

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

3-27-2018

State v. Battisti Appellant's Brief Dckt. 45559

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

Recommended Citation

"State v. Battisti Appellant's Brief Dckt. 45559" (2018). *Not Reported*. 4569.
https://digitalcommons.law.uidaho.edu/not_reported/4569

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

LARA E. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9855
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, |) | |
| |) | NO. 45559 |
| Plaintiff-Respondent, |) | |
| |) | ADA COUNTY NO. CR-FE-2014-10855 |
| v. |) | |
| |) | |
| MITCH MATTHEW BATTISTI, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Pursuant to a plea agreement, Matthew Battisti pled guilty to a single count of aggravated assault against his significant other. He received a unified sentence of five years, with two years fixed, and the district court retained jurisdiction. In December 2015, after successful completion of a “rider,” execution of Mr. Battisti’s sentence was suspended and he was placed on felony probation. Almost two years later, Mr. Battisti came before the district court for an alleged probation violation, which he admitted. The district court thereafter revoked his probation and executed his original sentence. On appeal, Mr. Battisti asserts the district court abused its discretion by revoking his probation.

Statement of the Facts & Course of Proceedings

According to the police reports attached to the pre-sentence investigation report (“PSI”), on July 26, 2014, Mr. Battisti and his significant other, Mary Rosenkrance-Oates (“Ms. Oates”), got into an altercation.¹ Employees from a designated driver service simultaneously arrived on scene after being summoned to Ms. Oates’ location, and reported to police they saw Mr. Battisti grabbing Ms. Oates around the neck and choking her for several seconds. (PSI, p.134.) When police responded to investigate, they found Mr. Battisti and Ms. Oates asleep together in the master bedroom. (PSI, p.134.) Ms. Oates had a red mark on her front lower neck area and under her left eye, and blood inside her lower lip. Mr. Battisti had scratch marks that had scabbed on his neck. (PSI, pp.96, 101-104.) Both parties had been drinking. (PSI, pp.119-120.) During questioning, Ms. Oates denied being in an altercation with Mr. Battisti. (PSI, p.120.) Mr. Battisti was initially charged with attempted strangulation. (R., p.38.) Some of the alleged facts were disputed.

Ms. Oates provided a sentencing statement, advising she had “never been threatened, or concerned for her safety while being with Mitch Battisti,” that the cab drivers arriving at her house overreacted, and that she was upset and shocked when the police broke down her door, blew a hole in the wall, started the carpet on fire and arrested Mitch.” (PSI, p.140.) Mr. Battisti nonetheless entered a guilty plea to an amended charge of aggravated assault. (R., pp.38, 92-94.) On May 11, 2015, the district court sentenced Mr. Battisti to a unified five year term, with two years fixed, and retained jurisdiction. (R., pp.114-115.)

¹ Mr. Battisti refers to aspect of the record titled, “PSI” which is a 392 page document incorporating several prior Presentence Investigation documents, police reports, assessments, and a rider review.

Mr. Battisti performed well during his rider, and earned a grant of probation in December of 2015. (R., pp.119-123.) Nineteen months later, the State alleged Mr. Battisti violated his probation by committing a new battery upon Ms. Oates and possessing alcohol. (R., pp.134-135.) According to the police reports, Ms. Oates called 911 because she and Mr. Battisti had gotten into an argument and Mr. Battisti struck her, causing injuries to her eye, face and lips. (PSI, p.284.) Ms. Oates was treated at the scene by EMS staff. (PSI, p.284.) At a probation revocation hearing, Mr. Battisti admitted the violations. (R., p.144; Plea Tr., p.5, Ls.16-25 – p.6, Ls.1-8.) The district court revoked his probation and executed his sentence. (R., pp.146-147.) Mr. Battisti also filed a motion to reduce his sentence pursuant to Idaho Criminal Rule 35 (“Rule 35”), which was denied.² On appeal, Mr. Battisti asserts the district court abused its discretion when it revoked his probation in light of mitigating factors.

ISSUE

Did the district court abuse its discretion in revoking Mr. Battisti’s probation and executing his five year prison sentence?

ARGUMENT

Mr. Battisti asserts that the district court abused its discretion when it revoked his probation and executed his original sentence without full consideration of the mitigating circumstances. The standards of this Court’s review for such claims on appeal are set forth in the Idaho Court of Appeals’ Opinion in *State v. Hoskins*:

When a trial court revokes a defendant’s probation, the court possesses authority under I.C.R. 35 to *sua sponte* reduce the sentence. The decision whether to do so is committed to the discretion of the court. Rule 35 also allows the defendant to

² The district court’s Order Denying Motion for Reconsideration Under ICR 35 was filed February 2, 2018, but is not included in the record; however, Mr. Battisti does not challenge the denial of his Rule 35 motion. *State v. Huffman*, 144 Idaho 201 (2006).

file a motion for reduction of a sentence within fourteen days after issuance of an order revoking probation, and Hoskins filed such a motion here. A motion for a sentence reduction under this rule is essentially a request for leniency which is addressed to the sound discretion of the sentencing court. On appeal, our criteria for review of rulings on Rule 35 motions are the same as those applied in determining whether the original sentence was reasonable. The defendant bears the burden of showing that the sentence is unreasonably harsh in light of the primary objective of protecting society and the related goals of deterrence, rehabilitation and retribution. Our focus on review is upon the nature of the offense and the character of the offender. When we review a sentence that is ordered into execution following a period of probation, we do not base our review upon only the facts existing when the sentence was imposed. Rather, we examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation.

131 Idaho 670, 672 (Ct. App. 1998) (internal citations omitted). Here, the court failed to fully consider Mr. Battisti's early acceptance of responsibility, positive performance on probation, amenability to treatment and rehabilitation, and family support.

To begin with, Mr. Battisti promptly plead guilty to the Valley County misdemeanor involving Ms. Oates, which formed the basis of his probation violation. He likewise admitted violating his probation as opposed to demanding a hearing. (R., p.144.) This early acceptance of responsibility is mitigating. *See State v. Shideler*, 103 Idaho 593, 594 (1982). Moreover, acknowledgment of guilt and acceptance of responsibility by the defendant are critical first steps toward rehabilitation. *See State v. Kellis*, 148 Idaho 812, 815 (Ct. App. 2010). This represented Mr. Battisti's first violation of probation since his January 2015, conviction, and Mr. Battisti's prior progress on probation warrants recognition.

Although the August 2017 probation violation conduct was distressing, particularly due to the fact that it involved the same victim from the underlying crime and caused her injuries, it appears to have been an isolated incident, and was misdemeanor as opposed to felony conduct. (R., p.144.) Up to that point, Mr. Battisti had performed violation-free, and was doing very well in other areas of his life. For instance, he had been living at the same home for several years,

and he was working for the Ada County Highway District. In fact, it was Mr. Battisti's understanding that his job would be held for him assuming he was released into the community. He had been on a low level of supervision, and there were no repeated concerns of alcohol use, outside of the probation incident. (Plea Tr., p.6, Ln.1 – p.7, Ls.1-24.) His probation officer corroborated this information in a report, noting Mr. Battisti's work with Battisti Custom Tile and Stone, and his second job at Ada County Highway District. (R., p.137). Outside of the new misdemeanor incident, he had not provided any positive drug or alcohol tests while on probation. (R., p.137.) He enrolled in MRT aftercare and domestic violence treatment and received all positive progress reports. Due to his compliance and low level of supervision up until the probation violation incident, his probation officer recommended only domestic battery treatment. (R., p.137.) There was no recommendation for incarceration or prison. (R., p.137.) Mr. Battisti also demonstrated major improvement during his rider, which bodes well for his ability to rehabilitate through some additional domestic battery treatment. (PSI, pp.2-7.)

Mr. Battisti performed very well during his rider in 2015. "Mr. Battisti came to the CRP program with a good attitude and a willingness to learn the information being presented. He has taken an honest approach to the program, not using justifying language, and opening up about some very personal issues. He acknowledged that he has a problems with addiction, relationships, and managing his anger. He assisted other inmates with their assignments and helped the counselor by giving constructive and insightful feedback." (PSI, p.7.) Mr. Battisti progressed through the SMART class, looking at his "negative core beliefs and how they affect his thoughts, behaviors, and overall situational outcome. He would then take a look at the same scenario with a more positive core belief and see how that changes the end result. He was able to write an apology letter to his girlfriend for the way he had manipulated and lied to her in the past.

. . “ (PSI, p.4.) He was willing and successful in applying anger management strategies. During moral reconnection therapy, Mr. Battisti had a positive attitude, a willingness to learn, and did well. (PSI, p.5.) These positive reports speak to Mr. Battisti’s insight and ability to improve his behavior. Mr. Battisti is also willing to address his mental health issues. (PSI, p.86.)

Mr. Battisti suffers from mental illness and substance abuse, which can be mitigating. (PSI, p.86.) Courts have recognized that substance abuse can be a mitigating factor in sentencing. *State v. Nice*, 103 Idaho 89, 645 P.2d 323 (1982). It is appropriate for the district court to consider a defendant’s mental health issues when making sentencing decisions. I.C. § 19-2523; *Hollon v. State*, 132 Idaho 573, 581 (1999). Dr. Beaver conducted a psychological evaluation in May 2007, diagnosing Mr. Battisti with alcohol abuse in early remission, Adjustment Disorder with Mixed Anxiety and Depressed Mood, Attention Deficit/Hyperactive Disorder, and Learning Disorder (non-verbal). At that time, Dr. Beaver indicated that Mr. Battisti was a low risk for anger-related incidents assuming alcohol abstinence. (PSI, p.148.) In 2015, Mr. Battisti’s GAIN revealed a diagnosis of alcohol abuse and recurrent major depressive disorder. (PSI, p.86.) According to Mr. Battisti’s recent probation report, he had been attending aftercare counseling, and was testing negative for drugs and alcohol. (R., p.137.) Thus, he was addressing his issues, outside of the isolated August incident. He also has strong employment capabilities.

A defendant’s reliability and dedication as a working member of society is a factor which a district court should consider as part of the defendant’s character. *State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991); *see also State v. Hagerdorn*, 129 Idaho 155, 161 (Ct. App. 1996). Mr. Battisti completed high school and was proactive in taking several courses through the Idaho Department of Lands and Bureau of Land Management. (PSI, p.145.) He had his own tile

cutting and setting business for several years. (PSI, p.145.) Mr. Battisti was also employed as a wildland fire fighter from 2001 until he was laid off in 2009. (PSI, p.146.) He previously documented numerous certificates of completion of courses and positive performance reports. (PSI, pp.236-262.) This demonstrates his ability to fulfill the financial obligations of his case.

Lastly, Mr. Battisti also reported a solid and stable private life, including family history. During Mr. Battisti's probation violation proceedings, his parents appeared in court. (Plea Tr., p.7, Ls.2-4.) He also has a strong support system through the Eagle Christian Church. (PSI, p.144.) During the 2014 sentencing hearing, Mr. Battisti's mother provided a positive reference. She described her son as compassionate and kind. When she was injured in 2014, she did not believe Mr. Battisti intentionally hurt her, nor did she believe incarceration was appropriate. (PSI, pp.184-185.) Mr. Battisti's brother, Kyle, described Mr. Battisti as a very close member of their family, who suffered from bi-polar disorder, who, when medicated, was doing great, and had endless potential. (PSI, pp.184-185.) His father, Roger Battisti, a former science teacher, coach and military man, wrote the court, stating, "Mitch needs to make some changes in his life and the classes etc. should help. I don't envy the decision and responsibility you have as a judge. Thank you for your part in shaping lives of victims and the convicted as well as making Boise safer and fair. . . . We will continue to support Mitch with wisdom, love, and some financial needs as we are able. . . . (PSI, pp.231-232.) His parents' attendance in the most recent incident affirms their continued support.

Based upon all of these mitigating factors, Mr. Battisti's probation should have been reinstated. The court abused its discretion in revoking the same because it was not reasonable in light of mitigating circumstances. "Reasonableness is a fundamental requirement in the exercise of sentencing discretion." *State v. Kingsley*, 99 Idaho 868, 869, 590 P.2d 1014, 1015 (1979).

Unless it appears that confinement was necessary “to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case, a sentence is unreasonable.” *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). Here, Mr. Battisti had made significant progress and probation – he had a stable home and job and had gone a substantial amount of time without signs of alcohol use or misconduct. Albeit he did engage in deplorable activity in August 2017, this incident, when contrasted to his progress, appears isolated. Moreover, his own probation officer recommended not incarceration but rather more treatment due to otherwise compliant behavior. Therefore, when the court refused to place Mr. Battisti back on probation with a less severe sanction than prison, it imposed an excessive penalty beyond its discretion.

CONCLUSION

For the reasons set forth above, Mr. Battisti respectfully requests this Court vacate the district court’s order revoking his probation, and remand the case to the district court with an instruction that he be returned to probation.

DATED this 27th day of March, 2018.

_____/s/_____
LARA E. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of March, 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:

MITCH MATTHEW BATTISTI
INMATE #85012
ISCC
PO BOX 70010
BOISE ID 83707

DEBORAH A BAIL
DISTRICT COURT JUDGE
E-MAILED BRIEF

BRIAN C MARX
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

LEA/eas