

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

1-4-2019

State v. Williams Appellant's Brief Dckt. 45749

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Williams Appellant's Brief Dckt. 45749" (2019). *Not Reported*. 5003.
https://digitalcommons.law.uidaho.edu/not_reported/5003

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

BEN P. MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45749
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-12505
v.)	
)	
GREGORY CONAN WILLIAMS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, the jury found Gregory Conan Williams guilty of felony stalking in the first degree. The district court imposed a unified sentence of five years, with three years fixed, and retained jurisdiction. After Mr. Williams participated in a “rider,” rider program staff recommended the district court consider placing him on probation. The district court instead relinquished jurisdiction and ordered into execution the sentence. On appeal, Mr. Williams asserts the district court abused its discretion when it imposed his sentence, and when it relinquished jurisdiction and ordered into execution his sentence.

Statement of the Facts & Course of Proceedings

The State charged Mr. Williams by Information with stalking in the first degree, felony, I.C. § 18-7905. (R., pp.46-47; *see* R., pp.179-80 (Amended Information).) Mr. Williams entered a not guilty plea. (R., p.50.) The case proceeded to a jury trial. (*See* R., pp.167-78, 181-90.)

During Mr. Williams' jury trial, the State presented its account of how Mr. Williams had engaged in inappropriate behavior towards the alleged victim, who had been teaching him how to be a yoga instructor, to the point where she had the police in Idaho Falls repeatedly tell him to leave her alone. (*See generally* Tr. Oct. 13, 2017, pp.747-99 (State's closing argument).) According to the State, Mr. Williams later saw the alleged victim at a concert venue in Boise, sat down next to her, followed her out when she left, and watched her for about five minutes as she contacted security and the police. (*See generally* Tr. Oct. 13, 2017, pp.747-99.) Mr. Williams' version of what happened was that his previous behavior towards the alleged victim was not malicious, and he immediately left the concert venue when he saw her. (*See generally* Tr. Oct. 13, 2017, pp.799-811 (Mr. Williams' closing argument).) The jury found Mr. Williams guilty of stalking in the first degree, finding, after determining his guilt for stalking, that Mr. Williams had also violated a no-contact order put in place the day before the incident. (*See* R., pp.210-11. *See generally* Tr. Oct. 13, 2017, pp.822-43 (Part II of the trial).)

The presentence investigator concluded Mr. Williams "appears to be a guarded candidate for an order of probation." (Presentence Report (*hereinafter*, PSI), p.13.)¹ At the sentencing hearing, Mr. Williams requested the district court consider a withheld judgment, or, alternatively, impose a unified sentence of four years, with one year fixed, suspend the sentence, and place him on probation. (*See* Tr. Dec. 18, 2017, p.880, Ls.13-18.) The State requested the district court

impose a unified sentence of five years, with two years fixed. (Tr. Dec. 18, 2017, p.864, L.25 – p.865, L.3.) The district court imposed a unified sentence of five years, with three years fixed, and retained jurisdiction. (R., pp.234-37.)

Mr. Williams filed a Notice of Appeal timely from the district court’s Judgment of Conviction and Order Retaining Jurisdiction. (R., pp.238-40; *see* R., pp.243-47 (Amended Notice of Appeal).)

After Mr. Williams participated in a “rider” at the North Idaho Correctional Institution, rider program staff recommended that the district court consider placing him on a period of supervised probation. (PSI, pp.483, 487.) At the rider review hearing, Mr. Williams asked the district court to place him on probation. (*See* Tr. June 4, 2018, p.22, Ls.12-14, p.28, Ls.7-12.) The State recommended the district court relinquish jurisdiction and execute the sentence. (*See* Tr. June 4, 2018, p.18, Ls.3-5.) The district court relinquished jurisdiction and ordered into execution Mr. Williams’ sentence.² (Order Relinquishing Jurisdiction and Commitment, June 5, 2018.)³

¹ All citations to the PSI refer to the 494-page PDF version of the Presentence Report and its attachments, including the Addendum to the Presentence Investigation (APSI).

² Mr. Williams later filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. (*See* Motion for Reconsideration of Sentence, Oct. 2, 2018; Order Denying Defendant’s Rule 35 Motion, Oct. 5, 2018.) On appeal, Mr. Williams does not challenge the denial of his Idaho Criminal Rule 35 motion.

³ The Order Relinquishing Jurisdiction and Commitment, Motion for Reconsideration of Sentence, and Order Denying Defendant’s Rule 35 Motion are three of the requested items in Mr. Williams’ Motion to Augment, filed contemporaneously with this Appellant’s Brief.

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of five years, with three years fixed, upon Mr. Williams following his conviction for stalking in the first degree?
- II. Did the district court abuse its discretion when it relinquished jurisdiction and ordered into execution Mr. Williams' sentence?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Three Years Fixed, Upon Mr. Williams Following His Conviction For Stalking In The First Degree

Mr. Williams asserts that the district court abused its discretion when it imposed his unified sentence of five years, with three years fixed, because his sentence, given any view of the facts, is excessive. The district court should have followed Mr. Williams' recommendations by withholding judgment, or alternatively, by imposing a unified sentence of four years, with one year fixed, and suspending the sentence to place him on probation. The presentence investigator also recommended the district court consider probation. (*See* PSI, p.13.)

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 "due regard to the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Strand*, 137 Idaho 457, 460 (2002).

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) (internal quotation marks omitted). Mr. Williams does not assert that his sentence exceeds the statutory maximum. Accordingly, in

order to show an abuse of discretion, Mr. Williams must show that in light of the governing criteria, the sentence was 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

“After a person has been convicted of a crime, a district court may, in its discretion, withhold judgment.” *State v. Edghill*, 134 Idaho 218, 219 (Ct. App. 2000) (citing I.C. § 19-2601(3); *State v. Trejo*, 132 Idaho 872, 880 (Ct. App. 1999)). “Refusal to grant a withheld judgment will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a withheld judgment would be inappropriate.” *State v. Geier*, 109 Idaho 963, 965 (Ct. App. 1985).

Mr. Williams asserts his sentence is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider that the instant offense is Mr. Williams’ first felony conviction. The Idaho Supreme Court has “recognized that the first offender should be accorded more lenient treatment than the habitual criminal.” *E.g.*, *State v. Shideler*, 103 Idaho 593, 595 (1982) (quoting *State v. Owen*, 73 Idaho 394, 402 (1953)) (internal quotation marks omitted). The instant offense is Mr. Williams’ first felony conviction. (*See* PSI, pp.3-6.) While Mr. Williams’ criminal record included a conviction and placement on probation for misdemeanor harassment in Oregon about

ten years before the incident here (*see* PSI, pp.4-6), he has never violated probation (*see* PSI, p.480; Tr. Dec. 18, 2017, p.882, Ls.4-6).

The district court also did not adequately consider Mr. Williams' family support. During the presentence investigation, Mr. Williams reported he would like to move back to Idaho Falls upon his release from incarceration, and he would like to live with his mother there. (*See* PSI, p.7.) If he were not allowed to leave Ada County upon his release, he stated he would like to live with a brother in Boise. (*See* PSI, p.7.) At the sentencing hearing, defense counsel told the district court that Mr. Williams could stay with his uncle in Boise. (*See* Tr. Dec. 18, 2017, p.877, L.24 – p.878, L.1.) Mr. Williams' counsel also stated Mr. Williams' family members had been in touch with one of Mr. Williams' past employers, and Mr. Williams was eligible for rehire in Boise. (*See* Tr. Dec. 18, 2017, p.878, Ls.1-8.) Defense counsel observed Mr. Williams "does have good family support. And just the brief interaction that I've had with his family could not be [with] a nicer group of folks." (Tr. Dec. 18, 2017, p.879, Ls.14-16.)

Further, the district court did not adequately consider Mr. Williams' work ethic. Mr. Williams reported during the presentence investigation that his last job had been in "Community Support," helping "people with disabilities perform their activities of daily living." (*See* PSI, p.9.) He stated he did not have any issues holding steady employment. (PSI, p.9.) At the sentencing hearing, Mr. Williams' counsel informed the district court Mr. Williams had been in the worker program at the jail for a month, before he caught the flu. (Tr. Dec. 18, 2017, p.879, Ls.3-7.)

Because the district court did not adequately consider the above mitigating factors, Mr. Williams' sentence is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed Mr. Williams' sentence.

II.

The District Court Abused Its Discretion When It Relinquished Jurisdiction And Ordered Into Execution Mr. Williams' Sentence

Mr. Williams asserts that the district court abused its discretion when it relinquished jurisdiction and ordered into execution his sentence. An appellate court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). The district court's discretion in deciding whether to relinquish jurisdiction is not limitless. *State v. Rhoades*, 122 Idaho 837, 837 (Ct. App. 1992).

When an exercise of discretion is reviewed on appeal, the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.

State v. Hedger, 115 Idaho 598, 600 (1989) (internal quotation marks omitted).

Mr. Williams asserts the district court abused its discretion when it relinquished jurisdiction, because it did not act consistently with the applicable legal standards. "The purpose of retaining jurisdiction after imposing a sentence is to afford the trial court additional time for evaluation of the defendant's rehabilitation potential and suitability for probation." *State v. Lee*, 117 Idaho 203, 205 (Ct. App. 1990). At the rider review hearing here, the district court told Mr. Williams one of the reasons it had initially imposed the fixed time in his sentence "was to give you an incentive to follow every single rule," and stated Mr. Williams did not follow rules. (See Tr. June 4, 2018, p.34, Ls.9-18.) The district court continued: "And ten rule infractions on the Rider—that should be perfect—causes me real concern about your ability to follow rules in the community. That's all that this is about. And based on your performance alone on your Rider, I'm relinquishing jurisdiction." (Tr. June 4, 2018, p.34, Ls.19-24.) But contrary to the

district court's determination, Mr. Williams' performance while on his rider indicated he had high potential for rehabilitation and suitability for probation.

While the district court focused on Mr. Williams' ten rules violations on his rider, as defense counsel noted (*see* Tr. June 4, 2018, p.25, Ls.8-11), the APSI itself stated, "These are all minor rules violations" (PSI, p.485). The APSI was also concerned that Mr. Williams received multiple warnings for the same behavior: three warnings for not having his bunk area inspection ready; three warnings for not being inspection ready when he left the unit; and two warnings for lying down during unauthorized times. (*See* PSI, p.485.) However, the APSI reported that, "When questioned about these warnings, he took ownership of his behavior and did not try and make excuses or minimize his actions." (PSI, p.485.)

During the rider review hearing, Mr. Williams explained, "some of the warnings I was never notified about until [the unit corporal] realized one day that maybe I just didn't know." (Tr. June 4, 2018, p.30, Ls.3-5.) For example, Mr. Williams did not know that he was supposed to clear the books from his bookshelf every time he left the unit, until the corporal informed him one day. (*See* Tr. June 4, 2018, p.30, Ls.5-14.) Mr. Williams told the district court, "And once I understood what they were for, I tried really hard not to get any more of those. So I tried to learn from that, as well." (Tr. June 4, 2018, p.30, Ls.20-23.)

Moreover, in the words of the APSI, "Mr. Williams' overall program performance has been good." (PSI, p.485.) Mr. Williams "has completed all his required classes and groups and even asked for extra classes that he was not required to take." (PSI, p.485.) Mr. Williams commented, "I completed 3 extra groups; Mindfulness, Advanced Mindfulness and Grief and Loss. I also went through the paperwork for the codependency group with the Clinician and did the homework assignments for that." (PSI, p.487.) The APSI also stated, "When he was not in a

group or class, he often volunteered to do things around the compound, such as shovel snow or assist staff with other projects.” (PSI, p.485.) Mr. Williams noted, “I volunteered to shovel snow, unload trucks at 4 am and anything else staff asked or even suggested would be helpful to me or them or anyone. . . . I volunteered to ref the basketball tournament.” (PSI, p.487.) He also “started a meditation group through the VRC (Volunteer Religious Coordinator).” (PSI, p.487.) At the rider review hearing, Mr. Williams related that his meditation group was officially starting and would be held twice a week. (*See* Tr. June 4, 2018, p.31, Ls.9-13.)

Mr. Williams’ Thinking for a Change facilitator reported that, while Mr. Williams had some struggles with identifying risky behavior, “He has met the minimum levels of competency in the group and was able to pass each session; he does not appear to have many issues applying the skills he has learned.” (PSI, p.485.) On the Thinking for a Change program, Mr. Williams commented, “I did all the homework. Many of the assignments I would practice daily or multiple times per day.” (PSI, p.487.)

Further, the APSI stated Mr. Williams “has submitted what appears to be a reasonable probation with a confirmed living arrangement and states he has a job waiting for him upon his release.” (PSI, p.487.) Mr. Williams provided that he would have two jobs upon release: setting up events for an arts council, and residential habilitation. (*See* PSI, p.486.) He additionally reported having a vehicle and valid driver’s license, as well as access to food and medical care. (*See* PSI, p.486.) The APSI stated Mr. Williams “also has positive family support waiting for him in the community.” (PSI, p.487.) During the rider review hearing, Mr. Williams told the district court, “I don’t have any problems with anything on the probation list. There’s not any of those that would be an issue. If I am granted probation, there will be no concerns about violating the no-contact order.” (Tr. June 4, 2018, p.31, L.23 – p.32, L.2.)

According to the APSI's recommendation of probation, Mr. Williams "appears honest and sincere in his regard to his desire to want to make positive changes in his life." (PSI, p.487.) As Mr. Williams' counsel put it during the rider review hearing, "And, honestly, I don't [know] what else we can expect from someone on a retained jurisdiction other than that." (*See* Tr. June 4, 2018, p.26, L.21 – p.27, L.2.) Contrary to the district court's determination, Mr. Williams' performance while on his rider indicated he had high potential for rehabilitation and suitability for probation. Thus, the district court abused its discretion when it relinquished jurisdiction and ordered into execution his sentence.

CONCLUSION

For the above reasons, Mr. Williams respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 4th day of January, 2019.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January, 2019, 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

BPM/eas