

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

1-16-2018

State v. Delarosa Appellant's Brief Dckt. 45119

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

Recommended Citation

"State v. Delarosa Appellant's Brief Dckt. 45119" (2018). *Not Reported*. 4315.
https://digitalcommons.law.uidaho.edu/not_reported/4315

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.

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

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
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,)	
)	NOS. 45119 & 45120
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NOS. CR 2012-1005 &
)	CR-2016-5591
v.)	
)	
ERICK DELAROSA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In these consolidated appeals, Erick Delarosa appeals from the district court's denial of his Rule 35 motion for reduction of sentence in Docket Number 45119 and from his judgment of conviction and the denial of his Rule 35 motion for reduction of sentence in Docket Number 45120. He asserts that the district court abused its discretion by imposing an excessive sentence in Docket Number 45120 and that the district court abused its discretion by denying his Rule 35 motions in both cases.

Statement of the Facts & Course of Proceedings

In Docket Number 45119, Mr. Delarosa pleaded guilty to forgery in 2012 and the district court imposed a unified sentence of ten years, with three years fixed, and the court retained jurisdiction. (R., p.73.) This charge stemmed from an allegation that Mr. Delarosa had forged checks on his step brother's checking account. (2012 Presentence Investigation Report (*hereinafter*, 2012 PSI, p.3.)) He filed a Rule 35 motion for reduction of sentence, which was denied. (R., p.84.) Following the period of retained jurisdiction, the district court suspended the sentence and placed Mr. Delarosa on probation. (R., p.88.)

Approximately three years later, the State filed a report of probation violation; Mr. Delarosa eventually entered into plea agreement in which he would admit to violating his probation. (R., p.175.) The district court revoked Mr. Delarosa's probation and executed the underlying sentence. (R., p.190.) Mr. Delarosa then filed a Rule 35 motion for reduction of sentence. (R., p.186.) The district court denied the motion. (R., p.203.) Mr. Delarosa filed a notice of appeal timely only from the order denying the Rule 35 motion. (R., p.205); *See* I.A.R. 14(a); *State v. Thomas*, 146 Idaho 592 (2008).)

In Docket Number 45120, Mr. Delarosa was charged with one count of forgery and one count of issuing an insufficient funds check in 2016. (R., p.238.) These charges stemmed from allegations that Jim Hahaj had sold a washer and dryer set to Mr. Delarosa and that Mr. Delarosa paid with an insufficient funds check. (2016 Presentence Investigation Report (*hereinafter*, 2016 PSI, p.4.) Mr. Delarosa also signed someone else's name on the check and admitted opening up fraudulent accounts with this name. (2016 PSI, p.4.) He entered into the same plea agreement as the 2012 case, in which he pleaded guilty to forgery. (R., p.271.) The district court imposed a unified sentence of seven and one-half years, with two and one-half years fixed. (R., p.288.) He

filed a Rule 35 motion for reduction of sentence, which the district court denied. (R., pp.278, 298.) Mr. Delarosa timely appealed from the judgment and the denial of the Rule 35 motion. (R., p.300.)

In Docket Number 45119, mindful of the fact this was his second Rule 35 motion, Mr. Delarosa contends that the district court abused its discretion by denying the motion. In Docket Number 45120, Mr. Delarosa contends that the district court abused its discretion by imposing an excessive sentence and by denying his Rule 35 motion.

ISSUES

- I. In Docket Number 45120, did the district court abuse its discretion when it imposed a unified sentence of seven and one-half years, with two and one-half years fixed, upon Mr. Delarosa following his plea of guilty to forgery?
- II. In Docket Numbers 45119 and 45120, did the district court abuse its discretion when it denied Mr. Delarosa's Rule 35 motion for reduction of sentence?

ARGUMENT

I.

In Docket Number 45120, The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven and One-Half Years, With Two and One-Half Years Fixed, Upon Mr. Delarosa Following His Plea Of Guilty To Forgery

“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)). Here, Mr. Delarosa's sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Delarosa “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).

At the sentencing hearing, counsel emphasized that Mr. Delarosa’s criminal history was due largely to his addiction to methamphetamine. (Tr., p.11, Ls.1-6.) Counsel for the State noted that it had not seen a criminal history from someone like Mr. Delarosa, who had a college degree; counsel for Mr. Delarosa noted, “I think that’s just reflective of the fact that addiction can hit anybody. Nobody is immune to addiction.” (Tr., p.11, Ls.1-3.) Counsel continued, “a degree doesn’t do it; a religious background doesn’t do it; racial background doesn’t do it; statute is the community doesn’t do it. Addiction can hit anybody.” (Tr., p.11, Ls.4-6.) Counsel emphasized that Mr. Delarosa had continued to struggle with his addiction and “he had slipped back into a relapse, was struggling with drugs again at the time this happened.” (Tr., p.11, Ls.12-25.)

Further, counsel informed the court that “every option that [Mr. Delarosa] has wanted me to look at or pursue has been focused on treatment.” (Tr., p.12, Ls.19-20.) Mr. Delarosa had secured funding for intensive outpatient treatment in the community through BPA. (Tr., p.13, Ls.4-7.) At the time of sentencing, Mr. Delarosa had checked with BPA, who indicated that

funding was available for up to fifteen months of outpatient treatment. (Tr., p.13, Ls.8-11.) Further, counsel represented that Mr. Delarosa had housing and employment available to him and that he was always considered a good employee at this current job. (Tr., p.14, Ls.1-9.) Considering that Mr. Delarosa had arranged for outpatient treatment, counsel requested that the court imposed a sentence of five years, with two years fixed, and that the court place Mr. Delarosa on probation. (Tr., p.16, Ls.11-18.)

Mr. Delarosa addressed the district court at the sentencing hearing. He stated,

Well, about the washer and dryer part, when – sorry. On the washer and dryer part, I – he did try to get to me. But I was having problems with my cell phone. I don't know.

I was trying to get my mom to get back at me to see if she was going to give me money so I could pay him back. But that didn't happen.

So I did ignore his call because, like I said, I was under the influence of meth and I was just pretty much sorry that I couldn't give him the right answer to him and answer to know if I was going to pay or not.

But on – on that behalf, about all this, I'm – am – really am sorry what I did with him, with my PO, when I went and tried to get help from her. I just wanted her just to help me to get into treatment and all that stuff.

So she tried to do that, but I never knew this was going to happen and go to this length of time. So that's the only thing else.

(Tr., p.20, Ls.4-24.) Mr. Delarosa also apologized for wasting the Court's time. (Tr., p.21, L.3-4.)

It is clear that the charges in this case stemmed from Mr. Delarosa's methamphetamine addiction and that he took the steps necessary to secure intensive outpatient treatment. Mr. Delarosa had a desire to confront his addiction. Further, he apologized to the Court. Considering this information, Mr. Delarosa respectfully submits that the district court abused its

discretion by imposing a unified sentence of seven and one-half years, with two and one-half years fixed.

II.

In Docket Numbers 45119 and 45120, The District Court Abused Its Discretion When It Denied Mr. Delarosa's Rule 35 Motion For Reduction Of Sentence

“If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citing *State v. Hernandez*, 121 Idaho 114 (Ct. App. 1991)). If the defendant fails to make such a showing, the denial of the motion is not an abuse of discretion. *State v. Shiloff*, 125 Idaho 104, 107 (1994); *State v. Hernandez*, 121 Idaho 114 (Ct. App. 1991).

At the Rule 35 hearing, counsel informed the Court that Mr. Delarosa had been treatment-oriented and treatment-focused since being back in custody. (Tr., p.27, Ls.18-20.) Mr. Delarosa recognized a need for treatment and had been active in putting together opportunities for treatment. (Tr., p.27, L.25 – p.28, L.2.) There was still funding available for Mr. Delarosa to obtain intensive outpatient treatment. (Tr., p.28, Ls.5-6.) Counsel emphasized that Mr. Delarosa had “a lengthy period of sobriety under his belt right now because of his custody.” (Tr., p.28, Ls.11-12.)

In Docket Number 45119, mindful of the fact that Mr. Delarosa had previously filed a Rule 35 motion in his case, he submits that the district court abused its discretion by denying his successive Rule 35 motion. (R., p.84; *see* ICR 35(b).) In Docket Number 45120, Mr. Delarosa submits that the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

Mr. Delarosa respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that the orders denying his Rule 35 motions be reversed and his cases remanded for further proceedings.

DATED this 16th day of January, 2018.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of January, 2018, 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:

ERICK DELAROSA
INMATE #62629
ISCI
PO BOX 14
BOISE ID 83707

DANE H WATKINS JR
DISTRICT COURT JUDGE
E-MAILED BRIEF

ROCKY L WIXOM
BONNEVILLE COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas