

10-19-2017

## State v. Osborn Appellant's Brief Dckt. 44964

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44964
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2016-4203
v.	)	
	)	
MICHAEL ROBERT OSBORN,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Michael Osborn pled guilty to grand theft and burglary and was sentenced to a total unified term of 24 years, with 17 years fixed, set to run concurrently with a total unified sentence of 36 years, with 17 years fixed, imposed in a separate case.<sup>1</sup> Mr. Osborn asserts that the district court abused its discretion by imposing an excessive sentence, and by denying his later filed Rule 35 motion, in light of the mitigating factors present in his case.

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<sup>1</sup> Mr. Osborn's other case, Ada County case no. 2016-24383, is the subject of the appeal filed in Supreme Court docket no. 44965.

## Statement of the Facts & Course of Proceedings

Michael Osborn has a drug problem. The day after using heroin and methamphetamine with some friends, and desperate for money, Mr. Osborn walked into a bank and asked the teller to give him the money in her drawer stating, “[n]o marked. No trap.” (Tr. Prelim, p.3, L.23 – p.7, L.24.) The teller gave Mr. Osborn the money in her drawer, and Mr. Osborn was arrested the next day. (Tr. Prelim, p.8, L.8 – p.16, L.24.) The State filed a complaint alleging Mr. Osborn committed the crime of robbery. (R., pp.11-12.) A preliminary hearing was held, Mr. Osborn was bound over into the district court, and an Information was filed charging Mr. Osborn with robbery. (R., pp.31-36.) The State later filed an Information Part II alleging Mr. Osborn is subject to a persistent violator enhancement. (R., pp.49-50.)

Pursuant to an agreement with the State, Mr. Osborn pled guilty to an amended information charging him with grand theft and burglary; in exchange, the State agreed to dismiss the persistent violator enhancement, and agreed to recommend a total unified sentence of 24 years, with 20 years fixed, to run concurrently with the sentence to be imposed in Ada County case no. 2016-24383,<sup>2</sup> and concurrently with a sentence previously imposed upon Mr. Osborn in a third case. (R., pp.147-160; Tr., p.5, L.3 – p.18, L.25.) Mr. Osborn also filed a timely Rule 35 motion asking the district court to reduce the fixed portion of his sentence to 10 years. (R., pp.189-194.) Mr. Osborn supplemented his Rule 35 motion with an additional letter in

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<sup>2</sup> Pursuant to the same agreement, Mr. Osborn pled guilty to the charges alleged in an Amended Information filed in Ada County case no. 2016-24383 and the State agreed to recommend a unified sentence of 36 years, with 20 years fixed, in that case. (R., pp.158-160; Tr., p.7, Ls.15-20.)

support. (Aug., pp.1-4.)<sup>3</sup> Ultimately, the district court denied Mr. Osborn's Rule 35 motion. (Aug., pp.5-10.)

### ISSUES

- I. Did the district court abuse its discretion when it imposed upon Mr. Osborn a total unified sentence of 24 years, with 17 years fixed, in light of the mitigating factors that exist in this case?
- II. Did the district court abuse its discretion when it denied Mr. Osborn's Idaho Criminal Rule 35 Motion for a Reduction of Sentence in light of the additional mitigating information offered in support of the motion?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Imposed Upon Mr. Osborn A Total Unified Sentence Of 24 Years, With 17 Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Osborn asserts that, given any view of the facts, his total unified sentence of 24 years, with 17 years fixed, is 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 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. *State v. Jackson*, 130 Idaho 293, 294 (1997) (citations omitted).

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<sup>3</sup> Mr. Osborn has filed a motion to augment the record with his memorandum in support of his Rule 35 motion, and the district court's order denying the Rule 35 motion. The motion to augment is pending.

Mr. Osborn's crime is a direct result of his drug addictions. The night before he entered the bank and asked for money, he had been using heroin and methamphetamine. (PSI, p.7.)<sup>4</sup> Mr. Osborn was "dope sick" and "coming down badly" and he was desperate for money. *Id.* In the months leading up to his crimes, Mr. Osborn had been using methamphetamine, heroin, bath salts, cocaine, and prescription drugs. (PSI, p.16.) He expressed a desire to get treatment for his addiction stating, "I'm tired of being an addict," and he realized that his prior failure in drug treatment programs was due to his not being committed to sobriety (PSI, pp.16-17.)

Mr. Osborn also struggles with mental health issues. He has been diagnosed with bipolar disorder, PTSD, anxiety disorder, and ADHD, and has taken various prescription medications to help him deal with his mental health issues. (PSI, pp.14-15.) Mr. Osborn has tried to commit suicide in the past and he recognizes that he would benefit from counseling. (PSI, p.15.) Fortunately, Mr. Osborn enjoys the support of family and friends. He submitted letters from various people explaining how he came to be in the situation that led him to commit his crimes, but also explaining that he is a kind and giving person. (PSI, pp.45-54.)

Idaho Courts recognize that drug addiction and mental health issues, coupled with the willingness to seek treatment, in addition to the support of family and friends, are all mitigating factors that should counsel a court to impose a lesser sentence. *See Hollon v. State*, 132 Idaho 573 (1999); *State v. Shideler*, 103 Idaho 593 (1982); *State v. Nice*, 103 Idaho 89 (1982). In light of the mitigating factors that exist in his case, Mr. Osborn asserts that the district court abused its discretion by imposing an excessive sentence.

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<sup>4</sup> Citations to the Presentence Investigation Report and its attached documents will use the designation "PSI" and will include page numbers associated with the electronic file containing those documents.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Osborn's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence In Light Of The Additional Mitigating Information Offered In Support Of The Motion

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) (citations omitted). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* (citation omitted). “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.* (citation omitted).

Through his Rule 35 motion, Mr. Osborn, who did not address the court during the sentencing hearing, informed the court that he was very remorseful for his actions. (R., pp.189-194.) He noted that he is maintaining his sobriety in the prison, even though drugs are available to him. *Id.* Mr. Osborn expressed that his situation has opened his eyes to how precious life is, and he does not want to waste any more of it using drugs. *Id.* Finally, Mr. Osborn submitted an additional letter in support from his mother, Laura Russell. (Aug., pp.3-4.) In addition to the mitigating factors noted above, Idaho Courts recognize that remorse for one's conduct is a mitigating factor that should counsel a court to impose a lesser sentence. *See State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). In light of the mitigating factors present in this case, Mr. Osborn asserts that the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

Mr. Osborn respectfully requests that this Court reduce the total fixed portion of his sentence to 10 years, or whatever relief this court deems just and appropriate.

DATED this 19<sup>th</sup> day of October, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
JASON C. PINTLER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19<sup>th</sup> day of October, 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:

MICHAEL ROBERT OSBORN  
INMATE #69712  
ISCC  
PO BOX 70010  
BOISE ID 83707

MICHAEL REARDON  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

JEFFERY E NONA  
ATTORNEY AT LAW  
E-MAILED BRIEF

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

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCP/eas