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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46166
)	
v.)	ELMORE COUNTY NO. CR-2017-2851
)	
AMBER R. CALDWELL,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Amber Caldwell was convicted upon her plea of guilty to possession of a controlled substance and the district court sentenced her to five years, with two years fixed, and retained jurisdiction. Following a successful rider, the district court suspended her sentence and placed Ms. Caldwell on probation. On appeal, Ms. Caldwell claims her underlying sentence is excessive in light of the mitigating circumstances of her case, representing an abuse of the district court's sentencing discretion.

Statement of the Facts and Course of Proceedings

Ms. Caldwell had lived as a law-abiding, hard-working mother of four when, following a violent first marriage and while in the midst of a mean divorce in her second, she began using methamphetamine. (PSI, pp.8, 107-12.) In January of 2017, Ms. Caldwell pled guilty to a misdemeanor drug charge in Elmore County, which was her first, non-traffic related offense, ever. (PSI, pp.4, 8.) In September of 2017, she was arrested and charged in the instant case, Elmore County Case No. CR-2017-2851, with possession of methamphetamine, possession of drug paraphernalia, and driving without privileges. (R., pp.12, 28, 53; PSI, pp.4, 8.) Shortly after she posted bond in this case, Ms. Caldwell picked up new drug charges in Ada County, after she was found asleep at the wheel of her parked car, in possession of methamphetamine and a syringe, in Boise.¹ (R., pp.4, 41; PSI, pp.4, 8.)

Pursuant to an agreement with the State, Ms. Caldwell pled guilty to the felony drug possession charge; in exchange, the State dismissed the remaining counts in this case and agreed to drop its prosecution of a related but separate case that alleged Ms. Caldwell brought drug contraband with her into the jail.² (12/18/17 Tr., p.5, L.6 – p.6, L.25; R., pp.61, 73.) Ms. Caldwell then applied for the drug court program but was denied. (4/2/18 Tr., p.13, Ls.1-7.) At sentencing, and consistent with the plea agreement, the State asked the district court to impose a term of six years, with three years fixed, and retain jurisdiction. (4/2/18 Tr., p.13, Ls.1-7; R., p.61.) Ms. Caldwell asked for probation. (4/2/18 Tr., p.17, Ls.8-15.)

¹ Ada County Case No. CR-01-17-43973; Ms. Caldwell pled guilty to possession of a controlled substance and DUI and was sentenced to five years, with two years fixed. (PSI, pp.4, 8.) Her sentence in the Ada County Case is the subject of a separate, pending appeal, Appeal No. 2018-46093.

² Elmore County Case No. CR17-2851. (PSI, p.3.)

The district imposed a unified sentence of five years, with two years fixed and retained jurisdiction.³ (R., p.94.) Ms. Caldwell filed a timely Notice of Appeal. (R., p.99.)

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

Ms. Caldwell successfully completed her rider and is currently on probation. She asserts her underlying sentence of five years, with two fixed, is excessive under the circumstances and represents an abuse of the district court's sentencing discretion.

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.

³ Ms. Caldwell has since completed her rider and on October 25, 2018, the Elmore County district court judge suspended her sentences and placed her on probation. See "Order Suspending Sentence After Retained Jurisdiction And Order Of Probation," filed October 25, 2018. Ms. Caldwell is filing a Motion to Augment the Record with a copy of the Order contemporaneously with her Appellant's Brief.

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

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. Ms. Caldwell was twenty-nine at the time of sentencing. (PSI, pp.3, 91.) Prior to her recent drug problem, she had lived her life as a law-abiding individual and a caring mother to her four children. (PSI, pp.8, 107-12.) Friends and family knew Ms. Caldwell to be strong-willed and fiercely devoted to her family. (PSI, pp.8, 107-12.) She worked as a respected realtor and had her own home; before that she worked in the service industry, at restaurants, rarely missing work. (PSI, p.107.) She was dedicated to her children, regularly attending school meetings regarding their education; she cooked for her family and arranged play dates for her children. (PSI, p.107.)

But Ms. Caldwell also bore emotional scars from a childhood of physical abuse suffered at the hands of her own father, and from her first marriage, entered at the age of nineteen, which was marred with violence; Ms. Caldwell has since struggled with symptoms of PTSD, Anxiety,

and Depression. (PSI, pp.107-12.) As the letter from her mother to the district court explains, the past year of Ms. Caldwell's life 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.108.)

Her eldest child's father, who remains a good friend to Ms. Caldwell, 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.111.)

The GAIN evaluation noted Ms. Caldwell's untreated mental health and substance abuse issues, and concluded that Ms. Caldwell was motivated to make changes. (PSI, pp.98, 101.) Ms. Caldwell reported she had "quit using [illegal] substances and is about 100% ready to remain abstinent." (R., p.97.) The GAIN notes that Ms. Caldwell will need help to understand her addiction and to develop tools to avoid relapse, and to address the mental health issues that put her continued sobriety at risk. (PSI, p.99.) Ms. Caldwell had started 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., pp.85-90.)

Given these mitigating facts, 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 19th 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 19th 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