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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45747
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-14874
v.)	
)	
PHILLIP LEE COOLEY,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Phillip Lee Cooley appeals from his judgment of conviction for felony jury to a child. Mr. Cooley pleaded guilty and the district court imposed a unified sentence of ten years, with two years fixed. Mr. Cooley appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On April 25, 2017, Mr. Cooley admitted to striking his daughter with a belt approximately twelve times, causing bruising to her right upper buttock, hip, leg, and wrapping around to her stomach. (Presentence Investigation Report (*hereinafter*, PSI), p.2.) Mr. Cooley admitted that he lost control while disciplining her and struck her too hard and too much. (PSI, p.2.)

Mr. Cooley was charged with two counts of felony injury to a child and two counts of misdemeanor injury to a child. (R., p.56.) He pleaded guilty to one count of felony injury to a child and the State dismissed the remaining counts. (R., p.92.) The district court imposed a sentence of ten years, with two years fixed. (R., p.114.) Mr. Cooley appealed. (R., p.142.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of ten years, with two years fixed, upon Mr. Cooley following his plea of guilty to injury to a child?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Two Years Fixed, Upon Mr. Cooley Following His Plea Of Guilty To Injury To A Child

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

As counsel for Mr. Cooley noted at sentencing, Mr. Cooley has no prior criminal history of any kind. (Sent. Tr., p.30, Ls.22-25.) Further, Mr. Cooley was rated as a low risk to reoffend: “of 13 offenders in the past who have had similar age, number of criminal convictions and LSI score, the vast majority of them were sentenced to probation.” (Sent. Tr., p.31, Ls.1-4.)

Counsel noted that it was “sad to hear that these children are blaming each other” and counsel believed that “a lot of that comes from the confusion because this parent’s no longer in their lives and they don’t know why, so from the child’s perspective when you cut off any form of communication, you have to think about the fact that, yes, you are protecting the child in this sense, I guess, from the parent, but there are other means in place to do that.” (Sent. Tr., p.32, Ls.8-15.) Further, counsel did not believe that this was a case of “abuse for the sake of abuse,” but rather punishment that got out of control. (Sent. Tr., p.32, L.23 – p.33, L.9.)

Counsel also noted that Mr. Cooley did indeed love his children. Counsel stated that Mr. Cooley had said that he would do anything for his children, was depressed because of the

situation with his children, and that he had lost everything because he had lost his children.
(Sent. Tr., p.33, Ls.18-25.)

Counsel also noted that Mr. Cooley had serious depression and substance abuse issues and was not receiving treatment. (Sent. Tr., p.34, Ls.15-20.) Counsel therefore requested that the court impose a period of probation upon Mr. Cooley along with some periods of jail and treatment. (Sent. Tr., p.30, Ls.2-14.)

Considering this information, Mr. Cooley respectfully submits that the district court abused its discretion by imposing a sentence of ten years, with two years fixed.

CONCLUSION

Mr. Cooley 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.

DATED this 30th day of August, 2018.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas