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State v. Armstrong Appellant's Brief Dckt. 44929

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44929
)	
v.)	MINIDOKA COUNTY NO. CR 2016-154
)	
BRADLEY ARMSTRONG,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Bradley Armstrong was sentenced to a unified term of ten years, with six years fixed, after he pled guilty to felony driving under the influence (DUI). He contends the district court abused its discretion when it imposed this sentence upon him considering, most importantly, the nature of his offense and the fact that the State recommended a significantly shorter sentence.

Statement of Facts and Course of Proceedings

On July 16, 2016, Mr. Armstrong was stopped while driving a vehicle at an excessive rate of speed, without a valid driver's license, and with an open can of beer in his vehicle. (R., pp.12-16; Presentence Investigation Report (PSI), p.4.) His breath alcohol level was

measured at .164, .143, and .146 and he was arrested for DUI. (R., pp.12-16.) Mr. Armstrong was charged by Information with felony DUI, driving without privileges, and possession of an open container of alcohol in a motor vehicle. (R., pp.28-31.) He was charged by Information Part II with having two prior DUI convictions within ten years. (R., pp.32-34.) Mr. Armstrong entered into an agreement with the State pursuant to which he agreed to plead guilty to felony DUI, and the State agreed to dismiss the remaining counts and recommend a unified sentence of six years, with three years fixed, and with a period of retained jurisdiction. (R., pp.42, 45-47) Mr. Armstrong pled guilty and the district court accepted his plea. (R., p.43.) The district court sentenced Mr. Armstrong to a unified term of ten years, with six years fixed, and with a period of retained jurisdiction. (R., p.59.) The judgment of conviction and order retaining jurisdiction was entered on June 6, 2016. (R., pp.60-63.)

On July 29, 2016, Mr. Armstrong filed a motion pursuant to Idaho Criminal Rule 35 (“Rule 35”) to reconsider sentence. (R., pp.68-69.) The district court denied the motion without a hearing. (R., pp.70-74.) Mr. Armstrong successfully completed a rider and the North Idaho Correctional Institution (NICI) recommended that the district court place Mr. Armstrong on probation. (PSI, pp.99-107.) Following a hearing, the district court suspended Mr. Armstrong’s sentence and placed him on probation for a period of ten years. (R., pp.75-76.) The order granting probation was entered on January 30, 2017. (R., pp.77-79.) Mr. Armstrong filed a timely Notice of Appeal on March 13, 2017. (R., pp.80-82.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Armstrong to a unified term of ten years, with six years fixed, for felony DUI?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Armstrong To A Unified Term Of Ten Years, With Six Years Fixed, For Felony DUI

Mr. Armstrong asserts that, given any view of the facts, his underlying unified sentence of ten years, with six years fixed, was 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. Armstrong was not reasonable considering, most importantly, the nature of his offense and the fact that the State recommended a significantly shorter sentence. Mr. Armstrong was stopped for driving over the speed limit, but it does not appear that he presented a significant danger to himself, other drivers, or the officer who stopped his vehicle. (PSI, p.3.) Mr. Armstrong was not violent or disrespectful to the officer in any way. (PSI, p.3.) He admitted drinking alcohol, attempted to complete the field sobriety tests, and took

a breath alcohol test, which determined his breath alcohol level was above the legal limit. (PSI, p.3.) Mr. Armstrong was employed as an operator/laborer prior to being arrested for the instant offense, and hopes to be able to return to this employer as soon as possible. (PSI, pp.12-13, 105.)

Mr. Armstrong was 44 years old at the time of the instant offense, and has been struggling with alcohol addiction since he began drinking at age 14. (PSI, pp.15, 19.) He has participated in alcohol treatment in the past, and recognizes he has to stop drinking. (PSI, pp.15, 16.) To complicate matters, Mr. Armstrong also struggles with mental illness and has been diagnosed with depression, anxiety, PTSD, and panic issues. (PSI, p.14.) He also has a history of suicide ideation and attempts. (PSI, p.14.) Mr. Armstrong has been admitted for inpatient mental health treatment on four occasions—most recently, in 2016. (PSI, p.14.) During the presentence investigation, Mr. Armstrong identified the most important thing in his life as his 15-year-old daughter, and stated he would like to restore his relationship with her. (PSI, pp.17, 20.)

The presentence investigator recommended high intensity residential treatment, and it is clear such treatment is necessary. (PSI, p.18.) What is not necessary is a lengthy term of incarceration. The prosecutor recommended a unified sentence of six years, with three years fixed, and a period of retained jurisdiction. (Tr., p.5, Ls.18-21.) This would have been a reasonable sentence, in light of Mr. Armstrong's character and the need to protect the public interest. Considering the mitigating factors that exist in this case, and notwithstanding the aggravating factors, the district court abused its discretion when it did not follow this recommendation, and instead sentenced Mr. Armstrong to a unified term of ten years (the maximum) with six years fixed.

CONCLUSION

Mr. Armstrong respectfully requests that the Court reduce his underlying sentence as it deems appropriate. Alternatively, he requests that the Court vacate his underlying sentence and remand this case to the district court for a new sentencing hearing.

DATED this 31st day of July, 2017.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of July, 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:

BRADLEY ARMSTRONG
86 PELICAN DRIVE
RUPERT ID 83350

JONATHAN BRODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas