

1-20-2017

State v. Richter Appellant's Brief Dckt. 44533

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Richter Appellant's Brief Dckt. 44533" (2017). *Not Reported*. 3606.
https://digitalcommons.law.uidaho.edu/not_reported/3606

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

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

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44533
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR 2016-2938
v.)	
)	
MARK HENRY RICHTER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Mark Richter was sentenced to a unified term of nine years, with two years fixed, after he pled guilty to, and was convicted of, possession of a controlled substance with intent to deliver. He contends the district court abused its discretion when it imposed this sentence upon him considering the mitigating factors that exist in this case.

Statement of the Facts & Course of Proceedings

While driving in Caldwell, Idaho, Mr. Richter was stopped for having a non-functioning taillight. (R., p.8.) The officer who effected the traffic stop frisked Mr. Richter and found a glass pipe and marijuana in his pocket. (R., p.8.) The officer

arrested Mr. Richter and found methamphetamine in a subsequent search of his vehicle. (R., p.8.) Following a preliminary hearing, Mr. Richter was charged by Information with possession of a controlled substance with intent to deliver; misdemeanor possession of a controlled substance; and misdemeanor possession of drug paraphernalia. (R., pp.18, 19-21.)

Mr. Richter entered into an agreement with the State pursuant to which he agreed to plead guilty to possession with intent to deliver, and the State agreed to dismiss the remaining counts, to not file a persistent violator enhancement, and to recommend a unified sentence not to exceed ten years, with three years fixed.¹ (Tr., p.8, Ls.13-23; R., pp.42; 58-59.) The district court accepted Mr. Richter's guilty plea and sentenced him to a unified term of nine years, with two years fixed. (Tr., p.32, Ls.6-17; p.86, L.19 – p.87, L.3; R., p.100.) The judgment was filed on September 12, 2016, and Mr. Richter filed a timely Notice of Appeal on September 20, 2016. (R., pp.113-14, 115-18.) Mr. Richter filed a motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for a reduction of sentence on November 14, 2016.² (Mot. to Aug., Ex. A.) The district court denied Mr. Richter's Rule 35 motion in an order dated January 4, 2017.³ (Mot. to Aug., Ex. B.)

¹ The State also agreed to dismiss charges pending in two other cases, CR 2016-0755, and CR 2016-07089. (R., pp.58-59.)

² The Clerk's Record does not contain copies of Mr. Richter's Rule 35 motion and the district court's order denying that motion. Simultaneously with the filing of this Brief, Mr. Richter is filing a Motion to Augment the record to include copies of these documents.

³ Mr. Richter does not challenge the district court's denial of his Rule 35 motion in light of *State v. Huffman*, 144 Idaho 201, 203 (2007).

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Richter to a unified term of nine years, with two years fixed, considering the mitigating factors that exist in this case?

ARGUMENT

Considering The Mitigating Factors That Exist In This Case, The District Court Abused Its Discretion When It Sentenced Mr. Richter To A Unified Term Of Nine Years, With Two Years Fixed

Mr. Richter asserts that, given any view of the facts, his unified sentence of nine years, with two years fixed, is excessive. Where, as here, the sentence imposed by the district court is within statutory limits, “the appellant bears the burden of demonstrating that it is a clear abuse of discretion.” *State v. Williams*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). “When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). “A sentence is reasonable if 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.” *Id.* (citation omitted). “When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, ‘having regard to the nature of the offense, the character of the offender and the protection of the public interest.’” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentence the district court imposed upon Mr. Richter was not reasonable considering the nature of his offense, his character, and the protection of the public interest. Mr. Richter acknowledged at the change of plea hearing that he had methamphetamine in his vehicle, which was intended for delivery. (Tr., p.31, Ls.13-17.)

This is certainly a serious offense, but it stems from Mr. Richter's addiction and in no way reflects a desire to commit harm. Mr. Richter was 51 years old at the time of the instant offense. (Conf. Exs., p.17.) He began using drugs at the age of 13 and has struggled with addiction throughout his life. (Conf. Exs., p.33.) Mr. Richter was drug-free for ten years, and "thought [he] had it under control" but, like many addicts, he suffered a relapse, and ended up "right back where [he] started." (Conf. Exs., p.34.) The nature of the offense, when considered in the context of Mr. Richter's addiction, did not warrant the sentence imposed.

The sentence imposed was also not warranted by Mr. Richter's character. Mr. Richter recognized he "messed up" and took "full responsibility for [his] actions." (Tr., p.81, Ls.7-10.) He explained to the district court that he was committed to working on his drug addiction and making better choices if given a chance at probation. He said:

I know there's many rules that I need to follow, and many things I need to change and will change in my life if I'm allowed probation. I will be open to flexibility of doing things differently in my life. And life can be a wonderful tool with better choices, make better results.

(Tr., p.82, Ls.19-25.) Mr. Richter explained that if released on probation, he would live with his adult son in Caldwell and would find work and support through his children and his church. (Tr., p.83, Ls.7-15.) The mental health examination report contained in the presentence materials reflect that Mr. Richter is highly motivated to change. (Conf. Exs., p.99.)

The sentence imposed upon Mr. Richter was also not necessary to protect the public interest. Mr. Richter successfully completed a rider program in 2006. (Tr., p.69, Ls.2-17; p.70, L.23 – p.71, L.6.) He was placed on probation in 2007, and was

discharged early from probation in April 2011, not having received any reports of violation. (Conf. Exs., p.25.) Counsel for Mr. Richter recommended Mr. Richter be placed on probation with a referral to drug court, or be sentenced to eight years, with four years fixed, and with a period of retained jurisdiction. (Tr., p.81, Ls.1-2; p.91, Ls.10-13.) Mr. Richter had a place he could live if placed on probation, and could have obtained employment working on countertops and cabinets for a home remodeling company. (Tr., p.91, L.23 – p.92, L.1.) Mr. Richter needed substance abuse treatment. (Conf. Exs., p.34.) He did not need a lengthy term of incarceration, without any recognition of the underlying cause of his criminal activity.

Considering the mitigating factors that exist in this case, and notwithstanding the aggravating factors, the district court abused its discretion when it sentenced Mr. Richter to a unified term of nine years, with two years fixed.

CONCLUSION

Mr. Richter respectfully requests that this Court reduce his sentence as it deems appropriate or remand this case to the district court for a new sentencing hearing.

DATED this 20th day of January, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of January, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

MARK HENRY RICHTER
INMATE #81029
ISCI
PO BOX 14
BOISE ID 83707

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas