

7-20-2017

State v. Kyhl Appellant's Brief Dckt. 44844

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

Recommended Citation

"State v. Kyhl Appellant's Brief Dckt. 44844" (2017). *Not Reported*. 3861.
https://digitalcommons.law.uidaho.edu/not_reported/3861

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

ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender
I.S.B. #7259
322 E. Front Street, Suite 570
Boise, Idaho 83702
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 44844 & 44845
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NOS. CR 2016-19550 &
v.)	CR 2016-21465
)	
BRYAN SCOTT KYHL,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Bryan Scott Kyhl appeals from the district court's Judgment and Sentence entered in CR 2016-19550 (Supreme Court Docket Number 44844) and CR 2016-21465 (Supreme Court Docket Number 44845). Mr. Kyhl was sentenced to unified sentences of eight years, with two and one-half years fixed, for his two grand theft convictions. He asserts that the district court abused its discretion in sentencing him to excessive sentences without giving proper weight and consideration to the mitigating factors present in his cases. Furthermore, Mr. Kyhl asserts that the district court abused its discretion by denying his Rule 35 motions for a reduction of sentence.

Statement of the Facts & Course of Proceedings

On November 4, 2016, an Information was filed in CR 2016-19550 (Supreme Court Docket Number 44844) charging Mr. Kyhl with burglary, grand theft, and a persistent violator enhancement. (R., pp.90-92.) On November 28, 2016, an Information was filed in CR 2016-21465 (Supreme Court Docket Number 44845) charging Mr. Kyhl with grand theft by possession of stolen property. (R., pp.167-168.) Pursuant to a combined plea agreement, Mr. Kyhl entered guilty pleas to one charge of grand theft in each case. (R., pp.97-99, 169-171.) The remaining charges in CR 2016-19550 (Supreme Court Docket Number 44844) were dismissed. (R., p.105.)

At the sentencing hearing, the State recommended unified sentences of ten years, with four years fixed. (Tr. 1/19/17, p.17, Ls.1-3.) Defense counsel requested that the district court either impose a period of probation or, alternatively, retain jurisdiction. (Tr. 1/19/17, p.20, Ls.16-19.) The district court imposed a unified sentence of eight years, with two and one-half years fixed, in each case. (R., pp.116-117, 183-184.) Mr. Kyhl filed Notices of Appeal timely from the district court's Judgment and Sentence in each case. (R., pp.120-122, 187-189.) He also filed timely Motions for Reconsideration of Sentence Pursuant to I.C.R. 35. (R., pp.118, 185.) Following a hearing on the motions, they were denied. (R., pp.134-135, 201-202.)

ISSUES

1. Did the district court abuse its discretion when it imposed, upon Mr. Kyhl, unified sentences of eight years, with two and one-half years fixed, following his pleas of guilty to two grand theft charges?
2. Did the district court abuse its discretion when it denied Mr. Kyhl's Idaho Criminal Rule 35 Motions for a Reduction of Sentence?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed, Upon Mr. Kyhl, A Unified Sentence Of Eight Years, With Two And One-Half Years Fixed, Following His Pleas Of Guilty To Two Grand Theft Charges

Mr. Kyhl asserts that, given any view of the facts, his unified sentences of eight years, with two and one-half years fixed, are excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, 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. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Kyhl does not allege that his sentences exceed the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Kyhl must show that in light of the governing criteria, the sentences were excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)). Mr. Kyhl asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

Specifically, Mr. Kyhl asserts that the district court failed to give proper consideration to his admitted substance abuse problem and desire for treatment. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982).

Mr. Kyhl began using alcohol and illegal substances at the age of 13 and started using methamphetamine at the age of 22. (PSI, pp.14, 21.)¹ His drug of choice is methamphetamine. (PSI, p.14.) He reported that he typically used daily. (PSI, p.14.) Mr. Kyhl recognizes that he has a substance abuse issue and feels that treatment is necessary. (PSI, p.14.) He is now “about 100% ready to remain abstinent” and noted that his kids are his primary motivation. (PSI, p.26.) He was diagnosed with Stimulant Use Disorder – Amphetamine Type, Severe – In a Controlled Environment and Alcohol Use Disorder – Provisional. (PSI, p.21.) It was recommended that he participate in Level I Outpatient Substance Abuse Treatment. (PSI, pp.14, 31.)

¹ For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as “PSI” and referenced pages will correspond with the electronic page numbers contained in this file.

Furthermore, in *State v. Shideler*, 103 Idaho 593, 594 (1982), the Idaho Supreme Court noted that family and friend support were factors that should be considered in the Court's decision as to what is an appropriate sentence. *Id.* Mr. Kyhl has the support of his friends and family. He supplied the district court with several letters of support noting that he was loving, caring, a hard worker, and deserved an opportunity to complete substance abuse treatment. (PSI, pp.69-72.)

Additionally, Mr. Kyhl has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, "In light of Alberts' expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character." *Id.* 121 Idaho at 209. Mr. Kyhl has expressed his remorse for committing the instant offense stating, "I just want to apologize for all the troubles and that issues that I've caused the courts and the investigating team and my family." (Tr. 1/19/17, p.20, Ls.23-25.)

Based upon the above mitigating factors, Mr. Kyhl asserts that the district court abused its discretion by imposing excessive sentences upon him. He asserts that had the district court properly considered his substance abuse, desire for continued treatment, friend and family support, and remorse, it would have crafted a less severe sentence.

II.

The District Court Abused Its Discretion When It Denied Mr. Kyhl's Rule 35 Motions For A Reduction Of Sentence

Mr. Kyhl asserts that the district court failed to give proper weight and consideration to the additional information provided in support of his Rule 35 motion and the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

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) (citing *State v. Forde*, 113 Idaho 21 (Ct. App. 1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* (citing *Lopez*, 106 Idaho at 450). “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.* (citing *State v. Hernandez*, 121 Idaho 114 (Ct. App. 1991)). “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

Mr. Kyhl supplied additional information to the district court during his testimony at the Rule 35 hearing. He testified that if he were granted probation he could live with his mother in Spokane, that he believed he would be able to secure employment easily, he was willing to participate in a retained jurisdiction, and if he was put on probation he would be willing to participate in substance abuse treatment. (Tr. 3/3/17, p.8, L.16 – p.9, L.18.)

Mr. Kyhl asserts that in light of the above additional information and the mitigating factors mentioned in section I, which need not be repeated, but are incorporated by reference, the district court abused its discretion in denying his Rule 35 motions.

CONCLUSION

Mr. Kyhl respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his cases be remanded to the district court for new sentencing hearings. Alternatively, he requests that the orders denying his Rule 35 motions be vacated and the cases remanded to the district court for further proceedings.

DATED this 20th day of July, 2017.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of July, 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:

BRYAN SCOTT KYHL
INMATE #69652
ISCC
PO BOX 70010
BOISE ID 83707

RICH CHRISTENSEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

CHRISTOPHER D SCHWARTZ
KOOTENAI COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas