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State v. Loiselle Appellant's Brief Dckt. 45503

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45503
Plaintiff-Respondent,	)	
	)	BANNOCK COUNTY NO. CR 2017-3301
v.	)	
	)	
CALLI LOISELLE,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Calli Loiselle pled guilty to felony injury to a child, and the district court sentenced her to eight years, with four years fixed. On appeal, Ms. Loiselle asserts the district court abused its sentencing discretion by imposing a prison sentence that is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

On February 26, 2017, Ms. Loiselle gave birth to a healthy six-pound, nine-ounce baby boy. (PSI, pp.16, 26.) However, the baby tested positive for amphetamines, methamphetamine and marijuana (PSI, pp.4, 30, 32), and the police and Child Protection Services ("CPS") were called (PSI, pp.4, 28). Upon questioning, Ms. Loiselle admitted that she had been using methamphetamine and marijuana while she was pregnant. (PSI, pp.4, 28; Tr., p.2, Ls.4-5.)

Out of fear of being arrested, Ms. Loiselle fled the hospital. (PSI, pp.4, 6; Tr., p.12, L.6.) But she didn't run for long. Ms. Loiselle contacted a detective a few days later (on or about March 6, 2017), and indicated she wanted to "make things right." (R., p.13; PSI, p.6.) That detective urged Ms. Loiselle to call CPS, which she did. (PSI, p.6.) By doing so, she was able to see her son a few times before being charged and, ultimately, arrested in this case. (*See* PSI, p.6.)

On March 29, 2017, Ms. Loiselle was charged. (R., pp.6-7.) She was charged with felony injury to a child, in violation of I.C. § 18-1501(1). (R., pp.6-7.) After waiving her preliminary hearing, she was bound over to district court on that charge. (R., pp.39, 40, 41.)

Ms. Loiselle wound up entering into a plea agreement with the State. In exchange for Ms. Loiselle's guilty plea to the charged offense, the State agreed not to file a "persistent violator" sentencing enhancement under I.C. § 19-2514.[1] It also agreed that if Ms. Loiselle were accepted into Family Court, it would recommend probation. (R, p.78; Tr., p.6, L.2, p.7, L.3, p.7, L.23 – p.8, L.3.) If Ms. Loiselle did not get into Family Court, the State was free to recommend any sentence. (Tr., p.6, L.2 – p.7, L.3, p.7, L.23 – p.8, L.3.)

[1] This promise from the State was of no benefit to Ms. Loiselle, as the State apparently had no basis to charge a persistent violator enhancement anyway. Section 19-2514 provides for a sentencing enhancement for third and subsequent felony convictions, but Ms. Loiselle only had one prior felony conviction on her record (a 2011 burglary conviction). (*See* R., pp.6-15.)

At sentencing, the State recommended a prison sentence of eight years, with four years fixed, because Ms. Loiselle had not been accepted into Family Court. (Tr., p.19, Ls.13-15.) Ms. Loiselle argued for probation or, at the most, retained jurisdiction, so that she might have an opportunity to be a mother to her son. (Tr., p.17, L.23 – p.18, L.7, p.21, Ls.2-6.) The district court, however, chose to follow the State's recommendation, and it sentenced Ms. Loiselle to eight years, with four years fixed, though it ordered that sentence to run concurrently with the sentence in an unrelated case.[2] (R., pp.95-97; Tr., p.22, Ls.18-20.)

Following entry of the judgment of conviction, Ms. Loiselle filed a motion seeking a reduction of sentence pursuant to Idaho Criminal Rule 35(b). (R., p.108.) Shortly thereafter, she withdrew that motion. (R., p.110.) She has since renewed that motion, but no ruling has been made on that renewed motion.[3]

Ms. Loiselle timely appealed from the judgment of conviction. (R., pp.100-02.) On appeal, she contends the district court abused its sentencing discretion by imposing a sentence which is excessive given any view of the facts. Specifically, she contends the district court should have either placed her on probation or retained jurisdiction and allowed her to participate in a "rider" program.

[2] The unrelated case was the one involving the 2011 burglary conviction. Ms. Loiselle was on parole in that case when the present case arose.

[3] The January 30, 2018 renewed motion is not part of the Clerk's Record, and Ms. Loiselle does not seek to add it to the record at this time because no issue is presented on appeal concerning any Rule 35 motion. If the district court at some point denies her renewed Rule 35 motion, Ms. Loiselle may separately appeal any such decision. *See* I.A.R. 11(c)(9) (providing that orders entered after judgment, which affect the substantial rights of the defendant, are appealable).

ISSUE

Whether the district court abused its discretion when it imposed a unified sentence of eight years, with four years fixed, which is excessive given any reasonable view of the facts.

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Eight Years, With Four Years Fixed, Instead Of Either Placing Ms. Loiselle On Probation Or Retaining Jurisdiction

To determine whether the district court abused its discretion, this Court must decide whether the sentence was excessive under any reasonable view of the facts. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). When reviewing a sentence, the appellate court will "independently review the record on appeal, having due regard for the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Strand*, 137 Idaho 457, 460 (2002). The defendant bears the burden of "show[ing] that the sentence is unreasonably harsh in light of the primary objective of protecting society and the related goals of deterrence, rehabilitation and retribution." *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001); *accord State v. Oliver*, 144 Idaho 722, 726-27 (2007).

A trial court must consider all mitigating evidence. This may include the defendant's past sexual assault, her mental health problems, her addiction, her remorse and recognition of her problem, and her desire for rehabilitation. *See, e.g.*, *Williams*, 135 Idaho at 620 (holding the defendant's troubled childhood was a mitigating "factor that bears consideration at sentencing"); *Hollon v. State*, 132 Idaho 573, 581 (1999) (recognizing trial courts are required to "consider the defendant's mental illness as a sentencing factor"); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991) (holding some leniency was required, in part, because the defendant had "remorse for his conduct," recognized his problem, and was willing to accept treatment); *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981) (holding substance abuse "is a proper consideration in mitigation of

punishment upon sentencing"). Based on Ms. Loiselle's past sexual assault, her mental health problems, her addiction, her remorse, recognition of her problem, and desire for treatment, the district court erred when it imposed a lengthy prison sentence.

Ms. Loiselle was adopted at ten months old. (PSI, p.35.) Her mother used drugs during her pregnancy with Ms. Loiselle, and her father was also a drug user who spent time in and out of prison until his addiction killed him. (PSI, p.35.) Growing up, Ms. Loiselle had a good childhood with her adoptive parents. (PSI, pp.16, 35, 47.) She rode horses, camped, and fished. (PSI, p.16.) However, things changed dramatically as Ms. Loiselle approached adolescence.

When she was in fifth grade, Ms. Loiselle was diagnosed with Bi-Polar Disorder and Attention Deficit-Hyperactivity Disorder. (PSI, p.35.) At 11 or 12, she was raped. (PSI, p.47.) Thereafter, she attempted suicide and was admitted to the Behavioral Health Center on two separate occasions. (PSI, p.47.)

As Ms. Loiselle spun out of control, so too did her behavior. She began using drugs, starting with marijuana and eventually methamphetamine. (PSI, pp.20-24, 35, 50-51.) She committed her first juvenile offense—assault—when she was just shy of her fourteenth birthday. (PSI, p.6.) After her sixth juvenile offense in a year and one-half, she was sent to the Brown School in Texas. (PSI, pp.15, 35, 46.) According to her high school transcripts, Ms. Loiselle did well at the Brown School. (PSI, p.37.) Unfortunately though, she went back to the same bad habits once she returned to Idaho. (PSI, pp.7-15, 37.) She never finished high school, nor has she ever received her GED. (PSI, p.18.) And her string of juvenile offenses became a string of misdemeanor offenses. (PSI, pp.6-15.)

Ms. Loiselle struggles with an addiction that has its roots in her mother's womb, or perhaps even in her genetic makeup. (*See* PSI, p.35.) As noted, both of her biological parents

were drug users, and her mother used drugs while pregnant with Ms. Loiselle. (R., p.35.) Throughout her life, Ms. Loiselle has continuously used marijuana to self-medicate. (PSI, p.20.) Although, she has had periods of taking medication for her mental illnesses (which she states has always helped her), when she has gone off her medications, she has always gravitated back to drugs. (PSI, p.35.) This time can be different though; now there is a new, overriding motivator to stay clean and sober—her son. (PSI, p.16.)

Ms. Loiselle's decisions throughout her pregnancy were terrible, but her addiction clouded her judgment. Since the birth of her son, she has been able to see her son on a number of occasions. (Tr., p.21, Ls.7-11) She knows, now more than ever, how important her sobriety is for not just her own life, but also her son's. (PSI, pp.21-22; Tr. p.17, Ls.15-17, p.21, Ls.1-11.) She does not want her son to feel the kind of abandonment she felt as a child. (PSI, p.22.) She wants to be there as a loving, supportive mother to her son. (PSI, p.22; Tr. p.21, Ls.1-11.)

Ms. Loiselle has made significant mistakes, but her addiction has been something she has fought her whole life. Unfortunately, the district court did not give sufficient weight to her past sexual assault, her mental illness, her addiction, and her remorse, recognition of her problem, and earnest desire for treatment. Because the court did not properly weigh the mitigating factors in her case, Ms. Loiselle contends it abused its discretion by imposing a sentence higher than that which was reasonable under the facts of the case.

CONCLUSION

Ms. Loiselle respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she requests that her case be remanded to the district court for a new sentencing hearing.

DATED this 14th day of May, 2018.

_____/s/_____
ERIK R. LEHTINEN
Chief, Appellate Unit

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of May, 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:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JH/eas