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State v. Marley Appellant's Brief Dckt. 45985

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45985
Plaintiff-Respondent,	)	
	)	ELMORE COUNTY NO. CR-2016-1094
v.	)	
	)	
COLTON HUNTER MARLEY,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Colton Hunter Marley pled guilty to felony DUI. He received an aggregate unified sentence of ten years, with three years fixed. After a period of retained jurisdiction, the district court placed him on probation for ten years.

On appeal, Mr. Marley contends that his felony DUI sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

On May 14, 2016, officers responded to a report of a vehicle spinning its tires and driving on the grass at a park. (R., p.23.) Officers arrived and followed the car. (R., pp.23-24.) They observed the car speed, run a stop sign, and nearly strike a wall. (R., p.24.) The driver then tailgated a black SUV and stopped to yell at the driver of that SUV. (R., p.24.) When law enforcement spoke to the driver, who was identified as Colton Marley, they observed the odor of an alcoholic beverage. (R., p.24.) Mr. Marley had a prior felony DUI conviction. (R., p.85.) Witness also reported that the driver had brandished a firearm at them while they were in the park. (R., p.23.)

Based on these facts, Mr. Marley was charged by Information with one count of felony DUI, misdemeanor reckless driving, misdemeanor disturbing the peace, and misdemeanor exhibition of a deadly weapon. (R., pp.64-67.) In another case, Elmore County CR-2017-708, Mr. Marley was charged with one count of felony injury to jails for breaking a video camera while in custody, and the cases were set together for arraignment. (Tr., p.9, Ls.18-22; R., pp.143-144.)

Pursuant to a plea agreement, Mr. Marley pled guilty with an Alford[1] plea to felony DUI, felony injury to jails, and misdemeanor exhibiting a deadly weapon, and the State agreed not to file a persistent violator enhancement and to dismiss the remaining misdemeanor charges. (R., pp.148-165.) The State agreed to recommend ten years, with three years fixed for the DUI conviction, consecutive to any other case. (R., p.160.) For the injury to jails sentence, the State agreed to recommend five years indeterminate, consecutive to any other case, but concurrent to

[1] *Alford v. North Carolina*, 400 U.S. 25 (1970).

the 2016 case. (R., p.160.) Mr. Marley was to be credited for time served in county jail on the exhibition charge. (R., p.160.)

At the sentencing hearing, the State asked the district court to sentence Mr. Marley on the felony DUI to a unified term of ten years, with three years fixed, but to retain jurisdiction. (6/22/17 Tr., p.9, Ls.7-14.) The State asked for five indeterminate years for the felony injury to jails conviction, concurrent with the DUI but consecutive to any other cases. (6/22/17 Tr., p.9, Ls.9-14.) Mr. Marley's counsel asked the district court to sentence Mr. Marley to seven and one-half years, with two years fixed, for the DUI conviction, and for injuring jails, Mr. Marley's counsel asked for two years indeterminate, with the court retaining jurisdiction on both counts. (6/22/17 Tr., p.11, Ls.12-24.)

Mr. Marley was sentenced to ten years, with three years fixed, on the felony DUI, and the district court retained jurisdiction. (6/22/17 Tr., p.15, Ls.20-23; R., pp.196-199.) On the injury to jails count, Mr. Marley was sentenced to five indeterminate years, and the district court retained jurisdiction. (6/22/17 Tr., p.16, Ls.20-23; R., pp.196-199.) The court ordered the sentences to be served concurrent to Payette County case number CR 2016-1873.[2] (6/22/17 Tr., p.16, L.24 – p.17, L.4.) After the period of retained jurisdiction, the district court suspended the sentences and placed Mr. Marley on probation for ten years. (3/12/18 Tr., p.23, Ls.13-17; R., pp.219-228.) The district court also sentenced Mr. Marley to an additional 60 days in the county jail due to the issues he had while on the rider. (3/12/18 Tr., p.20, Ls.5-13.)

Mr. Marley filed a notice of appeal timely from the Order Suspending Sentence After Retained Jurisdiction. (R., pp.229-232.)

[2] In Payette County CR-2016-1873, Mr. Marley was convicted of burglary, petit theft, and providing false information to a law enforcement officer. (R., p.76.)

ISSUES

I. Did the district court abuse its discretion when it imposed a unified sentence of ten years, with three years fixed, upon Mr. Marley following his plea of guilty to felony DUI?

II. Did the district court abuse its discretion when it placed Mr. Marley on probation for ten years?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Three Years Fixed, Upon Mr. Marley Following His Plea Of Guilty To Felony DUI

Mr. Marley asserts that, given any view of the facts, his unified suspended sentence of ten years, with three 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. Marley does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Marley must show that in light of the governing criteria, the sentences were excessive considering any view of the facts. *Id*. 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.*

In light of the mitigating factors present in this case, Mr. Marley's sentence is excessive considering any view of the facts.

Mr. Marley is only 26 years old, but he has long struggled with an addiction to alcohol. (R., pp.92-93.) He first tried alcohol when he was 11 years old and began drinking regularly beginning at age 12. (R., pp.92-93.) Mr. Marley has also used methamphetamine. (R., pp.92-93.) The Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). In *Nice*, the Idaho Supreme Court reduced a sentence based on Nice's lack of prior record and the fact that "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem." *Id.* at 91. Additionally, the Idaho Supreme Court has ruled that ingestion of drugs and alcohol resulting in impaired capacity to appreciate the criminality of conduct, could be a mitigating circumstance. *State v. Osborn*, 102 Idaho 405, 414 (1981). Mr. Marley realizes that his substance abuse is a problem area in his life, and he wants to stop using drugs and alcohol. (R., p.137.)

Further, Mr. Marley has been diagnosed with ADHD and Generalized Anxiety Disorder. (R., pp.96, 129-132.) He was taking medication for the anxiety disorder while in jail. (R., pp.129-132.) The Idaho Supreme Court has held that the trial court must consider a defendant's mental illness as a factor at sentencing. *Hollon v. State*, 132 Idaho 573, 581 (1999).

Mr. Marley does have a supportive family to assist him in his rehabilitation. He asked for treatment so that he could learn to be a contributing member of society and be there to raise and support his four-year-old daughter. (Tr., p.12, Ls.19-25.) Mr. Marley enjoys spending time with his daughter, and he "want[s] us to have a good life." (R., pp.89, 137.)

Further, Mr. Marley expressed remorse and accepted responsibility for his actions. (R., pp.148-165.) At his sentencing hearing, Mr. Marley told the court:

> Just I'd really appreciate a chance to do the program. Like he was saying, I – I haven't – this is the longest I've gone without doing drugs maybe since I was 12. In California, the jails are full of drugs. You do more drugs in jail than on the streets. And I've been in custody now for about 11 months, and I've had a lot of time to think about wanting to change my life.
>
> I have a daughter, she just turned 4. And I just – I really want a – a program. Like he said, I've never had programming. They always just made me do the time and then get out, and you don't learn anything from it. I'd appreciate just a chance for anything, to get some tools to help me be a member of society, a contributing member, and not just a criminal.

(Tr., p.12, Ls.11-25.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Mr. Marley 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 remorse, family support, and substance abuse/addiction it would have imposed a less severe sentence.

II.

The District Court Abused Its Discretion When It Placed Mr. Marley On Probation For A Period Of Ten Years Because This Length Of Time Is Not Reasonably Related To The Goal Of Rehabilitation

Mr. Marley asserts that, given any view of the facts, his ten-year period of probation is excessive because this length of time is not reasonably related to the goal of rehabilitation.

Idaho Code § 19-2601 provides that a district court has discretion to suspend the execution of judgment and place a defendant on probation "under such terms and conditions as it deems necessary and appropriate. . . ." I.C. § 19-2601(2). A district court has broad discretion

with regards to probation and generally, it can prescribe the terms and conditions of probation. *State v. Schumacher*, 131 Idaho 484, 486 (Ct. App. 1998).

However, a condition of probation must be reasonably related to the purpose of probation, which is rehabilitation. *State v. McCool*, 139 Idaho 804, 807 (2004); *State v. Dicksen*, 152 Idaho 70, 75 (Ct. App. 2011). Idaho Code Section 19-2601(4) does not, however, provide the trial court with authority to impose arbitrary or unreasonable conditions. *Dicksen*, 152 Idaho at 75. A condition of probation that is impossible to fulfill is improper. *State v. Sandoval*, 92 Idaho 853, 861 (1969); *see also State v. Wakefield*, 145 Idaho 270, 274 (Ct. App. 2007) ("Certainly a condition of probation that sets a probationer up for near-certain failure can not be said to be reasonably related to the ultimate goal of rehabilitation."). Further, a defendant "may challenge unreasonable conditions of probation." *State v. Urrabazo*, 150 Idaho 158, 162 (2010).

Here, Mr. Marley asserts that a condition of his probation is the actual length of the probation, which he asserts is excessive for the same reasons identified in Section I. Further, "[t]he average probation sentence in Idaho is five years. In comparison, the average probation sentence in the U.S. is three years, or 40 percent shorter." Council of State Governments Justice Center, *Justice Reinvestment In Idaho: Analysis and Policy Framework*, at https://www.idoc.idaho.gov/content/document/justice_reinvestment_in_idaho_report (last visited September 19, 2018). "Probation sentences in the state are lengthy, yet revocations from probation tend to occur early in the supervision period." *Id*. Here, Mr. Marley was sentenced to ten years of probation for his non-violent crimes, well in excess of the national average and even the average probation sentence in Idaho.

In light of the totality of the circumstances, Mr. Marley contends that the period of ten years to be on probation was not reasonably related to the objective of rehabilitation. Rather, he

asserts that the condition was unreasonable because there is no indication that it would take ten years for Mr. Marley to be rehabilitated. It was an unnecessary restriction on his liberty because during these ten years, he has to comply with the other terms of probation, and if he violates those terms, he could be sent to prison for up to ten years. A term of ten years is not reasonably related to curtailing any inclinations Mr. Marley may, or may not have, to commit crimes similar to the one for which he was convicted. Therefore, the district court abused its discretion by ordering that the probation last ten years, and a shorter term is appropriate.

CONCLUSION

Mr. Marley respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, Mr. Marley respectfully requests that this Court find that the length of his probation is unreasonable, and reduce the length of probation. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 3rd day of October, 2018.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of October, 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

SJC/eas