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State v. Bosse Appellant's Reply Brief Dckt. 44773

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44773
)	
v.)	ADA COUNTY NO. CR-FE-2016-5327
)	
MICHAEL EARL BOSSE,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Michael Bosse pled guilty to one count of lewd conduct. He received a unified sentence of thirty years, with twelve years fixed. Mr. Bosse contends that his sentence is excessive in light of the mitigating factors that exist in his case.

This Reply Brief is necessary to address the State's assertion that Mr. Bosse's sentence was reasonable. (Respondent's Brief, p.2.)

Statement of the Facts & Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Bosse's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of thirty years, with twelve years fixed, upon Mr. Bosse following his plea of guilty to one count of lewd conduct?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Thirty Years, With Twelve Years Fixed, Upon Mr. Bosse Following His Plea Of Guilty To One Count Of Lewd Conduct

The State claims Mr. Bosse's sentence was reasonable (Respondent's Brief, p.2); however, the sentence imposed by the court was not necessary to accomplish the primary objective of protecting society. The incident(s) for which he was convicted occurred more than 13 years ago. Prior to this case, Mr. Bosse had no felony convictions. (PSI, pp.11-12.) Further, imprisoning Mr. Bosse for thirty years, with twelve years fixed, was not a reasonable sentence—it was not a sentence necessary to protect society where Mr. Bosse had admitted to the crime, had taken responsibility, and was willing to engage in sex offender treatment. (Tr., p.44, L.24 – p.46, L.9; PSI, pp.21, 50, 61.) He had been deemed only a moderate risk to reoffend and was found moderately amenable to treatment by the psychosexual evaluator. (PSI, pp.82, 89.) Where he had never before engaged in sexual offender treatment, Mr. Bosse had good potential for rehabilitation. (PSI, p.84.)

The State claims that this was “not just a one-time lapse in judgment because of alcohol” and thus Mr. Bosse's alcohol abuse is not mitigating (Respondent's Brief, p.3); however, alcohol

abuse does not have to cause a one-time incident in order to be mitigating information. *See State v. Osborn*, 102 Idaho 405, 414 n.5 (1981) (holding ingestion of drugs and alcohol, resulting in the defendant's impaired capacity to appreciate the criminality of his conduct, could be a mitigating circumstance). Mr. Bosse has maintained that his heavy alcohol abuse impaired his judgment during a lengthy time period spanning several years. (PSI, pp.21, 49-52, 55.) During this time, Mr. Bosse was having a difficult time in his life, particularly his relationship with his significant other. (PSI, pp.11, 50.) As a result, he was frequently drinking heavily, and was intoxicated during each incident. (PSI, pp.11, 49-52, 55).

Based on this additional clarification concerning his risk to the community, as well as the mitigating factors discussed in Mr. Bosse's Appellant's Brief, Mr. Bosse asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his lack of any prior felony convictions, recognition of his alcohol abuse problems, supportive family, military service, good work history, and remorse, it would have imposed a less severe sentence.

CONCLUSION

Mr. Bosse 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 12th day of December, 2017.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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OROFINO ID 83544

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DISTRICT COURT JUDGE
E-MAILED BRIEF

MICHAEL DEANGELO
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas