. 3-5.

Eventually, Mr. Bykonen was removed from the car and placed face down on the ground and told to extend his hands over his head. Mr. Crawford hit his hands 6-7 times with a hatchet resulting in the complete loss of one finger, the partial loss of another, and other lasting injuries. When Mr. Bykonen tried to protect his hands during the attack, Mr. Crawford hit him on the back of the head and ordered him to keep his hands out. Mr. Crawford took Mr. Bykonen's cell phone and wallet and smashed the phone on the ground telling Mr. Bykonen that if he reported the incident to the police, they would come back and kill him. *Id.*

Mr. Bykonen was left to walk for help, which he did, and the police were summoned. *Id.*

Mr. Crawford entered into a non-binding plea agreement. He pled guilty to second degree kidnapping and admitted a deadly weapon enhancement. The state dismissed other charges in this and another case. In a third case, Mr. Crawford pled guilty to intimidating a witness and the state dismissed the remaining charges. Pursuant to the agreement Mr. Crawford and the state both recommended a fixed term of 12 years and both remained free to argue for any legal indeterminate sentence. R 225-28.

In the PSI interview, Mr. Crawford declined to provide information about his childhood other than to say that it was extremely dysfunctional and screwed up. PSI p. 7. However, he did tell Dr. Landers, the psychologist who performed the psychological assessment for sentencing purposes, that he did not know his biological father. He was raised by a series of step-fathers and his mother until he was 6 and then he was raised by an uncle. The step-fathers subjected him to sexual, physical, and mental abuse. His uncle subjected him to physical abuse. Throughout his childhood, he witnessed domestic violence. PSI p. 118.

At age 16, Mr. Crawford was sent to IDJC St. Anthony, where he remained until age 18. He married at age 21; however, his wife died from congenital heart failure. *Id.* He was 24 at the time of sentencing. PSI p. 1.

Mr. Crawford stated, “I struggle with my past on a daily basis. There are things I refuse to talk about.” He uses alcohol and drugs to help him forget. PSI p. 11.

Mr. Crawford’s step-father first injected him with heroin when he was four years old. He started drinking at age 5. He starting smoking cannabis at age 6. And, he was self-administering opiates by age 12. Yet, he has never had drug treatment. PSI p. 119. At the time of the offense, he had been using methamphetamine continuously for many days and had not slept for several days. Sentencing Tr. p. 15, ln. 8-13.

Dr. Landers opined that Mr. Crawford was “somewhat demoralized, anxious, and appears characterologically pathological as well as situationally affected.” He

wrote that Mr. Crawford's symptoms "appear most consistent with an Adjustment Disorder with Depressed Mood, Posttraumatic (sic) Stress Disorder, and Antisocial Personality Disorder." He also noted that alcohol and substance use are of significant concern. PSI p. 119.

Dr. Landers also opined that Mr. Crawford has symptoms consistent with central auditory processing disorder wherein something adversely affects the way the brain recognizes and interprets sounds, especially speech. "[Mr. Crawford] appears to have been unable to compensate for [CAPD], leading to many of his difficulties academically, emotionally, and behaviorally as a result of this concern." PSI p. 120.

Dr. Landers reported that Mr. Crawford has a history of five suicide attempts, including one while in the jail awaiting sentencing, and he admitted to homicidal ideation. However, the ideation is not global, but rather is restricted to those who violate norms. PSI p. 119. (The state alleged that Mr. Crawford had committed some unspecified felony against a co-defendant while in the jail. However, at the time of sentencing, Mr. Crawford had not been convicted. Sentencing Tr. p. 26, ln. 10-15.)

Dr. Landers opined that Mr. Crawford has poor judgment in choosing appropriate future behavior. However, Mr. Crawford told Dr. Landers that he would likely become aggressive in general population and had a strong preference for solitary confinement due to his PTSD, which indicates the opposite of Dr. Landers' conclusion regarding Mr. Crawford's judgment. Dr. Landers wrote that

Mr. Crawford would likely be violent in general population, but “while in solitary confinement he is likely to act out on suicidal thoughts[.]” *Id.*

Dr. Landers wrote that Mr. Crawford is not delusional or psychotic. *Id.* Yet, he has not received psychotherapy for his symptoms. PSI p. 120. Dr. Landers concluded, “[G]iven his predilection for violence as well as substance use in combination with poor prosocial coping skills, he is not a good candidate for psychotherapy.” Dr. Landers also opined that medication would only have a minimal impact on symptom management. Yet, at the same time, Dr. Landers indicated some hope, indicating that if Mr. Crawford is able to make a conscious decision that he wants to change, he might no longer be a high risk for violent behavior. PSI p. 121.

The GAIN assessment reached a different conclusion regarding Mr. Crawford’s amenability to treatment.

Given ASAM Placement Criteria, past legal consequences, and current drug/alcohol use, Devin is recommended for Level 3.1 Residential Treatment to address his current drug/alcohol use, resistance to change and effects of his use on his family and society. He would benefit from a cognitive behavioral based treatment program such as Dialectical Behavioral Therapy, Cognitive Self-Change or other therapies of the like to address his criminal thinking.

PSI p. 11.

Dr. Landers believed that Mr. Crawford was not demonstrating remorse or empathy for the victim. PSI p. 119. However, the PSI investigator reached a different conclusion. She wrote, “He took accountability for his actions in this

offense[.]” PSI p. 12. Further:

The defendant expressed what appeared to be a genuine sense of remorse for his actions in this crime. He held himself accountable and did not attempt to place blame on external circumstances or other people, nor did he make excuses for his behavior. He appears to be a very intelligent but deeply troubled man[.]

*Id.*

At sentencing, the state asked for a 35 year sentence based primarily on Dr. Landers’ evaluation. Sentencing Tr. p. 27, ln. 11-20. Defense counsel pointed out that Dr. Landers’ conclusions might be incorrect because following the alleged offense against a co-defendant, Mr. Crawford had been in general population without incident for 90 days, and further because those sharing his pod and the jailers reported to counsel that Mr. Crawford was quiet and respectful. Sentencing Tr. p. 16, ln. 17-p. 17, ln. 15.

The district court imposed the sentence requested by the state: twelve years fixed followed by 23 indeterminate. Sentencing Tr. p. 35, ln. 1-11; R 240-242.

*C. Issue Presented on Appeal*

Did the district court err in imposing an excessive sentence?

*D. Argument - The Sentence is Excessive*

This Court reviews sentences for an abuse of discretion making an independent review of the record focusing on the nature of the offense and the character of the offender. *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982); *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991). When doing so, the Court will consider the defendant’s entire

sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007), *citing State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). A sentence is reasonable to the extent it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. A sentence longer than necessary for these purposes is unreasonable and must be reversed. *Toohill, supra*.

Dr. Landers offered a very negative assessment of Mr. Crawford's acceptance of responsibility, amenability to treatment, and eventual rehabilitation. However, that dark view was not shared by the PSI investigator, the GAIN assessment, or those inmates and jailers who talked with defense counsel. In fact, Dr. Landers' dark forecast was proven incorrect when Mr. Crawford spend 90 days in population at the jail without incident. The sentence imposed was based upon the state's recommendation which was in turn based upon Dr. Landers' faulty assessment. Thus, the sentence imposed was not reasonable per *Toohill*.

Clearly, the 12-year fixed portion was agreed to by all parties and should remain. However, a shorter indeterminate period is appropriate. Mr. Crawford will either improve and the goals of protection of society, deterrence, rehabilitation, and retribution will be served by a shorter indeterminate term, or he will commit further felonies in prison. In the event of further felonies, he can be sentenced to successive sentences which will serve society's interests.



*E. Conclusion*

For these reasons, Mr. Crawford requests that the order imposing sentence be reversed and the case remanded for imposition of a shorter indeterminate term.

Respectfully submitted this 24<sup>th</sup> day of January, 2017.

/s/Deborah Whipple  
Deborah Whipple  
Attorney for Devin Crawford

**CERTIFICATE OF COMPLIANCE AND SERVICE**

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es):

Idaho State Attorney General  
Criminal Law Division  
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Dated and certified this 24<sup>th</sup> day of January, 2017.

/s/Deborah Whipple  
Deborah Whipple