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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46093
)	
v.)	ADA COUNTY NO. CR01-17-43973
)	
AMBER RAE CALDWELL,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Amber Caldwell appeals from the district court's judgment of conviction sentencing her to five years, with two years fixed, for possession of a controlled substance. Ms. Caldwell is currently on probation following a successful rider. She claims her underlying sentence is excessive and therefore unreasonable, representing an abuse of the district court's sentencing discretion.

Statement of the Facts and Course of Proceedings

In October of 2017, police officers found Ms. Caldwell asleep at the wheel of her car, parked at a Little Caesar's Pizza in Boise. (R., p.13.) After the officers discovered methamphetamine and syringes in the car, Ms. Caldwell was charged with DUI, possession of a controlled substance, and possession of paraphernalia. (R., pp.13, 25.) These charges followed close on the heels of recent drug charges in Elmore County: in January of 2017, Ms. Caldwell pled guilty to a misdemeanor drug possession¹ – which was her first non-traffic offense, ever (PSI, p.7); and in September of 2017, Ms. Caldwell was charged with felony offenses related to her use of methamphetamine.² (PSI, p.148.)

Pursuant to an agreement with the State, Ms. Caldwell pled guilty to the felony drug possession charge and to misdemeanor DUI, and the State dismissed the paraphernalia charge. (R., p.39; 1/18/18 Tr., p.14, L.16 – p.19, L.3.) The district court sentenced Ms. Caldwell to unified term of five years, with two fixed, and retained jurisdiction on the possession count, and imposed a concurrent fifty-six days on the DUI. (R., pp.55-58.) The district court then ordered these sentences to be served concurrently with the sentence imposed in Elmore County Case No. CR-17-2851. (R., p.56.)

Ms. Caldwell filed a timely Notice of Appeal from the judgment of conviction. (R., p.60.) She has since completed her rider and the district court granted her probation.³ However, she asserts her underlying sentence of five years, with two fixed, for possession of a

¹ Elmore County Case No. CR17-98. (PSI, p.5.)

² Elmore County Case No. CR-2017-2851. (PSI, pp.1-5, 148.) The sentence imposed in her Elmore County felony case is the subject of a separate, pending appeal, Appeal No. 46166.

³ See “Judgment After Retained Jurisdiction and Order for Probation,” filed October 12, 2018. Ms. Caldwell is filing a Motion to Augment the Record with a copy of this Order contemporaneously with this Appellant's Brief.

controlled substances is excessive in light of the mitigating circumstances of her case, representing an abuse of the district court's sentencing discretion.

ISSUE

Did the district court abuse its discretion by imposing an excessive sentence of five years, with two years fixed, for possession of a controlled substance?

ARGUMENT

The District Court Abused Its Discretion By Imposing An Excessive Sentence Of Five Years, With Two Years Fixed, For Possession Of A Controlled Substance

A. Introduction

Based on an independent review of the record, this Court should conclude that the sentence imposed in this case – five years with two years fixed – is excessive, and therefore unreasonable, given the mitigating facts in this case.

B. Standard Of Review

Sentencing decisions are reviewed under the abuse of discretion standard. *State v. McIntosh*, 160 Idaho 1, 8 (2015). When the appellate court reviews an alleged abuse of discretion by the district court, the sequence of inquiry requires consideration of four essentials: whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason. *State v. Le Veque*, 164 Idaho 110, ___, 426 P.3d 461, 464 (2018). Ms. Caldwell claims the district court abused its discretion under the fourth, reasonableness, prong of this standard.

When reviewing the reasonableness of a sentence the appellate court conducts an independent examination of the record, “having regard for the nature of the offense, the character

of the offender and the protection of the public interest.” *State v. Shideler*, 103 Idaho 593, 594 (1982). 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. Lundquist*, 134 Idaho 831, 836 (2000). A sentence is unreasonable, representing an abuse of discretion, if the sentence is excessive under any reasonable view of the facts. *State v. Nice*, 103 Idaho 89, 90 (1982).

C. Ms. Caldwell’s Unified Sentence Of Five Years, With Two Years Fixed, Is Unreasonable Given The Mitigating Facts Of Her Case

Ms. Caldwell was twenty-nine at the time of her sentencing. (PSI, pp.3, 91.) Prior to her recent addiction and her first-ever criminal offense in 2017, she had lived her life as a law-abiding individual, and as a hard-working mother devoted to raising her four children. (PSI, pp.7, 166-72.) Friends and family knew Ms. Caldwell to be strong-willed and fiercely devoted to her children. (PSI, pp.166-72.) As a child, she was “home-schooled” and from the age of six worked long hours on the family’s farm business, under the supervision of a volatile, at times physically abusive, father. (PSI, p.129.) At the age of seventeen, Ms. Caldwell moved out and started her own family. (PSI, p.129.) She worked in the service industry, in restaurants, rarely missing work, and she also worked as a respected realtor. (PSI, pp.136-38, 166-72.) She was dedicated to her children, regularly attending school meetings regarding their education, and she cooked family meals and hosted play dates for her children. (PSI, p.168.)

At the same time, Ms. Caldwell carried the burden of her own emotionally-scarred childhood, and of the physical abuse suffered at the hands of her own father; and she has struggled with PTSD, Anxiety, and Depression. (PSI, pp.166-72.) As her mother’s letter to the district court explains, the year leading up to Ms. Caldwell’s methamphetamine problem had been especially difficult:

Amber married a service man who had taken her to Italy. Soon after, their relationship became abusive to the point, in my opinion, of her being tortured ...

The mental and physical degradation she tolerated had crushed her. Trying to move on and care for the children she became a respected real estate agent in the community. However, a mean divorce continued to erode her stamina. Succumbing to low self-esteem and unhealthy associations, Amber acknowledges she has made wrong choices. She recognizes that her family, reputation and job have all suffered from her choices. She has also stated that she “wants to do things right this time so she doesn't become overwhelmed again.”

(PSI, p.172.)

Her eldest child's father, who remains a good friend to Ms. Caldwell to this day, provided a similar description of the precipitating events:

Following a string of personal tragedies, including surviving a violent marriage, the near loss of her fourth child, and almost losing her own life due to surgical complications a few months later, she has been struggling to get back to herself. In desperation and trying to keep up with being a single mother of four, she ended up turning to substances to cope and be productive.

(PSI, p.171.)

The court-ordered GAIN evaluation acknowledged Ms. Caldwell's untreated mental health and substance abuse issues but stated that Ms. Caldwell was motivated to make changes.

(PSI, pp.156, 159.) Ms. Caldwell reported she had “quit using [illegal] substances and is about 100% ready to remain abstinent.” (R., p.157.) The GAIN evaluation concluded that Ms. Caldwell will need help to understand her addiction and to develop tools to avoid relapse, and that she will also need help to address the mental health issues that put her at risk for relapse.

(PSI, p.157.) Importantly, Ms. Caldwell had already started the work to make these changes, prior to sentencing: while housed in the Elmore County Jail she completed the Life Skills program, the Anger Management class, a Parenting class, and the jail's Relapse Prevention program. (R., p.180-83.) Ms. Caldwell's performance in those classes was remarkable; as observed by the instructor:

Her participation and involvement has been exceptional during this time. Her motivation for help without external pressure is commendable. She appears to desire a lifestyle of recovery, and has demonstrated comfort and trust in the programs in a short amount of time.

(PSI, p.179.)

In light of the mitigating facts in this case, Ms. Caldwell's sentence of five years, with two years fixed, is excessive and represents an abuse of the district court's sentencing discretion.

CONCLUSION

Ms. Caldwell respectfully requests that this Court vacate her judgment of conviction and remand her case to the district court for resentencing with the instruction that the district court impose a less severe, reasonable sentence.

DATED this 15th day of November, 2018.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 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

KAC/eas