12-21-2017

State v. Pollard Appellant's Brief Dckt. 44936

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44936
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR 2016-10557
v.	)	
	)	
MICHAEL P. POLLARD,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After a jury trial, Michael P. Pollard was found guilty of one count of domestic battery and one count of petit theft. The district court imposed a sentence of ten years, with five years fixed for the domestic battery charge. On appeal, Mr. Pollard asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In June of 2016, Caldwell police responded to a report of a battery. (PSI, p.3.)[1] The alleged victim, Dana White, told Officer Hutton that she was arguing with Mr. Pollard when he

[1] All citations to the PSI and its attachments refer to the 60-page electronic document.

destroyed one of her cell phones, and punched her several times. (PSI, p.3.) She also reported that Mr. Pollard stole her backpack when he left her apartment. (PSI, p.3.) Mr. Pollard was later arrested and charged with one count of domestic battery with traumatic injury, one count of intentional destruction of a telecommunication line or instrument, and one count of petit theft. (PSI, p.3; R., pp.24-26.) Mr. Pollard proceeded to trial and was found guilty of domestic battery and petit theft but acquitted on the second count. (PSI, p.3; R., pp.104-05.)

At the sentencing hearing, the State noted that Mr. Pollard was on probation when this offense occurred, and his sentence in the prior case had been imposed; it recommended that the district court impose a concurrent sentence of ten years, with five years fixed. (2/14/17 Tr., p.365, L.25 – p.367, L.4.) Mr. Pollard's counsel noted that Mr. Pollard did not have any probation violations other than this offense. (2/14/17 Tr., p.367, Ls.13-16.) She did not request a specific underlying sentence but asked the district court to place Mr. Pollard on probation, or, in the alternative, retain jurisdiction. (2/14/17 Tr., p.367, L.17 – p.368, L.17.) The district court imposed a sentence of ten years, with five years fixed, to run concurrent to his sentence in the prior case.[2] (2/14/17 Tr., p.368, L.23 – p.369, L.1; R., p.117.) Mr. Pollard filed a notice of appeal timely from the judgment of conviction. (R., pp.124-26.)

ISSUE

Did the district court abuse its discretion when it imposed a sentence of ten years, with five years fixed, following Mr. Pollard's conviction for domestic battery?

[2] The district court imposed a sentence of six months, with credit for time served, on the petit theft charge. (2/14/17 Tr., p.369, Ls.14-17.)

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Sentence Of Ten Years, With Five Years Fixed, Following Mr. Pollard's Conviction For Domestic Battery

Based on the facts of this case, Mr. Pollard's sentence of ten years, with five years fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, the appellate court will conduct an independent examination 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).

Independent appellate sentencing examinations are based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). In such a review, "the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason." *State v. Hedger*, 115 Idaho 598, 600 (1989) (citation omitted). When a sentence is unreasonable based on the facts of the case, it is an abuse of discretion. *State v. Nice*, 103 Idaho 89, 90 (1982). Unless it appears that confinement was necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case," a sentence is unreasonable. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). Accordingly, if the sentence is excessive, "under any reasonable view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Mr. Pollard's sentence is excessive under any reasonable view of the facts. First, Mr. Pollard has significant mental health issues. The mental health examination report prepared for his case revealed diagnoses of a major depressive disorder, generalized anxiety disorder, post-traumatic stress disorder, attention-deficit/hyperactivity disorder, and a provisional diagnosis of acute stress disorder. (PSI, pp.49, 58.) The mental health report also revealed that Mr. Pollard was experiencing suicidal ideations. (PSI, pp.22, 58.) Mr. Pollard has also been diagnosed with a severe alcohol use disorder and a severe cannabis use disorder. (PSI, pp.49, 58.) A defendant's mental health and substance abuse problems should be considered as mitigating information. *State v. Odiaga*, 125 Idaho 384, 391 (1994); *State v. Nice*, 103 Idaho 89, 91 (1982) (reducing defendant's sentence, in part, because "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime [the defendant had been drinking at the time of the offense] and the suggested alternatives for treating the problem").

Mr. Pollard was also gainfully employed when this offense occurred. (PSI, p.15.) This is another recognized mitigating sentencing factor. *State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing sentence of defendant who, *inter alia*, had been steadily employed, enjoyed his work, and expressed a desire to advance within his company). Additionally, Mr. Pollard disclosed that he had a stable place to live if he was to be released. He said he has a good relationship with Nellie Rheuby who lives in Caldwell, and she said he could live with her when he was released. (PSI, p.13.) Regarding Mr. Pollard, Ms. Rheuby said, "He is like a grandson/son to us and does a lot of help around here. I could use him." (PSI, p.13.) Finally, Mr. Pollard has a positive relationship with his siblings, and with his son; Mr. Pollard said that, upon his release, his son

will move to Idaho. (PSI, pp.11, 14.) The support of friends and family should also be considered as mitigating information. *State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991).

In light of the mitigating information in this case, Mr. Pollard's sentence was excessive because it was not necessary to accomplish the goals of sentencing outlined in *Toohill*. A shorter sentence would accomplish those goals. The district court did not adequately consider this option or the mitigating information in this case. Therefore, it abused its discretion because it did not reach its decision through an exercise of reason or act consistently with the legal standards applicable to its choices.

CONCLUSION

Mr. Pollard respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 21st day of December, 2017.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of December, 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:

MICHAEL P POLLARD
INMATE #102222
ICIO
381 HOSPITAL DRIVE
OROFINO ID 83544

CHRISTOPHER S NYE
DISTRICT COURT JUDGE
E-MAILED BRIEF

KRISTA HOWARD
CANYON COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas