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State v. Ketlinski Appellant's Brief Dckt. 44971

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

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
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. 44971
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2016-5656
v.)	
)	
TAYLOR JOHN KETLINSKI,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Taylor Ketlinski contends the district court abused its discretion when it imposed his sentence in this case. Specifically, he asserts it did not sufficiently consider the mitigating factors which indicate that a shorter term of sentence was appropriate in this case. As such, this Court should reduce Mr. Ketlinski's sentence as it deems appropriate, or, alternatively, vacate the judgment of conviction and remand his case for a new sentencing hearing.

Statement of the Facts & Course of Proceedings

Pursuant to a plea agreement, Mr. Ketlinski agreed to plead guilty to one count of aggravated assault for his role in instigating a fight against another inmate, and in exchange, the

State agreed to recommend a unified sentence of five years, with one and one-half years fixed.¹ (See Tr., p.1, L.22 - p.23, L.1.) Mr. Ketlinski, who was 26 years old at the time, explained that he suffers from depression and that the medications he was on had become ineffective, and so, he had stopped taking them. (Tr., p.5, Ls.15-16.) Defense counsel noted that, since this incident, Mr. Ketlinski had been placed in segregation, and that situation caused his symptoms of depression to worsen. (See Tr., p.24, Ls.20-25.)

Mr. Ketlinski explained that, prior to this incident, he had been in solitary confinement for a year. (PSI, p.1645.) After that, he had been attacked, and had been asking for cell transfers as a result, but those requests had not been granted. (PSI, p.1646.) Accordingly, he explained it was his intent to start a minor fight to get the cell change, but the incident got out of hand when other inmates joined in. (PSI, pp.1646-47.) Defense counsel added that the video of the incident showed other inmates appeared to be aware that something was going to happen, and defense counsel argued they had actually orchestrated the fight as part of the prison gang culture and that, under the influence of these other inmates, Mr. Ketlinski felt as though he had no choice but to act as he did.² (Tr., p.22, L.24 - p.24, L.9.) Mr. Ketlinski acknowledged this did not excuse his behavior, for which he expressed his remorse and accepted responsibility, and he also identified ways he could better address such situations in the future. (PSI, p.1648; Tr., p.23, L.22 - p.24, L.3.)

¹ Mr. Ketlinski had been serving an aggregate sentence of ten years, with two years fixed, for convictions for burglary and injury to jails. (See Presentence Investigation Report (*hereinafter*, PSI), pp.1367-74.) The district court in this case relied on the PSI prepared in those cases rather than ordering an updated report. (See, e.g., Tr., p.16, Ls.3-18.)

² The district court did not actually review the video of the incident. (See Tr., p.19, L.21 - p.20, L.9.)

The district court acknowledged the difficulties of life in prison as well as Mr. Ketlinski's efforts to figure out how better to address those issues going forward. (Tr., p.28, Ls.10-13.) It proceeded to impose a unified sentence of four years, with one year fixed, which, pursuant to statute, it ordered to be served consecutive to his current sentences. (Tr., p.29, Ls.11-16.) Mr. Ketlinski filed a notice of appeal timely from the judgment of conviction. (R., pp.117-22.)

ISSUE

Whether the district court abused its discretion by imposing an excessive sentence on Mr. Ketlinski.

ARGUMENT

The District Court Abused Its Discretion By Imposing An Excessive Sentence On Mr. Ketlinski

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, 772 (Ct. App. 1982). Accordingly, in order to show an abuse of discretion in the district court's sentencing decision, he must show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997); *see State v. Hedger*, 115 Idaho 598, 600 (1989) (articulating the standard for reviewing whether the district court abused its discretion). The protection of society is the primary objective the court should consider. *State v. Charboneau*, 124 Idaho 497, 500 (1993). The Idaho Supreme Court has also indicated that rehabilitation is the first means the district court should consider to achieve that primary objective. *See State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

The district court did not reach its decision to impose the sentence it did as an exercise of reason, as it did not sufficiently consider the mitigating factors in this case. When a defendant is still young (like Mr. Ketlinski, who was only 26 at the time of this incident), his age is a factor which weighs in mitigation because it speaks significantly to his rehabilitative potential. *See, e.g., State v. Shideler*, 103 Idaho 593, 595 (1982); *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App. 2008); *State v. Eubank*, 114 Idaho 635, 639 (Ct. App. 1988). Specifically, a younger offender should be treated more leniently because he is still maturing, and still able to become a productive member of society. *See, e.g., State v. Dunnagan*, 101 Idaho 125, 126 (1980). In fact, Mr. Ketlinski demonstrated the potential for such maturity to come in his response to this incident. Once he saw the video of the incident, he realized the full impact of his actions, and so, not only did he immediately accept responsibility and express remorse for those actions, he also began working on finding ways to better handle such situations going forward, particularly given the knowledge that his sentence in this case would be consecutive, and thus, potentially result in additional time incarcerated. (*See Tr.*, p.23, L.22 - p.24, L.2 (defense counsel discussing Mr. Ketlinski's acceptance of responsibility); *Tr.*, p.2, L.2 - p.3, L.13 (the district court discussing the requirement for consecutive sentences during the change of plea hearing).)

Those facts speak to the point that the author of the previous PSI report made prior to his current incarceration: Mr. Ketlinski has a sincere desire to get his life turned around. (PSI, p.17.) However, as defense counsel explained, issues have arisen which have impacted his ability to follow through on that desire. Most notable is the impact of prison culture – others exerting influence over him, potentially even through threats – to get him to act improperly in response to issues. (*See Tr.*, p.22, L.24 - p.24, L.9 (defense counsel explaining how that issue played out in this case); *Tr.*, p.28, Ls.10-13 (the district court acknowledging these issues exist

and Mr. Ketlinski's efforts to overcome them).) Additionally, there are Mr. Ketlinski's mental health issues. As he explained, the medication he was being given to help him deal with the symptoms of his depression had stopped being effective. (*See* Tr., p.5, Ls.15-16) He had also been placed in solitary confinement, a situation which defense counsel indicated was likely to cause those symptoms to worsen, as it had done when Mr. Ketlinski was placed back in segregation following this incident. (*See* Tr., p.24, Ls.20-25; PSI, p.1645.)

All these facts reveal that continuing that cycle, as the sentence imposed by the district court in this case does by increasing the term of required incarceration by a year, fails to address the goal of sentencing which is supposed to be the district court's first consideration – rehabilitation. *See McCoy*, 94 Idaho at 240. A shorter sentence, particularly one that does not delay his parole-eligibility date, would promote the rehabilitation, the maturity, Mr. Ketlinski has begun to demonstrate, and thus, actually provide better long-term protection for society. As such, the sentence imposed in this case, which fails to serve the goal of rehabilitation, represents an abuse of the district court's discretion.

CONCLUSION

Mr. Ketlinski respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 4th day of August, 2017.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of August, 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:

TAYLOR JOHN KETLINSKI
INMATE #94810
IMSI
PO BOX 51
BOISE ID 83707

PATRICK H OWEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

NICOLE OWENS
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas