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### State v. Curttright Appellant's Brief Dckt. 45822

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45822
Plaintiff-Respondent,	)	
	)	BANNOCK COUNTY NO. CR 2017-4234
v.	)	
	)	
BRYAN JOHN CURTTRIGHT,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Bryan John Curttright appeals from his judgment of conviction for attempted strangulation. Mr. Curttright pleaded guilty and the district court imposed a unified sentence of eight years, with four years fixed, and the court retained jurisdiction. Mr. Curttright now 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 16, 2017, a cab driver reported that he was approached by a woman who asked him to call the police. (Presentence Investigation Report (*hereinafter*, PSI, p.3.) When officers

arrived, they spoke with Eugenia Kibler, who reported that her ex-boyfriend, Mr. Curtright, had come up behind and pushed her, pushed her into her house, threw her to the ground, and attempted to strangle her. (PSI, p.3.) She reported that in the process, he stole some of her medication and destroyed her phone. (PSI, p.3.) Mr. Curtright was subsequently arrested. (PSI, p.4.)

Mr. Curtright was charged with attempted strangulation and first degree stalking. (R., p.31.) He pleaded guilty to attempted strangulation and the State dismissed the stalking charge. (R., p.84.) The district court imposed a unified sentence of eight years, with four years fixed, and the court retained jurisdiction. (R., p.100.) Mr. Curtright appealed. (R., p.106.) He asserts that the district court abused its discretion by imposing an excessive sentence.

#### ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of eight years, with four years fixed, upon Mr. Curtright following his plea of guilty to attempted strangulation?

#### ARGUMENT

##### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Eight Years, With Four Years Fixed, Upon Mr. Curtright Following His Plea Of Guilty To Attempted Strangulation

“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. Curtright’s sentence does not exceed the statutory maximum. *See* I.C. §18-923(1). Accordingly, to show that the sentence imposed was unreasonable, Mr. Curtright “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 time of sentencing in this case, Mr. Curtright pleaded guilty to another crime, felony violation of a no-contact order, and the sentencing hearing addressed both charges. (1/16/18 Tr., p.12, Ls.1-3.) For this case, the attempted strangulation charge, the parties agreed to recommend that the court retain jurisdiction; the State requested a sentence of eight years, with four years fixed, and Mr. Curtright requested six years, with two years fixed. (1/16/18 Tr., p.13, Ls.18-21.) Mr. Curtright addressed the court at sentencing. He stated,

I know I violated the no-contact order. When I found out – when I got word that she beat her leukemia, I did go by there. I apologize. Just wanted to see – I went and did my PSI request, did my GAIN assessment. I wanted to see if there was – I could have the opportunity to get on probation. I know I can do it. I just want to be given the opportunity.

(1/16/18 Tr., p.16, Ls.9-17.) At the entry of plea hearing, Mr. Curtright addressed the attempted strangulation charge. He stated, “we were outside. She was arguing telling me to get out of her residence. She threw a cell phone at me and went to act like she was going to spit on me, and I just grabbed her by her shit and then the neck.” (9/18/17 Tr., p.14, Ls.6-11.) When asked by the district court if he squeezed her neck, Mr. Curtright said yes. (9/18/17 Tr., p.14, Ls.16-18.) At

the sentencing hearing, counsel for Mr. Curtright acknowledged that in the PSI Mr. Curtright had denied strangling Ms. Kibler. (1/16/18/ Tr., p.9, Ls.4-9.) However, counsel emphasized that Mr. Curtright had allocated at the entry of plea hearing and admitted his conduct, and that Mr. Curtright stood by his allocution. (1/16/18 Tr., p.9, Ls.1-19.) Thus, Mr. Curtright acknowledged his actions in both cases and apologized. Because Mr. Curtright acknowledged his guilt and apologized in court, he respectfully submits that the district court abused its discretion by imposing an excessive sentence.

### CONCLUSION

Mr. Curtright 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 30<sup>th</sup> day of October, 2018.

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

CERTIFICATE OF SERVICE

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

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

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

JMC/eas