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State v. Mier-Leon Appellant's Brief Dckt. 44540

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44540
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2015-17530
v.)	
)	
ROBERTO MIER-LEON,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Roberto Mier-Leon pled guilty to burglary, and was sentenced to a unified term of ten years, with two and one-half years fixed. Mr. Mier-Leon contends the district court abused its discretion when it imposed this sentence upon him considering the mitigating factors that exist in this case—most significantly, the fact that this was his first adult felony conviction, and that his criminal conduct stemmed from his resumption of drug use after twelve years of sobriety.

Statement of Facts & Course of Proceedings

On December 12, 2015, Mr. Mier-Leon entered Walmart with the specific intent to commit theft. (7/22/16 Tr., p.13, L.16 – p.14, L.14.) He stole a number of items, valued at less

than \$300. (Presentence Investigation Report (“PSI”), pp.125, 127.) Mr. Mier-Leon fled when confronted by two Walmart loss prevention employees. (5/23/16 Tr., p.130, Ls.3-18, p.168, Ls.7-18.) According to the State, Mr. Mier-Leon then opened an unlocked car and attempted to pull a woman out of the driver’s seat. (5/23/16 Tr., p.132, Ls.7-22; 5/24/16 Tr., p.210, Ls.12-17.) Mr. Mier-Leon was apprehended by a police officer after initially refusing the officer’s request to stop, and he was arrested. (State’s Exh. 19.)

Mr. Mier-Leon was charged by Information with attempted robbery; burglary; resisting, delaying, or obstructing a public officer; and petit theft. (R., pp.20-21, 26-27.) Following a two-day trial, a jury found Mr. Mier-Leon guilty of resisting, delaying, or obstructing a public officer, and petit theft. (R., pp.96-97; 5/24/16 Tr., p.319, Ls.3-7.) The jury was not able to reach a unanimous verdict on the two felonies—attempted robbery and burglary—and the district court declared a mistrial on those counts. (R., pp.89, 91; 5/24/16 Tr., p.319, Ls.18-22.)

Mr. Mier-Leon then entered into an agreement with the State pursuant to which he agreed to plead guilty to burglary and the State agreed to dismiss the attempted robbery charge, and recommend a unified sentence of ten years, with two years fixed, with the district court retaining jurisdiction. (R., pp.110-20.) The district court accepted Mr. Mier-Leon’s guilty plea. (7/22/16 Tr., p.15, Ls.5-6.) The district court sentenced Mr. Mier-Leon as follows: for burglary, a unified sentence of ten years, with two and one-half years fixed; for resisting, delaying, or obstructing a public officer, 365 days in Ada County Jail; and for petit theft, 365 days in Ada County Jail. (R., p.125.) The district court retained jurisdiction and ordered Mr. Mier-Leon to pay restitution to Walmart in the amount of \$296.97. (R., pp.122-23, 125.) The judgment of conviction was entered on September 12, 2016, and Mr. Mier-Leon filed a timely notice of appeal on September 28, 2016. (R., pp.124-28, 129-31.)

ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Mier-Leon a unified sentence of ten years, with two and one-half years fixed, for burglary?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Mr. Mier-Leon A Unified Sentence Of Ten Years, With Two And One-Half Years Fixed, For Burglary

Mr. Mier-Leon asserts that, given any view of the facts, his unified sentence of ten years, with two and one-half 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. Miller*, 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 imposed upon Mr. Mier-Leon for burglary was not reasonable given the nature of his offense, his character, and the protection of the public interest. Mr. Mier-Leon admitted he entered Walmart with the intent to steal, and ultimately stole items valued at less than \$300. (7/22/16 Tr., p.13, L.16 – p.14, L.14; PSI, pp.125, 127.) Mr. Mier-Leon fled from two loss prevention employees when they chased him down, and he refused to stop when requested to do so by a police officer. (5/23/16 Tr., p.130, Ls.3-18, p.168, Ls.7-18; State’s Exh.

19.) Mr. Mier-Leon did not have a weapon or make any threats to the Walmart employees or the police officer. This was a simple case of shoplifting that escalated due to an overaggressive response, and did not warrant a lengthy sentence of incarceration.

The sentence imposed upon Mr. Mier-Leon was also not warranted by his character. Mr. Mier-Leon was 32 years old at the time of the instant offense, and this was his first adult felony conviction. (PSI, pp.2, 9.) Mr. Mier-Leon had multiple criminal convictions as a juvenile, but successfully rehabilitated. (PSI, pp.4-9.) Unfortunately, after being crime-free and drug-free for most of his adult life, he resumed using drugs after his divorce, and was using methamphetamine daily at the time of the instant offense. (PSI, pp.14, 20, 21.) His criminal conduct stemmed from his drug use rather than any flaw in his character. Mr. Mier-Leon was in need of substance abuse treatment, not a long prison sentence that would take him away from his community and his four daughters. (PSI, p.12.)

The sentence imposed upon Mr. Mier-Leon was also not necessary to protect the public interest. Mr. Mier-Leon had successfully rehabilitated in the past, and there is every indication he could have done so again. His criminal acts stemmed from his drug use, which could have been addressed during supervised probation. At sentencing, counsel for Mr. Mier-Leon recommended that he be placed on probation. (9/9/16 Tr., p.23, Ls.3-8.) Considering the mitigating factors that exist in this case, and notwithstanding the aggravating factors, the district court abused its discretion when it did not place Mr. Mier-Leon on probation, but instead imposed a unified sentence of ten years, with two and one-half years fixed.

CONCLUSION

Mr. Mier-Leon respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that this case be remanded to the district court for a new sentencing hearing.

DATED this 12th day of June, 2017.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of June, 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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DISTRICT COURT JUDGE
E-MAILED BRIEF

D DAVID LORELLO
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas