

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

6-13-2018

State v. Ayarzagoitia Respondent's Brief Dckt. 44958

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Ayarzagoitia Respondent's Brief Dckt. 44958" (2018). *Not Reported*. 4233.
https://digitalcommons.law.uidaho.edu/not_reported/4233

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) Nos. 44958 & 44968
 Plaintiff-Respondent,)
) Ada County Case Nos.
 v.) CR-FE-2016-7003 &
) CR01-2016-31420
 DAMIAN A. AYARZAGOITIA,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE SAMUEL A. HOAGLAND
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

SALLY J. COOLEY
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712

**ATTORNEY FOR
DEFENDANT-APPELLANT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUES	3
ARGUMENT	4
I. Ayarzagoitia Has Failed To Show The District Court Abused Its Sentencing Discretion.....	4
A. Introduction.....	4
B. Standard Of Review	4
C. The District Court Did Not Abuse It Sentencing Discretion.....	5
D. The District Court Did Not Abuse Its Discretion By Denying The Rule 35 Motion.....	7
II. Ayarzagoitia Has Failed To Show The District Court Abused Its Discretion When It Ordered Him To Pay Restitution.....	7
A. Introduction.....	7
B. Standard Of Review	8
C. Ayarzagoitia Has Failed To Show The Court Abused Its Discretion By Ordering Restitution To CVCP.....	8
CONCLUSION.....	9
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>State v. Baker</u> , 136 Idaho 576, 38 P.3d 614 (2001)	4
<u>State v. Burggraf</u> , 160 Idaho 177, 369 P.3d 955 (Ct. App. 2016)	7
<u>State v. Corbus</u> , 150 Idaho 599, 249 P.3d 398 (2011)	8
<u>State v. Farwell</u> , 144 Idaho 732, 170 P.3d 397 (2007)	5
<u>State v. Fisher</u> , 162 Idaho 465, 398 P.3d 839 (2017).....	5
<u>State v. Hill</u> , 154 Idaho 206, 296 P.3d 412 (Ct. App. 2013).....	8
<u>State v. Huffman</u> , 144 Idaho 201, 159 P.3d 838 (2007)	4, 7
<u>State v. Jimenez</u> , 160 Idaho 540, 376 P.3d 744 (2016)	5
<u>State v. Lundquist</u> , 134 Idaho 831, 11 P.3d 27 (2000)	4
<u>State v. Miller</u> , 151 Idaho 828, 264 P.3d 935 (2011).....	5
<u>State v. Oliver</u> , 144 Idaho 722, 170 P.3d 387 (2007)	4, 5
<u>State v. Olpin</u> , 140 Idaho 377, 93 P.3d 708 (Ct. App. 2004).....	8
<u>State v. Strand</u> , 137 Idaho 457, 50 P.3d 472 (2002)	4
<u>State v. Straub</u> , 153 Idaho 882, 292 P.3d 273 (2013)	8
<u>State v. Taie</u> , 138 Idaho 878, 71 P.3d 477 (Ct. App. 2003).....	8
<u>State v. Trevino</u> , 132 Idaho 888, 980 P.2d 552 (1999).....	4
 <u>STATUTES</u>	
I.C. § 19-5304	8

STATEMENT OF THE CASE

Nature Of The Case

Damian A. Ayarzagoitia appeals from his sentences for aggravated battery, with a deadly weapon enhancement, and burglary.

Statement Of The Facts And Course Of The Proceedings

Using a copy of a key he obtained while working for a janitorial company for six days, Ayarzagoitia and an accomplice entered an office on two occasions and stole a computer, a bicycle, and bottles of alcohol and vandalized the office by pouring substances on surfaces and equipment. (PSI, pp. 5-6.) Ayarzagoitia smashed the computer he stole and he and his accomplice drank the alcohol. (PSI, p. 6.) Ayarzagoitia explained that the vandalism was intended to be revenge against his former employer, but he was mistaken as to the actual owner of the office. (Id.)

Five days later, convinced that Ryan Garcia-Larimore was a “snitch,” Ayarzagoitia and two others attacked and stabbed him multiple times. (PSI, pp. 3-6.) Ayarzagoitia organized the attack. (Id.) The men struck Garcia-Larimore in the head in an attempt to knock him unconscious and then stabbed him in the throat, neck, back of the head, and over the right eye. (Id.) The victim reported that he believed the men had tried to murder him, and that he was suffering from PTSD as a result. (PSI, pp. 6-7.)

The state charged Ayarzagoitia with aggravated battery with a deadly weapon enhancement and a persistent violator enhancement for his attack on Garcia-Larimore. (R., pp. 54-55, 72-73, 81-82.) For breaking into, stealing from, and vandalizing the office the state charged him with burglary, malicious injury to property, and three counts of petit theft. (R., pp. 238-39.) Pursuant to a plea agreement Ayarzagoitia pled guilty to aggravated

battery with a deadly weapon enhancement and burglary, and the state dismissed the other charges and enhancement. (R., pp. 113, 244.) The district court imposed a sentence of 30 years with 20 years determinate for the enhanced aggravated battery conviction (R., pp. 159-60) and ten years indeterminate for burglary with jail time on the misdemeanors (R., pp. 289-92). The court ran the aggravated battery and burglary sentences consecutively, resulting in an aggregate sentence of 40 years with 20 years determinate. (R., p. 290.)

Ayarzagoitia filed motions for reconsideration or correction of sentence. (R., pp. 163-70, 299-302.) The district court denied the motions. (R., pp. 182-89, 313-20.)

Ayarzagoitia filed notices of appeal timely from his judgments. (R., pp. 137-41, 175-78, 268-72, 308-11.)

ISSUES

Ayarzagoitia states the issues on appeal as:

- I. Did the district court abuse its discretion when it imposed an aggregate unified sentence of forty years, with twenty years fixed, upon Mr. Ayarzagoitia following his pleas of guilty to one count of aggravated battery with a deadly weapon sentencing enhancement, one count of misdemeanor malicious injury to property, three counts of misdemeanor petit theft, and one count of burglary?
- II. Did the district court abuse its discretion when it denied Mr. Ayarzagoitia's Idaho Criminal Rule 35 Motions?
- III. Did the district court abuse its discretion in ordering Mr. Ayarzagoitia to pay restitution to the Crime Victims Compensation Program?

(Appellant's brief, p. 5.)

The state rephrases the issues as:

1. Has Ayarzagoitia failed to show the district court abused its sentencing discretion either in its original sentence or in the denial of Ayarzagoitia's Rule 35 motion?
2. Has Ayarzagoitia failed to show the district court abused its discretion when it ordered him to pay restitution?

ARGUMENT

I.

Ayarzagoitia Has Failed To Show The District Court Abused Its Sentencing Discretion

A. Introduction

On the felony convictions for aggravated battery (enhanced by a deadly weapon enhancement) and burglary the district court imposed an aggregate sentence of 40 years with 20 years determinate. (R., pp. 159-60, 289-92.) Ayarzagoitia contends the district court abused its sentencing discretion in light of his youth (he is 39), his mental health, and his expressions of remorse and acceptance of responsibility. (Appellant’s brief, pp. 6-7.) Ayarzagoitia’s argument fails because it ignores the crimes, his character, his history, and the district court’s reasoning. Ayarzagoitia also contends his sentence is excessive in light of the information he submitted with his Rule 35 motions. (Appellant’s brief, pp. 8-9.) Review shows this argument also fails to demonstrate an abuse of discretion.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant’s probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). Sentencing discretion is reviewed for three factors: “(1) whether

the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the legal standards applicable; and (3) whether the trial court reached its decision by an exercise of reason.” State v. Fisher, 162 Idaho 465, ___, 398 P.3d 839, 842 (2017) (quoting State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011)).

C. The District Court Did Not Abuse Its Sentencing Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met his burden, the court considers the entire sentence but, because the decision to release him on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. Oliver, 144 Idaho at 726, 170 P.3d at 391. To establish that the sentence was excessive, he must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. The “primary objective” of sentencing is “the protection of society.” State v. Jimenez, 160 Idaho 540, 544, 376 P.3d 744, 748 (2016).

The district court applied the correct legal standards, and perceived its discretion and the legal boundaries thereof. (Tr., p. 93, L. 19 – p. 94, L. 16.) It found that, at the sentencing, Ayarzagotia was 39 years old. (Tr., p. 96, L. 4.) The court found that Ayarzagotia was “a danger to the community” and that the offenses he committed were “serious.” (Tr., p. 96, Ls. 22-24.) The court found that “a lesser sentence would depreciate the seriousness of the offense,” especially the aggravated battery. (Tr., p. 96, L. 24 – p. 97,

L. 1.) The sentence was supported by the “victim impact,” and Ayarzagotia’s “prior criminal history” and his disciplinary record at the jail and prison. (Tr., p. 97, Ls. 2-5.) The court considered Ayarzagotia’s mental health, and concluded that it was primarily a personality disorder that would be difficult to treat because Ayarzagotia generally refused treatment, including medication. (Tr., p. 97, Ls. 6-22.)

The district court’s analysis and findings are supported by the record. As noted above, it applied the correct legal standards, which Ayarzagotia does not dispute. It found that Ayarzagotia was 39 years old, which is supported by the evidence. (PSI, p. 1.) The record certainly supports the findings that Ayarzagotia is a danger to the community, that his offenses were serious, and that his criminal history and record while incarcerated or on release supported a finding of risk to the community. (PSI, pp. 3-7 (recitation of the crimes), 7-10 (Ayarzagotia’s extensive criminal record, including three prior felony convictions), 10-13 (Ayarzagotia’s performance in custody and on release), 20-21 (evaluated to be a high risk for recidivism).) Finally, that his mental health issues centered on a personality disorder that would be difficult to treat is also established by the evidence. (PSI, pp. 17-18, 35-41.)

Ayarzagotia attempts to show an abuse of discretion by claiming the district court did not “properly” consider mitigating circumstances including his age, his mental health, and his expressions of remorse and acceptance of responsibility. (Appellant’s brief, pp. 6-7.) Ayarzagotia’s argument ignores the district court’s analysis and makes no attempt to address the factors supporting the sentence. He has therefore failed to show an abuse of discretion.

D. The District Court Did Not Abuse Its Discretion By Denying The Rule 35 Motion

“A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” State v. Burggraf, 160 Idaho 177, 180, 369 P.3d 955, 958 (Ct. App. 2016). “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, 159 P.3d 838, 840 (2007).

Ayarzagoitia points to the following “new evidence” submitted with his request for reconsideration: he was being medicated with a mood stabilizer (Appellant’s brief, p. 8 (citing R., p. 165)); he was denied housing in the “Behavioral Health Unit” (Appellant’s brief, p. 8 (citing R., p. 165)); and he “expressed his concern that, without treatment, he might reoffend” (Appellant’s brief, p. 8 (citing R., p. 165)). The district court reaffirmed that the sentence was not excessive in light of Ayarzagoitia’s mental issues, and that Ayarzagoitia had a low probability of rehabilitation. (R., pp. 186-87, 317-18.) Ayarzagoitia has failed to show an abuse of discretion.

II.

Ayarzagoitia Has Failed To Show The District Court Abused Its Discretion When It Ordered Him To Pay Restitution

A. Introduction

The district court ordered Ayarzagoitia to pay \$59,283.32 to cover the victim’s medical expenses, jointly and severally with his co-defendants. (Aug., pp. 35-45.) Of that restitution, \$25,000 was to the Crime Victims Compensation Program (“CVCP”) for its payment of some of the aggravated battery victim’s medical bills. (Aug., pp. 35, 39.) On appeal Ayarzagoitia acknowledges that CVCP is a “victim” for purposes of restitution, but

contends the district court erred by ordering restitution to CVCP because he lacks the ability to pay. (Appellant’s brief, pp. 9-13.) Review of the record shows that Ayarzagoitia has failed to show an abuse of discretion.

B. Standard Of Review

The decision whether to order restitution and in what amount is committed to the trial court’s discretion. State v. Hill, 154 Idaho 206, 211, 296 P.3d 412, 417 (Ct. App. 2013). The trial court’s factual findings in relation to restitution will not be disturbed if supported by substantial evidence. State v. Straub, 153 Idaho 882, 885, 292 P.3d 273, 276 (2013); State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011).

C. Ayarzagoitia Has Failed To Show The Court Abused Its Discretion By Ordering Restitution To CVCP

Idaho’s restitution statute provides that the sentencing court “shall” order restitution for economic loss actually suffered by the victim. I.C. § 19-5304(2). Nevertheless, the court may decline to order restitution or order less than full restitution after considering other factors, including “the financial resources, needs, and earning ability of the defendant.” I.C. § 19-5304(3), (7). While a district court is required to *consider* these factors, inability to pay neither precludes nor limits a restitution award; rather, ability to pay is only one factor for a court’s consideration when it makes a discretionary restitution determination. State v. Olpin, 140 Idaho 377, 379, 93 P.3d 708, 710 (Ct. App. 2004) (citing State v. Taie, 138 Idaho 878, 880, 71 P.3d 477, 479 (Ct. App. 2003)). In addition, “[t]he immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution.” I.C. § 19-5304(7).

Ayarzagoitia does not argue that the district court failed to *consider* his ability to pay, only that it failed to “give sufficient weight” to his inability to pay. (Appellant’s brief, pp. 9-11.) This argument is unsupported by the law and the record. He also argues that because CVCP has some discretion in what medical bills it pays the district court abused its discretion. (Appellant’s brief, pp. 13-14.) He fails, however, to establish that, even if true, CVCP’s alleged discretion and source of funding is relevant. If CVCP had paid none of the victim’s medical bills the amount of restitution would have been the same; the only difference is to whom the restitution is owed. Ayarzagoitia has failed to show an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court’s judgment.

DATED this 13th day of June, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of June, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd