

12-14-2017

## State v. Olson Respondent's Brief Dckt. 45265

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45265
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-01-2017-2554
	)	
MICHAEL LEE OLSON,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Olson failed to establish that the district court abused its discretion, either by imposing a unified sentence of 10 years, with three years fixed, upon his guilty plea to felony domestic violence, or by denying his Rule 35 motion for a reduction of sentence?

Olson Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Olson pled guilty to felony domestic violence and the district court imposed a unified sentence of 10 years, with three years fixed. (R., pp.95-98.) Olson filed a notice of appeal timely from the judgment of conviction. (R., pp.102-04.) He also filed a timely Rule 35 motion

for a reduction of sentence, which the district court denied. (R., pp.105, 108-22; Order Denying Motion for Reconsideration of Sentence (Augmentation).)

Olson asserts that the district court abused its discretion by imposing an excessive sentence in light of his difficult childhood, substance abuse issues, and remorse. (Appellant's brief, pp.3-6.) Olson has failed to establish an abuse of discretion.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. 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. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, "[a] sentence fixed within the limits

prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The maximum prison sentence for felony domestic violence is 10 years. I.C. § 18-918(2)(b). The district court imposed a unified sentence of 10 years, with three years fixed, which falls within the statutory guidelines. (R., pp.95-98.) Olson’s sentence is reasonable in light of the seriousness of the crime, his extensive juvenile and adult criminal history, his ongoing criminal thinking, and his failure to rehabilitate or be deterred despite prior legal sanctions and treatment opportunities.

While high on methamphetamine, Olson battered his live-in girlfriend, T.G., “after she expressed her sad feelings of wanting to see her children that are staying with their father.” (PSI, pp.223-24.) Olson “use[d] an extreme amount of unwanted physical force against [T.G.] by pushing her to the bed, getting on top of her, and proceeding to strike her in the face with a closed fist several times.” (PSI, p.223.) Olson also “grabbed [T.G.] by the throat with both hands and restricted her ability to breath[e,] causing her to fear for her life.” (Id.) T.G. “sustained a fractured nose, a concussion, and a swollen black eye” as a result of the battery. (Id.)

Olson’s conduct in this case appears to be in keeping with both his criminal history and his character. Olson has an extensive juvenile record, consisting of adjudications for felony injury to a child (amended from lewd conduct with a child under 16), unlawful entry, two counts of petit theft, and three counts of battery with intent to commit a serious felony. (PSI, pp.224-25.) Olson was incarcerated in both the Twin Falls juvenile detention center and the Ada County jail as a result of his adjudications. (PSI, p.227.) He was convicted of his first adult felony, grand theft by receiving, in 2004 and was placed on a rider. (PSI, pp.225, 227.) He was released

to community supervision in April 2005 but quickly violated the conditions of his release by, among other things, testing positive for drug use and acquiring new charges, leading to the execution of his sentence in August 2006. (PSI, p.227.) Approximately two years later, Olson was convicted of sexual battery of a minor child 16 or 17 years of age and was again sentenced to prison. (PSI, pp.226-27.) Within a month of completing that sentence, Olson “relapsed on methamphetamine.” (PSI, p.227.) He also failed to report a change of address and, as a result, was convicted of felony “sex offender-fail to register change of address” in May 2014. (PSI, pp.226-28.) That same month, he was also convicted of misdemeanor battery and unlawful entry. (PSI, pp.226, 228.) Olson was again incarcerated until September 2015, after which he reportedly “‘did good’ for a short time but relapsed on methamphetamine only one-and-one-half (1 ½) months later.” (PSI, p.228.) By December 215, Olson had served a 60-day jail sanction. (PSI, p.228.) After the jail sanction Olson again relapsed on methamphetamine and, as a result, served a 90-day jail sanction in May of 2016. (PSI, p.228.) Olson was released from jail in October of 2016 and, by November, he admitted to having violated his parole by staying at an unauthorized residence, using methamphetamine, and not contacting vocational rehabilitation. (PSI, p.228.) After that, Olson absconded supervision and was subsequently arrested for the instant offense in January of 2017. (PSI, pp.227-28.)

Olson has participated in and completed multiple treatment programs, including Thinking for a Change, Relapse Prevention, Sex Offender Treatment, and Cognitive Behavioral Therapy, and has also completed a Rider. (PSI, pp.227-28.) However, despite the many programs, rider, probation and parole opportunities Olson has been given, he continues his dangerous criminal thinking. In fact, Olson’s LSI-R score is a 40, “which places him in the high-risk category” to reoffend. (PSI, p.236.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Olson's sentence stating, "I realize that your drug use likely played some role in your decision making in this case, but this was a crime of violence and it had significant physical and emotional impacts on someone that you professed to care for." (Tr., p.32, Ls.10-14.) The state submits that Olson has failed to establish that his sentence is excessive for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Tr., p.31, L.5 – p.34, L.22. (Appendix A).)

Olson next asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence, contending he provided information "showing his determination to become a better, law-abiding person, and demonstrating that he is making progress along the right path." (Appellant's brief, pp.5-6.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Olson 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." Id. Olson has failed to satisfy his burden.

As noted by the district court in its order denying Olson's Rule 35 motion, some of the information Olson submitted in support of his motion was before the district court at the time of sentencing and, as such, was not new information that entitled Olson to a reduction of sentence. (Order Denying Motion for Reconsideration of Sentence, p.4 (Augmentation).) Even considering the new information Olson supplied with his Rule 35 motion, the district court concluded the sentence imposed was reasonable, explaining:

... Defendant's PSI reveals a significant criminal history, including numerous offenses as a juvenile and two prior felony convictions as an adult. Defendant has had previous opportunities for rehabilitation and supervision. Over the past 12 years, each time Defendant was released from incarceration, he quickly returned to using methamphetamine and acquired new charges. Defendant reported to the PSI evaluator that aside from his periods of incarceration, the longest he has been sober was for four months in 2005.

Defendant scored a 40 on the LSI-R, which places him in the high risk category to re-offend. The Domestic Violence Evaluation also indicates Defendant poses a high risk to re-offend.

Finally, the offense for which Defendant was sentenced is a crime of violence that had a significant physical and emotional impact on the victim. The victim sustained a concussion, a fractured nose, a black and swollen eye, bruising to the back of her head, and several bruises all over her upper body. Due to the severe emotional effects of Defendant's crime, the victim felt unable to make a victim impact statement at the sentencing hearing.

(Order Denying Motion for Reconsideration of Sentence, p.4 (Augmentation).)

The district court considered all of the relevant information and appropriately concluded that Olson's sentence was "reasonable because it serves the sentencing goals of protecting society, deterring Defendant from engaging in further criminal behaviors, and providing Defendant with an opportunity to rehabilitation through sobriety while incarcerated." (Order Denying Motion for Reconsideration of Sentence, p.4 (Augmentation).) Olson has not shown that he was entitled to a reduction of sentence simply because he presented documents that he contends "show[] his determination to become a better, law-abiding person". (Appellant's brief, p.5.) Given any reasonable view of the facts, Olson has failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence.

Conclusion

The state respectfully requests this Court to affirm Olson's conviction and sentence and the district court's order denying Olson's Rule 35 motion for a reduction of sentence.

DATED this 14th day of December, 2017.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of December, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

# APPENDIX A

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1 THE COURT: Mr. Olson, thank you.  
 2 On your guilty plea to this charge of  
 3 domestic violence, I'll find that you are guilty. I'll  
 4 enter a judgment convicting you of that offense.  
 5 I think you recognize where your decisions in  
 6 the past put the Court. You've spent more than a decade  
 7 in and out of the penitentiary. You've had prior chances  
 8 on parole. At one point, you were out a month before you  
 9 started using controlled substances.  
 10 In deciding how to -- well, I say those  
 11 things because I think everyone recognizes that probation  
 12 or something other than prison would be inappropriate in  
 13 this case. Certainly you're not asking me to consider  
 14 that.  
 15 In deciding what prison sentence is  
 16 appropriate, I'm required to balance a number of factors,  
 17 Mr. Olson. Certainly, I want to fashion a sentence that  
 18 provides you some opportunity to rehabilitate yourself.  
 19 I want to deter you from doing something like this again  
 20 in the future, I want to deter others, to the extent I  
 21 can. My primary obligation is to protect the community.  
 22 The State, in my view, is taking kind of a  
 23 balanced approach with their recommendation. The  
 24 practical effect of the sentence they're recommending  
 25 would be that you are not eligible for parole for a

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1 kind of deal with those while you're waiting to be  
 2 eligible for release again.  
 3 I'm not without sympathy for that, Mr. Olson,  
 4 but I don't think that it's appropriate to impose a  
 5 sentence that's less than what the State's recommending  
 6 on that basis. Certainly, the -- there is a reasonable  
 7 view of these facts and your record, Mr. Olson, where  
 8 they could have simply come in and said, this gentleman  
 9 is dangerous and will always be so. You should keep him  
 10 in prison for ten years, and add that 10 years on to the  
 11 sentence he's already serving.  
 12 That would be harsh, but it wouldn't have  
 13 been unreasonable, given where you find yourself.  
 14 And so, for those reasons, I'm going to  
 15 follow the State's recommendation. I'll sentence you to  
 16 serve ten years in the State penitentiary. That will  
 17 consist of three years fixed, followed by seven years  
 18 indeterminate. I will not impose a fine. I will order  
 19 you to pay those costs, fees, and assessments mandated by  
 20 statute. Upon your agreement, I'll order you to pay  
 21 restitution in the amount of \$14,199.68.  
 22 I will give you credit for the 168 days you  
 23 have served in custody so far toward the imposition of  
 24 that sentence. I will order that sentence into execution  
 25 immediately. That sentence will run concurrently with

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1 period of three years, slightly less given your credit --  
 2 about two-and-a-half years given the credit time served  
 3 in this case -- and it would extend your total possible  
 4 sentence between this case and your other case, it would  
 5 extend your release date by about three years.  
 6 That's, as I understand, the practical effect  
 7 of a concurrent recommendation for the number of years.  
 8 I think that's reasonable, Mr. Olson.  
 9 I think a lesser sentence would depreciate  
 10 the seriousness of what you did. I realize that your  
 11 drug use likely played some role in your decision making  
 12 in this case, but this was a crime of violence and it had  
 13 significant physical and emotional impacts on someone  
 14 that you professed to care for.  
 15 And I agree with Mr. Dinger, she didn't do  
 16 anything to deserve this. I think as a -- simply as a  
 17 punishment, and as an attempt to prevent you from doing  
 18 this again, that the recommendation their making is a  
 19 reasonable one.  
 20 I realize that, you know, you kind of want to  
 21 get back on a release plan. I understand your comments  
 22 about this -- it's sometimes harder to focus on  
 23 rehabilitation when you've just got time to kill. I  
 24 understand that there are influences in the penitentiary  
 25 that are less than ideal, and you're going to have to

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1 any other sentences you are currently serving.  
 2 You have the right to appeal from this  
 3 judgment of conviction. That appeal must be taken within  
 4 42 days of today's date. In that appeal, you have the  
 5 right to the assistance of an attorney, and if you are  
 6 indigent, the costs of your attorney and the costs of the  
 7 appeal would be paid for by the State.  
 8 Do you have questions about your appeal  
 9 rights, Mr. Olson?  
 10 THE DEFENDANT: No.  
 11 THE COURT: Mr. Olson, I agree with your  
 12 attorney. There's help in the Department of Corrections,  
 13 if you look for it. Sometimes it may not be the easiest  
 14 thing to access. I encourage you to keep that in mind as  
 15 you approach your parole eligibility date. You're in a  
 16 position where if you continue to violate parole,  
 17 particularly if you commit new crimes while you're on  
 18 parole, that the sentences are going to be simply  
 19 increasingly more focused on just keeping you locked up.  
 20 I don't want that for you, sir. So, I  
 21 encourage you to take whatever access to rehabilitation  
 22 that you can.  
 23 Good luck to you.  
 24 THE DEFENDANT: Thank you.  
 25 MR. DINGER: Judge, the No Contact Order?