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State v. Garcia Appellant's Brief Dckt. 44812

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44812, NO. 44813 & NO. 44814
)	
v.)	BANNOCK COUNTY NO. CR 2010-5635,
)	NO. CR 2013-15623 & NO. CR 2015-6599
RAMON S. GARCIA,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In these consolidated appeals, Ramon S. Garcia challenges the district court's sentencing decisions in three cases: a 2010 DUI case (44812); stalking his ex-wife in 2013; (44813); and a 2015 DUI case (44814). Mr. Garcia was on probation in the 2010 and 2013 cases when the State charged him with a new DUI in 2015.

The court revoked Mr. Garcia's probation in the 2010 and 2013 cases, ordering concurrent sentences of seven years, with three years fixed; and five years, with one year fixed, respectively. In the 2015 case, the court imposed a concurrent term of seven years, with three years fixed. The court ordered prison sentences in all three cases without retaining jurisdiction.

On appeal, Mr. Garcia contends that the district court abused its discretion in all three cases by refusing to place him on probation and by declining to retain jurisdiction. He additionally challenges the district court's denial of his Rule 35 motion, in his 2015 DUI case, as an abuse of discretion.

Statement of the Facts and Course of Proceedings

In 2010, Mr. Garcia was charged with felony DUI; he pled guilty and received a seven-year sentence, with three years fixed, and the district court retained jurisdiction. (R., p.154.) After Mr. Garcia successfully completing a rider program, the court placed him on probation. (R., p.169.)

In 2013, Mr. Garcia was charged with stalking his ex-wife. (R., p.203.) He admitted violating his probation in the 2010 case and pled guilty to the new charge. (R., pp.224, 523.) Following a consolidated disposition and sentencing hearing, the district court revoked probation in the 2010 case and executed Mr. Garcia's previously-suspended sentence (R., p.226); in the 2013 case, the court imposed a consecutive five-year sentence, with one year fixed (R., p.523), retaining jurisdiction in both cases. (R., pp.226, 523.)

Mr. Garcia successfully completed another rider, and in March of 2015, he was placed on probation in both his 2010 and 2013 cases. (R., p.532.) The following month, on April 25, 2015, Mr. Garcia was stopped for speeding; he had been drinking and was ultimately arrested and charged with a new DUI. (R., p.668; PSI, p.151.) The State also filed probation violation reports in his 2010 and 2013 cases.

Pursuant to an agreement, Mr. Garcia pled guilty to the 2015 DUI charge (Tr., p.17, Ls.17-19), and he admitted violating his probation in his 2010 and 2013 cases (Tr., p.17, Ls.17-

19). In exchange, the State agreed to dismiss a pending charge in a different, unrelated case.¹ (Tr., p.9, L.22 – p.10, L.14; Tr., p.18, L.6. – p.19, L.22; Tr., p.19, L.23 – p.21, L.21.) The parties made no agreement regarding sentencing. (Tr., p.13, Ls.9-5.)

At the combined disposition and sentencing hearing, Mr. Garcia asked the court to place him in a structured probation program, noting his successful performances in his earlier rider programs; he also agreed to arrange for and participate in any inpatient treatment program that the court saw fit to order. (Tr., p.31, Ls.11-18.) Alternatively, he asked the court to retain jurisdiction. (Tr., p.31, Ls.18-22.)

The district court noted Mr. Garcia's current ineligibility for the drug court program (Tr., p.37, Ls.23-25), and decided he was not a viable candidate for continued probation (Tr., p.39, Ls.5-7). The court revoked Mr. Garcia's probation in the 2010 and 2013 cases, and ordered that he serve his sentences in prison "as punishment and to deter you." (Tr., p.38, Ls.18-24; R., p.322.) However, the court modified the sentences to run concurrently, instead of consecutively as originally ordered. (R., pp.322, 625; Tr., p.39, Ls.14-19.)

In the 2015 case, the court imposed a concurrent prison term of seven years, with three years fixed, without retaining jurisdiction. (R., p.802; Tr., p.39, Ls.19-21.)

Mr. Garcia filed a motion pursuant to Idaho Criminal Rule 35² that was timely as to his sentence in the 2015 case, *see* I.C.R. 35(b), and he offered additional information at his hearing. (Aug., p.1; Supp.Tr., 5/8/17, p.8, Ls.13–21.) The district court denied his motion. (Aug., p.3.)

¹ There appears to have been a pending, amended charge of domestic battery (Tr., p.10, Ls.1-6) and a potential violation of a no contact order (Tr., p.21, Ls.16-21).

² A copy of the written Rule 35 motion that was filed in the 2015 case, along a copy of the district court's Minute Entry & Order denying the motion are being added to the record, via appellant's Motion to Augment the Record, filed contemporaneously with this Appellant's Brief.

Mr. Garcia filed timely notices of appeal from the judgment in his 2015 case (R., p.806), and from the orders revoking probation in his 2010 and 2013 cases (R., pp.327, 630). This Court then consolidated these cases on appeal. (See Order to Consolidate Appeals For All Purposes, dated February 17, 2017.)

Mr. Garcia contends on appeal that the district court abused its discretion in all three of his cases by refusing to place him on probation and declining to retain jurisdiction, and by denying his Rule 35 motion in his 2015 case.

ISSUES

- I. Did the district court abuse its discretion when it refused to place Mr. Garcia on probation, and instead ordered that he serve his sentences in prison, without retaining jurisdiction?
- II. Did the district court abuse its discretion by denying Mr. Garcia's Rule 35 Motion in his 2015 case, in light of the additional information he presented?

ARGUMENT

I.

Given Mr. Garcia's Alcohol Addiction And Past Success In Structured Programs, The District Court Abused Its Discretion By Refusing To Place Mr. Garcia On Probation Or To Retain Jurisdiction

A. Introduction

Mr. Garcia contends that the district court abused its discretion when it declined to grant or continue probation in his cases, and instead sent him to prison, without retaining jurisdiction. He contends that the court's decisions were unreasonable, given his history of alcohol addiction, his positive attitude and willingness to participate in much-needed treatment, and his ability to perform in a structured program.

B. Standard Of Review

Where a defendant challenges his 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 828, 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.

The decision whether to grant or continue probation, instead of requiring confinement, is also a matter within the trial court's discretion. *Toohill*, 103 Idaho at 568. "The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision." *State v. Mummert*, 98 Idaho 452, 454 (1977). "In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society." *Upton*, 127 Idaho at 275. A trial court's decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *State v. Beckett*, 122 Idaho 324, 325 (Ct. App. 1992).

The district court also has the discretion to retain jurisdiction. *See* I.C. § 19-2601(4). The primary purpose of retaining jurisdiction after imposing a sentence is to afford the trial court additional time for evaluation of the defendant's rehabilitation potential and suitability for probation. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). The sentencing court's refusal to

retain jurisdiction is not an abuse of discretion if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *Id.* at 677.

C. The District Court Abused Its Discretion By Imposing An Excessive Sentence In His 2015 DUI Case, And By Refusing To Allow Probation In These Three Cases

Mr. Garcia was twenty-nine at the time of sentencing. (PSI, p.177.) His difficult childhood, and history with alcohol addiction and potential for overcoming that addiction, are strong mitigating factors in this case. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008); *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). Mr. Garcia grew up surrounded by drugs and alcohol, and as a child he suffered physical and mental abuse. (PSI, pp.11, 12.) His mother used cocaine, the step-father who raised him used methamphetamine, and both of them abused alcohol. (PSI, p.12.)³ Mr. Garcia started abusing alcohol when he was just eight years old, and he became a heavy drinker by the time he was fifteen. (PSI, p.22.) He was raised thinking “that’s what normal people did.” (PSI, p.22).

Mr. Garcia embraced the rider programs offered to him in the past, successfully completing the traditional program, twice: first in 2011 and again, in March of 2015, where his behavior had been “commendable.” (PSI, p.133; Tr., p.34, L.23 – p.35, L.2.) But he has struggled with aftercare, lacking structured relapse prevention plans. (PSI, p.176.) As he told court at sentencing, “What I have noticed is, I do excellent on a Rider because of the structure, but then there is no structure after the aftercare.” (Tr., p.35, Ls.4-6.)

He was dismayed by the ease of his most recent relapse, after eleven months’ sobriety, and he is aware of the dire consequences should he not gain control of his alcohol problem.

³ Citations to the Presentence Investigation Report and attached materials will use the designation “PSI” and will include the page numbers associated with the 215-page electronic file containing those documents.

(PSI, pp.130, 152; Tr., p.29, Ls.2-4.) As he explained to the court, “Your honor, for the first time in my life, I can say that I want and need recovery in order to survive.” (Tr., p.34, Ls.7-9.)

Although recovery thus far has been elusive for Mr. Garcia, he is highly motivated to get his alcohol problem under control. (PSI, p.188; Tr., p.29, Ls.2-6.) He pleaded with the district court for another chance at probation, asking for a structured program such as Wood Court, in Idaho Falls (Tr., p.29, L.11), or Victory House⁴ in Twin Falls (Tr., p.29, Ls.13-19), or any other treatment that the court deemed appropriate. (Tr., p.35, Ls.12-16.) He told the court, “I want to have that structure that we get on a Rider, but in the community to get those stressors in front of me, to be able to apply them and work through them.” (Tr., p.35, Ls.12-16.) Mr. Garcia’s past successes in program completion, along with his attitude and increasing awareness that his life depends on his recovery, illustrate his strong rehabilitation potential.

Mr. Garcia’s mental health must also be considered as a sentencing factor. *See* Idaho Code § 19-2523; *Hollon v. State*, 132 Idaho 573, 581 (1999). His most recent diagnosis includes Bipolar I Disorder, and he has earlier diagnoses of Borderline Personality Disorder and Alcohol Dependence. (PSI, pp.176.) According to his recent GAIN assessment, he meets the criteria for mental health treatment, which he can obtain in the community while on probation. (PSI, pp.176, 195, 201.) Without that treatment, he will continue to struggle with symptoms and his problems my increase. (PSI, pp.176, 195, 201.)

Finally, Mr. Garcia’s remorse and responsibility for his actions serve as mitigation that favors probation. *See Coffin*, 146 Idaho at 171. At sentencing, he candidly admitted his relapse

⁴ The treatment center is actually called Victory Home. *See* www.victoryhomeid.com (webpage lasted visited July 25, 2017.)

and failure while on probation and he accepted “full responsibility for my behavior that has got me in front of you today.” (Tr., p.34, Ls.5-7.)

Mr. Garcia submits that, in light of these mitigating factors, and despite the aggravating ones, the district court abused its discretion by imposing an excessive sentence in his 2015 DUI case, and in all three of his cases, by declining to place him on probation, or retain jurisdiction.

II.

The District Court’s Denial Of Mr. Garcia’s Rule 35 Motion Represents An Abuse Of Discretion In Light Of The Additional Information Presented

Mr. Garcia also challenges the district court’s denial of his Rule 35 motion in his 2015 DUI case, asserting that the court abused its discretion by denying his motion in light of the additional information he presented.

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.*

At his Rule 35 hearing, Mr. Garcia informed the court that he was participating, and progressing, in the MRT (Moral Reconciliation Therapy) program offered at the jail. (Supp.Tr., 5/8/2017.) This information provided the district court with further proof of his good attitude, motivation, and commitment to recovery. Mr. Garcia contends that, in light of this additional information, the district court’s refusal to retain jurisdiction and allow him to complete

another rider, and the possibility for probation, was unreasonable, representing an abuse of discretion.

CONCLUSION

Mr. Garcia respectfully asks this Court vacate to his sentence in the 2015 DUI case and the orders revoking his probation in his 2010 and 2013 cases, and to remand all three cases to the district court with directions that the district court place him on probation, or alternatively, retain jurisdiction.

DATED this 19th day of September, 2017.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of September, 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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INMATE #97475
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SHERIFF'S OFFICE
145 MAIN STREET
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ROBERT C NAFTZ
DISTRICT COURT JUDGE
E-MAILED BRIEF

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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas