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### State v. Carroll Appellant's Brief Dckt. 45806

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45806
Plaintiff-Respondent,	)	
	)	BONNEVILLE COUNTY NO. CR 2017-3971
v.	)	
	)	
CHARLES CECIL CARROLL,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Charles Cecil Carroll appeals from the district court's Judgment of Conviction. Mr. Carroll was sentenced to a unified sentence of fifteen years, with one and one-half years fixed, for his lewd conduct conviction. He asserts that the district court abused its discretion in sentencing him to an excessive sentence without properly considering the mitigating factors that exist in his case.

## Statement of the Facts & Course of Proceedings

On July 14, 2017, a Prosecuting Attorney's Information was filed charging Mr. Carroll with lewd conduct with a child under sixteen years of age. (R., pp.75-76.) The charges were the result of report to police that Ms. Twist walked in on her daughter touching Mr. Carroll's genitalia. (PSI, pp.4-5.)<sup>1</sup>

Despite the fact that Mr. Carroll adamantly denies that the alleged touching occurred for the purposes of sexual gratification, he entered an *Alford*<sup>2</sup> plea to the charge. (R., pp.107-108.) At sentencing, the prosecution requested an underlying unified sentence of fifteen years, with three years fixed, with a period of retained jurisdiction. (Tr., p.35, Ls.11-13.) Defense counsel recommended probation. (Tr., p.39, Ls.13-15.) The district court imposed a unified sentence of fifteen years, with one and one-half years fixed. (R., pp.113-114.) Mr. Carroll filed a Notice of Appeal timely from the district court's Judgment of Conviction. (R., pp.125-27.)

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<sup>1</sup> For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as "PSI" and referenced pages will correspond with the electronic page numbers contained in this file.

<sup>2</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

## ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Carroll, a unified sentence of fifteen years, with one and one-half years fixed, following his *Alford* plea to lewd conduct?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed, Upon Mr. Carroll, A Unified Sentence Of Fifteen Years, With One And One-Half Years Fixed, Following His *Alford* Plea To Lewd Conduct

Mr. Carroll asserts that, given any view of the facts, his unified sentence of fifteen years, with one and one-half years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Carroll does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Carroll must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*,

99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)).

Mr. Carroll asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason. Specifically, he asserts the district court did not properly consider to his age and health concerns. The Idaho Court of Appeals had previously held that the health problems of the defendant are a factor for the district court to consider in evaluating sentencing. *State v. James*, 112 Idaho 239, 243-44 (Ct. App. 1986). Mr. Carroll was 85 years old when the presentence investigation report was created. (PSI, p.3.) He describes his health as “poor.” (PSI, p.10.) Mr. Carroll suffers from COPD, emphysema, a rapid heard beat, and edema. (PSI, p.9.) It was reported that he was taking three different medications to assist with lung issues: Pulmicort, Tudorza, and Brovana. (PSI, p.9.) He also takes medication to assist with his heart issues and edema. (PSI, p.9.)

Additionally, Mr. Carroll has no prior felony convictions. (PSI, p.6.) In *State v. Nice*, 103 Idaho 89, 91 (1982) the Idaho Supreme Court reduced Mr. Nice’s sentence where the present conviction “was the defendant’s first felony with no prior history of any sexual violations.” In *State v. Shideler*, 103 Idaho 593, 595 (1982) the Idaho Supreme Court also

reduced the defendant's sentence, in part, because "[t]his was the defendant's first felony with no prior history of any criminal activity."

In addition to a lack of a criminal record, Mr. Carroll was evaluated as a "very low risk" to reoffend. (PSI, pp.10, 27.) It was noted that he is not a risk to the community and does not need to participate in sex offender treatment because he "does not demonstrate significant treatment needs." (PSI, pp.10, 27.)

Finally, Mr. Carroll is a military veteran. (PSI, p.8.) The Idaho Supreme Court found that it was error for the sentencing court to fail to consider a defendant's military service when determining the appropriate sentence. *State v. Mitchell*, 77 Idaho 115, 118 (1955). Mr. Carroll enlisted in the Navy in 1952. (PSI, p.8.) He served in both the Korean and Vietnam Wars. (PSI, p.8.) Before receiving an Honorable Discharge in 1982, he achieved the rank of "O-5, Commander, and held the position of Officer in Charge." (PSI, p.8.)

Based upon the above mitigating factors, Mr. Carroll asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his advanced age, health issues, lack of prior record, very low risk to reoffend, and military service with an Honorable Discharge, it would have crafted a less severe sentence.

CONCLUSION

Mr. Carroll 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 31<sup>st</sup> day of July, 2018.

/s/ Elizabeth Ann Allred  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of July, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, electronically as follows:

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
Delivered via e-mail to: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

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

EAA/eas