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State v. Dalton Appellant's Brief Dckt. 45379

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45379
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-17-17946
v.	)	
	)	
TERRY RAY DALTON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Terry Ray Dalton appeals from the district court's Judgment of Conviction and Commitment. Mr. Dalton was sentenced to a unified sentence of three years, with one and one-half years fixed, for his battery against a health care worker conviction. He asserts that the district court abused its discretion in sentencing him to an excessive sentence. Further, he asserts that the district court abused its discretion by denying his Idaho Criminal Rule 35 motion for a reduction of sentence.

Statement of the Facts & Course of Proceedings

An Information was filed charging Mr. Dalton with malicious harassment and battery against a health care worker. (R., pp.20-21.) The charges were the result of a report to police that a patient at Saint Luke's Hospital, Mr. Dalton, was intoxicated, threatening staff, and punched a staff member. (PSI, p.4.)[1] Mr. Dalton entered a guilty plea to the battery against a health care worker charge and the remaining charge was dismissed. (R., p.23.)

The case proceeded to sentencing. The prosecution recommended a unified sentence of three years, with one year fixed. (Tr., p.31, Ls.15-17.) Defense counsel requested that Mr. Dalton be placed on probation and ordered to participate in substance abuse treatment. (Tr., p.32, Ls.1-10.) The Presentence Investigator also recommended that Mr. Dalton be placed on probation. (PSI, p.28.) The district court exceeded the sentencing recommendations and imposed a unified sentence of three years, with one and one-half years fixed. (R., pp.40-42.) Mr. Dalton filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.44-46.) He also filed a timely Rule 35 motion. (R., pp.49-51.) The motion was denied. (R., pp.54-55.)

[1] For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as "PSI" and referenced pages will correspond with the electronic page numbers contained in this file.

ISSUES

I. Did the district court abuse its discretion when it imposed, upon Mr. Dalton, a unified sentence of three years, with one and a half years fixed, following his plea of guilty to battery against a health care worker?

II. Did the district court abuse its discretion when it denied Mr. Dalton's Idaho Criminal Rule 35 Motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed, Upon Mr. Dalton, A Unified Sentence Of Three Years, With One And One-Half Years Fixed, Following His Plea Of Guilty To Battery Against A Health Care Worker

Mr. Dalton asserts that, given any view of the facts, his unified sentence of three years, with one and one-half 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 Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Dalton does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Dalton must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id*. (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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. *Id*. (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)).

Mr. Dalton asserts that the district court acted outside the boundaries of its discretion and inconsistently with the legal standards applicable. As noted previously, the prosecution recommended a unified sentence of three years, with one year fixed (Tr., p.31, Ls.15-17) and both defense counsel (Tr., p.32, Ls.1-10) and the Presentence Investigator (PSI, p.28) recommended that Mr. Dalton be placed on probation. However, the district court exceeded the recommendations. A statement made by the district court indicates that it may have been influenced by current events, which provided a motivation outside of the governing sentencing criteria, for imposing a sentence greater than the sentencing recommendations. At the sentencing hearing, the district court made the following statement:

> It is, I suppose, ironic, nonetheless worth noting the defendant is here to be sentenced today for his actions that expressed a degree of hate and malignancy of thought directed towards a person simply because of the color of their skin, and I recognize Mr. Dalton says that he doesn't remember doing this and he does not think I [sic] way.
>
> I say it's ironic, because of course what happened, unfortunately, this weekend where hate and bigotry and that kind of thought resulted in terrorist

> action killing at least one person and injuring many others in the south. But Mr. Dalton is not here for what is in his heart and only he knows what is in his heart. I'm not here to sentence him for what is in his heart, I'm here to sentence him for his actions.

(Tr., p.38, Ls.1-15.)

The events of "this weekend," referenced by the district court, were the deadly white nationalist and white supremacist rally at the University of Virginia. *See* Andrew Katz, *Unrest in Virginia* <http://time.com/charlottesville-white-nationalist-rally-clashes/> (accessed Jan. 1, 2018). While the sentiments of the district court regarding the events in Charlottesville are admirable, the events were separate and distinct from Mr. Dalton's case. The district court's upward departure in sentencing, coupled with the mentioning of the events that transpired in Charlottesville, suggest that the district court abused its sentencing discretion.

Mr. Dalton also asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason. Specifically, he asserts that the district court failed to give proper consideration to his admitted substance abuse problem and desire for treatment. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982).

Mr. Dalton began using alcohol at the age of fifteen. (PSI, p.23.) However, he grew-up in an atmosphere of alcohol abuse, going to the bar with his father as young child. (PSI, p.18.) His drinking increased over the years until he was drinking approximately "a pint to a fifth" of Vodka every day after work. (PSI, p.23.) He has been drinking at this rate for the past "5 or more" years. (PSI, p.23.)

In his version of the events, articulated in the PSI, Mr. Dalton noted that he is an alcoholic, has been drinking heavily for "many years now," desperately needs help, and worries that his drinking will kill him. (PSI, p.5.) Mr. Dalton suffers from pancreas attacks and seizures. (PSI, p.22.) One of his doctors warned him that if he does not stop drinking "it will kill him." (PSI, p.22.)

Mr. Dalton wrote to the district court expressing his desire to stop drinking and to participate in treatment. (R., p.32.) He acknowledges that his drinking plays a significant role in his criminal behavior. (R., p.23.) When asked if he wants to stop drinking, he responded "in Christ['s] name YES!!!!" (PSI, p.23.) Mr. Dalton was diagnosed with Alcohol Use Disorder, Severe, and it was recommended that he participate in Level II.1 Intensive Outpatient Treatment. (PSI, pp.31, 39.) As evidence of his desire to participate in treatment, he supplied the district court with an acceptance letter from the New Life Discipleship Recovery Program, a 12 to 18 month inpatient substance abuse treatment program. (R., p.33.)

In his PSI comments to the district court, Mr. Dalton noted:

> I'm truly sorry I showed myself at the Hospital, and I've got to get a handle on this drinking problem before it is to late. I'm so tired of waking up in jail, and not even knowing What I've done. Plus, I have a pancreas problem, and if I don't stop drinking I am going to die. A Doctor in Nashville already told me this, and after he said that I stopped for almost two weeks, and one day just out of the blue, I walked past a liquor store, and before I knew it, there I was buying a 5th of Vodka. Forgetting everything the Doctor told me. I'm 53 now, and I don't want to die like this. I do realize I need professational help with this problem, and truth be known; I knew all along, I just feared it for some reason. I do know this; being around the negative people in jails is not the answer. Been there many times. I'm asking for your help 'your Honor' for a good treatment center. I've never had this, but I have meant people who have been through treatment, and seen a change in them. Gene Lyon is one man I know that treatment helped him, and he's been clean now going on 15 years, and big in AA. Your Honor; please give me this chance to change my life, and to learn about my problem, and to learn how to fight it. If I don't drink, I never broke the law. I have nothing else I can say your Honor; just please give me this chance, and I thank you sir, and I'll

> report to whom ever you say. If nothing else, is the River of Life a decent program. I do need professional help with this problem. . . [sic]

(PSI, p.25.) Mr. Dalton also expressed a desire for treatment and to stop drinking at the sentencing hearing. (Tr., p.34, L.25 – p.37, L.9.)

Additionally, Mr. Dalton has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, "In light of Alberts' expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character." *Id*. 121 Idaho at 209. In the PSI, Mr. Dalton noted that he "does not recall saying such 'awful' things to the victim and asserted that he only behaves this way when he is intoxicated." (PSI, p.5.) He maintains that he is not a racist, "feels awful" for using racial epithets, and was so ashamed after reading the police report that he wrote an apology letter to his victim. (PSI, p.5.) In looking back at his crime, he said that he feels horrible and that he wishes he had never drank in his life. (PSI, p.5.) He also noted that "with all my heart, I'm truly sorry for this." (PSI, p.18.)

Based upon the above argument and the mitigating factors present in his case, Mr. Dalton asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his substance abuse, desire for treatment, and remorse, it would have crafted a sentence that focused on his rehabilitation rather than incarceration.

II.

The District Court Abused Its Discretion When It Denied Mr. Dalton's Rule 35 Motion For A Reduction Of Sentence

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) (citing *State v. Forde*, 113 Idaho 21 (Ct. App.1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App. 1984)). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id*. (citing *Lopez*, 106 Idaho at 450).

The Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). In order to show an abuse of discretion, Mr. Dalton must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id*. (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). "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).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its

decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.,* 119 Idaho 87, 94 (1991)).

Mr. Dalton provided new or additional information in support of his Rule 35 motion in the form of a letter. (R., p.53.) He asserts that the district court failed to give proper weight and consideration to the additional information provided in support of his Rule 35 motion and the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

In his letter in support of the Rule 35 motion, Mr. Dalton wrote:

> I'm asking a "Reduction of my Sentence" based on the following: Mrs. Ami Nunes (Presentence Investigator) did recommend a (Level 2) Intensive Outpatient Treatment, and I even went above & beyond the recommendations of the State by being accepted into a 18 month Inpatient Model of treatment at the "River of Life," which I did on my own, and a copy of the acceptance letter by Program Manager – Ray Carleton, in on the back of this letter. I'm 53 years old, and have "NEVER" had help with my alcohol problem. Plus, every conviction on my record is [due] to alcohol, and 90% of those, I don't remember. Sir, I've been in prison in my past, and [it] has never taught me anything about my problem, and I've checked into this program, and this program will give me the tools, and knowledge to fight this demon in my life. I also apologized to the victim, and come to find out he didn't even press charges, it was the police officer who wasn't even there at the time. I've never had any kind of write-up (DOR) in my life, and only [lose] control when I'm drunk. Sir, I'm a [hardworking] man, and helped a lot of people during my time with (FEMA) & Suit Maxx in – Tornado clean-up, & construction.
>
> This is a [well-known] program, and I'm asking for the chance to learn & get help with my alcohol problem.

(R., p.53.)

Mr. Dalton asserts that in light of the above additional information and the mitigating factors mentioned in section I, which need not be repeated, but are incorporated by reference, the district court abused its discretion in denying his Rule 35 motion.

CONCLUSION

Mr. Dalton 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. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 3rd day of January, 2018.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of January, 2018, 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:

TERRY RAY DALTON
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STEVEN J HIPPLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas