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State v. Spencer Appellant's Brief Dckt. 45212

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45212
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY NO. CR42-16-9655
v.)	
)	
DELORES LISA SPENCER,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Delores Lisa Spencer pled guilty to driving under the influence of alcohol, the district court sentenced her to ten years, with five years fixed. Ms. Spencer then moved for reconsideration of her sentence pursuant to Idaho Criminal Rule 35 (“Rule 35”). The district court denied the motion. Ms. Spencer appeals to this Court. She asserts the district court abused its discretion by imposing an excessive sentence and by denying her Rule 35 motion.

Statement of Facts and Course of Proceedings

The State charged Ms. Spencer with driving under the influence of alcohol (“DUI”), a felony due to two prior felony DUIs, in violation of I.C. §§ 18-8004 and -8005(9). (R., pp.94–95.) Ms. Spencer pled guilty as charged. (Entry of Plea Tr., p.18, L.2–p.19, L.17, p.20, Ls.2–15.)

At sentencing, the State recommended a sentence of ten years, with seven years fixed. (Sent. Tr., p.16, Ls.7–10.) Ms. Spencer requested a lengthy term of probation after, at most, three years fixed. (Sent. Tr., p.19, Ls.10–17, p.20, Ls.18–25.) The district court sentenced Ms. Spencer to ten years in prison, with five years fixed. (Sent. Tr., p.28, Ls.18–22.)

Ms. Spencer timely appealed from the district court’s judgment of conviction. (R., pp.146–51, 159–62.) Ms. Spencer then moved for a reduction in her sentence under Rule 35. (Aug. R., pp.1–4.) The district court denied her motion. (Aug. R., pp.5–13.)

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of ten years, with five years fixed, upon Ms. Spencer, following her DUI guilty plea?
- II. Did the district court abuse its discretion when it denies Ms. Spencer’s Rule 35 motion?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Five Years Fixed, Upon Ms. Spencer. Following Her DUI Guilty Plea

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Similarly, “[t]he choice of probation, among available sentencing alternatives, is committed to the sound discretion of the trial court” *State v. Landreth*, 118

Idaho 613, 615 (Ct. App. 1990). Here, Ms. Spencer’s sentence does not exceed the statutory maximum. *See* I.C. § 18-8004(6), (9) (maximum of ten years imprisonment). Accordingly, to show the sentence imposed was unreasonable, Ms. Spencer “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Ms. Spencer asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, she contends the district court should have sentenced her to a lesser term of imprisonment in light of the mitigating factors, including her family support, acceptance of responsibility and remorse, and past success managing her alcohol issues.

Ms. Spencer has struggled with alcohol addiction for over half of her life. She is fifty years old, and she began drinking regularly at age twenty-four. (Presentence Investigation Report

(“PSI”),¹ pp.2, 16.) Throughout her life, Ms. Spencer has turned to alcohol to cope with traumatic experiences and numb the pain. (PSI, pp.9–10.) At age twenty-five, Ms. Spencer got married, but her husband became “very jealous.” (PSI, p.9.) He would hit her and come after her if she tried to leave. (PSI, pp.9, 12.) This abuse went on for about two years. (PSI, p.9.) When she was pregnant with their first child, her husband told her he was going to Mexico to visit his family, but he never came back. (PSI, p.9.) Ms. Spencer was left alone, with two car payments, and had to move back in with her parents.² (PSI, p.9.) Ms. Spencer’s next relationship was equally distressing. (PSI, p.9.) After four years of dating, Ms. Spencer found out that her boyfriend used drugs after finding them hidden in his sock. (PSI, pp.9, 12.) She left him because she “wanted no part of drugs around my child.” (PSI, p.9.) However, Ms. Spencer and her boyfriend drank heavily during their four-year relationship. (PSI, p.9.) She explained, “[D]rinking was a problem for us.” (PSI, p.8.) After leaving this relationship, Ms. Spencer was living in a trailer and working in trash haul. (PSI, p.10.) Her next relationship, from 1997 to 2009, coincided with her previous DUI convictions. (PSI, pp.6–8, 10.) Her boyfriend became “very controlling,” such as telling her how to dress, who to be friends with, and when she could see her family. (PSI, p.10.) He would tell her that she was nothing without him, and she believed him. (PSI, p.10.) Ms. Spencer began to drink alcohol behind his back. (PSI, p.10.) He had affairs with other women, which caused Ms. Spencer to drink even more. (PSI, p.10.) Eventually, Ms. Spencer’s life fell apart. (PSI, p.10.) Her family told her she was “better off without him,” but she felt “useless, hopeless,” and “devastated.” (PSI, p.10.) Drinking alcohol “covered up” her pain. (PSI, p.10.)

¹ Citations to the PSI refer to the sixty-three page electronic document containing the confidential exhibits.

² After her son was born, she got a divorce and full custody of her son. (PSI, p.9.)

Once in treatment in prison for her past DUIs, Ms. Spencer's life started to turn around. She wrote that prison was "a God sen[d]." (PSI, p.10.) "It saved [her] life." (PSI, p.10.) She was "able to deal with [her] feelings with [her] recovery classes." (PSI, p.10.) From about 2010 to 2016, Ms. Spencer was on either probation or parole. (PSI, p.9.) She initially lived with her elderly father and her son. (PSI, p.10.) She went to church, kept a budget, and helped her father. (PSI, p.10.) She was sober for seven years. (PSI, p.16.) She wrote that her son and her family were "very happy" she stopped drinking. (PSI, p.10.) Ms. Spencer said she was happy too. (PSI, p.10.) At sentencing, her probation officer testified that she had no issues on probation. (Sent. Tr., p.7, Ls.6–11.) Ms. Spencer never missing a meeting, completed all required treatment, maintained employment, and passed monthly drug/alcohol testing. (Sent. Tr., p.6, L.17–p.7, L.18.) Her probation officer described her as a "model probationer and parole[e]." (Sent. Tr., p.6, Ls.21–22.)

Sometime in 2016 or 2017, Ms. Spencer was diagnosed with Crohn's disease.³ (PSI, p.10.) She started taking medications that made her "edgy, irritable, and anxious." (PSI, pp.6, 10.) She relapsed two months after her Crohn's disease diagnosis. (PSI, p.10.) Looking at the instant offense, Ms. Spencer felt horrible, ashamed, guilty, regretful, and remorseful. (PSI, p.6; Sent. Tr., p.21, Ls.23–25.) She accepted full responsibility for her actions. (Sent. Tr., p.21, Ls.22–24, p.22, Ls.20–23.) She also realized that she could have turned to her family for help instead of turning to alcohol. (PSI, p.6.) "God, family, job, my health, [and] my sobriety" are the most important things in her life. (PSI, p.17.) She hoped to get treatment for her alcohol issues and go back to school to become a drug and alcohol counselor. (PSI, p.17.) While in jail for

³ Since her incarceration, Ms. Spencer has lost twenty pounds due to her Crohn's disease and attendant food restrictions.

seven months pending sentencing, she participated in the Twin Falls Treatment and Recovery Clinic and Moral Reconciliation Therapy/Thinking for Good. (PSI, pp.16, 19; Sent. Tr., p.22, Ls.3–13.)

In addition to her renewed commitment to her sobriety, Ms. Spencer has support from family and friends, and she provides support for her elderly father. Ms. Spencer's father is eighty-four years old. He has diabetes and difficulty hearing. (PSI, pp.10, 19.) Ms. Spencer's sister wrote that Ms. Spencer was helping their father with the bills, cleaning, cooking, and working in the fields. (PSI, p.58.) Another sister wrote that Ms. Spencer was needed to take care of their father. (PSI, p.60.) Similarly, Ms. Spencer's father wrote that he wanted his daughter to take care of him. (PSI, p.59.) Along with the support Ms. Spencer provided to her father, the presentence investigator stated that Ms. Spencer appeared to have a good support system in her life. (PSI, p.19.) Ms. Spencer reported that she had a good relationship with her father, her son, and her six siblings. (PSI, pp.10–11, 12.) Ms. Spencer's son described her as "very caring and kind-hearted," with "an exceptional work ethic." (PSI, p.61.) He said that she always put his needs above her own. (PSI, p.61.) He explained that she "has always been there for her father as well." (PSI, p.61.) He believed that "with support she has what it takes to rehabilitate and continue to be a wonderful mother, daughter, and soon to be grandmother." (PSI, p.61.) Likewise, one of Ms. Spencer's friends said she was surprised Ms. Spencer had relapsed, but knew she could overcome her addiction. (PSI, p.62.) Finally, Ms. Spencer's niece stated Ms. Spencer had a large family support network, and her family was willing to help her achieve a successful, sober life. (PSI, p.63.)

These mitigating circumstances support a lesser sentence for Ms. Spencer. The facts show Ms. Spencer has struggled with alcohol abuse for her entire adult life and used alcohol to

cope with a series of abusive relationships. But, with the proper treatment and supervision, Ms. Spencer can be a successful, productive member of society. Indeed, she maintained her sobriety for seven years. Unfortunately, she turned to alcohol to deal with the symptoms of her Crohn's disease medications, instead of asking for help from her family or treating physician. (PSI, p.6.) This single relapse in seven years, however, does not support a ten-year sentence. Ms. Spencer has accepted responsibility for the crime and is motivated to stay sober. (*See* PSI, p.17.) She has a supportive family, and her father relies on her for support. Her past success on probation and parole shows that she can succeed in the community with appropriate supervision and accountability. Based on these mitigating factors, the district court abused its discretion by imposing an excessive sentence of ten years, with five years fixed.

II.

The District Court Abused Its Discretion When It Denied Ms. Spencer's Rule 35 Motion

“A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “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).

Here, Ms. Spencer asserts the district court abused its discretion by denying her Rule 35 motion in light of the new and additional information. First, Ms. Spencer emphasized her mental health issues. She explained that she has been diagnosed with depression. (Aug. R., p.1; PSI, pp.22, 30.) Second, Ms. Spencer informed the district court that she wanted to participate in a DUI specialty court. (Aug. R., p.2.) The district court did not have this information at sentencing. (*See generally* PSI; Sent. Tr.) Ms. Spencer also informed the district court that she intended to participate in recovery support meetings and “pursue more significant help with her trauma, anxiety, and depression, which appear to be the primary motivating factors behind her alcohol addiction.” (Aug. R., p.2.) Finally, Ms. Spencer again noted her supportive family. (Aug. R., p.2.) She included another letter from her friend. (Aug. R., pp.2, 4.) Her friend wrote that she fully supported Ms. Spencer. (Aug. R., p.4.) Her friend believed Ms. Spencer was even more determined to stay sober because her father was “not well” and her son had his first child. (Aug. R., p.4.) In light of this new and additional information, Ms. Spencer contends the district court abused its discretion by denying her Rule 35 motion for leniency.

CONCLUSION

Ms. Spencer respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she respectfully requests that this Court vacate the district court's judgment of conviction or its order denying her Rule 35 motion and remand this case for a new sentencing hearing or a Rule 35 motion hearing.

DATED this 25th day of October, 2017.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of October, 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:

DELORES LISA SPENCER
INMATE #93599
SBWCC
13200 S PLEASANT VALLEY ROAD
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G RICHARD BEVAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

SAMUEL S BEUS
TWIN FALLS COUNTY PUBLIC DEFENDER
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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas