

6-27-2017

State v. Maciel Appellant's Brief Dckt. 44732

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

Recommended Citation

"State v. Maciel Appellant's Brief Dckt. 44732" (2017). *Not Reported*. 3790.
https://digitalcommons.law.uidaho.edu/not_reported/3790

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

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
I.S.B. #4115
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. 44732 |
| Plaintiff-Respondent, |) | |
| |) | MADISON COUNTY NO. CR 2016-59 |
| v. |) | |
| |) | |
| MARIA MACIEL, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Pursuant to an agreement, Maria Maciel pled guilty to aggravated DUI, and the State joined her in recommending a suspended sentence and probation, with a year's confinement in the local jail, which would be inevitably followed by her deportation from the country. The district court declined to follow the joint recommendation, however, and sentenced Ms. Maciel to a prison term of twelve years, with two years fixed. On appeal, Ms. Maciel asserts that the district court abused its discretion by imposing a sentence that is excessive under the circumstances of her case.

Statement of the Facts & Course of Proceedings

On November 14, 2015, Ms. Maciel's car collided with an oncoming minivan, injuring its driver and his young son, (R., p.15; PSI, p.4),¹ and the State charged her with two counts of aggravated DUI (R., pp.44-45). Pursuant to the terms of a plea agreement, Ms. Maciel pled guilty² to one count (Plea.Tr., p.8, Ls.10-16); in exchange, the State dismissed the second count, and joined Ms. Maciel in her request for a suspended sentence and probation, with one year's confinement in the local jail.³ (Plea.Tr., p.30, L.14 – p.31, L.25.) At the time of her plea, the parties advised the court of Ms. Maciel's existing immigration hold, and that once Ms. Maciel was released from jail, she would be deported and return to Mexico. (Plea.Tr., p.6, L.10.)

At sentencing, the district court declined to follow the parties' joint recommendation. Instead of a fixed one-year jail term, with ensuing deportation, the court sentenced Ms. Maciel to prison for a fixed two-year term, followed by a ten-year indeterminate period. (Sen.Tr., p.85, Ls.5-10; R., p.207.) Ms. Maciel filed a Rule 35 motion for a reduction of her sentence (R., p.211), which the district court denied (R., p.235; R., p.35 Tr., p.105, pp.7-11).⁴ Ms. Maciel timely appealed. (R., pp.207, 213, 235.)

¹ Citations to the Presentence Investigation Report and attached materials will use the designation "PSI" and will include the page numbers associated with the 103-page electronic file containing those documents. Citations to the transcripts will use "Plea.Tr." for the plea hearing, held 10/12/16, and "Sen.Tr." for the sentencing hearing, held 11/21/2016.

² Ms. Maciel entered an *Alford* plea. (Tr., p.52, Ls.16-18.)

³ The district court did not agree to be bound by the parties' request for a suspended sentence but did promise not to impose a sentence having a fixed term greater than two years. (Plea.Tr., p.8, Ls.5-9.)

⁴ Ms. Maciel did not offer new or additional information that supports her Rule 35 motion, and he therefore does not challenge the denial of that motion on appeal. *See State v. Huffman*, 144 Idaho 201, 203 (2007).

ISSUE

Did the district court abuse its discretion by imposing a sentence that is excessive in view of the mitigating evidence in Ms. Maciel's case?

ARGUMENT

The District Court Abused Its Discretion By Sentencing Ms. Maciel To A Term That Is Excessive In View Of The Mitigating Evidence

A. Introduction

Ms. Maciel asserts that her twelve-year prison sentence, with two years fixed, is excessive in light of the mitigating evidence, and despite the aggravating evidence, in her case. She contends that the district court should have followed the parties' joint recommendation for a one-year fixed jail term, which would be followed by deportation.

B. Standards Of Review

When a defendant challenges her sentence as excessively harsh, 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. *State v. Miller*, 151 Idaho 825, 834 (2011). The Court reviews the district court's sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, "under any reasonable view of the facts." *State v Strand*, 137 Idaho 457 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). "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." *Miller*, 151 Idaho at 834. When reviewing the length of a sentence, the Court considers the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

C. The District Court Abused Its Discretion By Imposing A Sentence That Is Excessive Under The Circumstances

Ms. Maciel, 37, is a mother of two school-aged children. (PSI, p.2.) She suffers from depression and has for years. (PSI, pp.2, 11, 12) Her condition became more severe in 2005, after she had attempted to get her green card and instead, found herself being deported; she had lived in Idaho from the time she was eight. (PSI, p.11.) She lost interest in her church and her home, and began losing hope for the future; she even made plans to end her life. (PSI, pp.12, 77.) After her marriage ended in 2013, she started drinking on a regular basis, (PSI, p.12), but she had never before driven while drunk. (Sen.Tr., p.74, L.12.) However, when her ex-husband took custody of their children, leaving her alone and depressed, Ms. Maciel fell into deep despair. (Sen.Tr., p.73, L.22 – p.74, L.13.) It was under these most difficult of circumstances, causing Ms. Maciel’s judgment became so clouded, that she got behind the wheel of a vehicle while drunk. (*See* Sen.Tr., p.74, L.12, p.69, Ls.16-22.)⁵ While not excusing her criminal act, the circumstances that led to that act mitigate against harsh punishment. *State v. Nice*, 103 Idaho 89, 91 (1982).

Additionally, as noted in both the GAIN and mental health assessments (PSI, pp.97, 102), Ms. Maciel will continue to struggle with symptoms of her mental health and alcohol problems, and those reports both recommend that she have outpatient treatment. (PSI, pp.97, 102.) Ms. Maciel has recognize her need for treatment, and she made a commitment to the court and her victims’ family, that “I will take care [of] this alcoholism, be treated and never let this happen again. Because I think that’s what – the least I can do.” (Sen.Tr., p.70, Ls.3-5.) Indeed, Ms. Maciel had already taken steps to address her alcohol problem, successfully completing all

⁵ Ms. Maciel committed a second DUI offense during this period of her despair, in February of 2016. (PSI, p.16.)

twelve classes in the Addiction Recovery Program offered to her prior to sentencing. (PSI, p.99.)

While Ms. Maciel needs and wants to continue treatment, she does not need a two-to-twelve year prison term to receive that help. As noted, Ms. Maciel made a commitment to sobriety, and she plans to address her depression and alcohol abuse after she is deported. (PSI, p.19; Sen.Tr., p.70, Ls.2-5.) The record attests to Ms. Maciel's ability to overcome difficulties in her life, (PSI, pp.10-13), and as the court itself aptly noted, she is capable of doing hard things that she puts her mind to. (Sen.Tr., p.81, L.21 – p.82, L.3.)

Yet, in justifying a lengthy prison term, the district court concluded that Ms. Maciel would fail to get treatment if she were deported, making prison both necessary and “humane”:

If we were to just let her be deported in five months,⁶ she would basically be going back to Mexico and putting everyone in that country at risk. If she were to come back to the United States illegally, which appears likely because she's done it before and because she has young children living here, then she's essentially going to be unsupervised, which would greatly enhance the risk to this community or any other place that she came.

So I think it's not only more appropriate for protecting society, but frankly, *more humane* in giving this Defendant an opportunity for rehabilitation *if I sentence her to prison*.

(Sen.Tr., p.88, Ls.2-14) (Emphasis added).

The court's seemingly benevolent intentions are misplaced, however. As this Court is aware, the district court has no assurance that rehabilitation programs will be made available to Ms. Maciel in prison. However, given Ms. Maciel's tenacity, and her recent vow to tackle her alcohol problem, the district court's decision to deny her the opportunity to pursue treatment was unreasonable, and represents an abuse of discretion.

⁶ By the time of sentencing, Ms. Maciel had already served nearly seven months in jail. (R.p.32.)

Additionally, Ms. Maciel's lack of a criminal record serves as strong mitigation in this case. *Cook v. State*, 145 482, 489 (Ct. App. 2008). She has lived in this country from the time she was eight, and she has no prior felony convictions. (PSI, pp.5-15.)

Finally, Ms. Maciel's remorse and responsibility serve as mitigation in this case. *See State v. Coffin*, 146 Idaho 166, 177 (Ct. App. 2008). At sentencing, Ms. Maciel addressed Ms. Martinez, who is the wife and mother of the two victims, and candidly admitted her mistake, and she apologized for the expense and pain that her actions had caused the family. (Sen.Tr., p.68, Ls.15-21.) She also apologized to the family for having been in denial of her role, and for not taking responsibility, earlier. (Sen.Tr., p.68, Ls.15-17.)

In view of the mitigation evidence, and notwithstanding the aggravating evidence, Ms. Maciel's sentence is excessively harsh and represents an abuse of the court's sentencing discretion.

CONCLUSION

Ms. Maciel respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she requests that her case be remanded to the district court for a new sentencing hearing.

DATED this 27th day of June, 2017.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of June, 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:

MARIA MACIEL
INMATE #121681
PWCC
1451 FORE ROAD
POCATELLO ID 83205

GREGORY W MOELLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

R JAMES ARCHIBALD
ATTORNEY AT LAW
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas