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State v. Bruna Appellant's Brief Dckt. 45876

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 45876 & 45877
Plaintiff-Respondent,	)	
	)	KOOTENAI CO. NOS. CR-2016-16862
	)	& CR-2017-3288
v.	)	
	)	
STEVEN GARRETT BRUNA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Steven Garrett Bruna appeals from the district court's judgments of conviction and orders denying his Idaho Criminal Rule 35 motions (Rule 35 motions) requesting leniency. Mr. Bruna asserts the district court abused its discretion when it imposed his sentences and when it denied his Rule 35 motions.

Statement of the Facts & Course of Proceedings

Supreme Court Docket Nos. 45876 (district court case number CR-2016-16862 (*hereinafter*, 2016 Case)), and 44877 (district court case number CR-2017-3288 (*hereinafter*,

2017 Case)) have been consolidated for appellate purposes. (R., p.471.) In the 2016 Case, a Coeur d'Alene police officer responded to a domestic battery call. (Presentence Report (PSI), p.39.)[1] When the officer arrived, he spoke with the alleged victim. (PSI, p.39.) She said Mr. Bruna held her down to keep her from leaving, slapped her, covered her mouth with his hand, punched her, and bit her on the cheek. (PSI, p.39.) Subsequently, Mr. Bruna was charged, by Information, with one count of domestic battery and one count of second degree kidnapping. (R., pp.59-60.)

In the 2017 Case, two women alleged Mr. Bruna sexually assaulted them during a party at his residence. (PSI, p.40). One woman stated that Mr. Bruna called her back to his bedroom and started kissing her. (PSI, p.40.) She said when she protested, Mr. Bruna continued and she "kind of just gave in." (PSI, p.40) She reported that Mr. Bruna then penetrated her vagina with his penis. (PSI, p.40.) She said she was in the bedroom with Mr. Bruna for approximately ten minutes, and, after Mr. Bruna left the room, she returned to the living room in the residence. (PSI, p.40.) She said she then saw another woman go into Mr. Bruna's bedroom with him. (PSI, p.40.) That woman told the police that Mr. Bruna called her into his bedroom and started to kiss her. (PSI, p.40.) She said when she resisted, Mr. Bruna held her down by her throat, put two fingers in her vagina, and raped her. (PSI, p.40.) Subsequently, Mr. Bruna was charged, by Indictment, with two counts of rape. (R., pp.294-95.)

Pursuant to a plea agreement in the 2016 case, Mr. Bruna pleaded guilty to one felony count of domestic battery. (7/31/17 Tr., p.8, Ls.10-13.) In exchange, the State agreed to dismiss the kidnapping charge and not file any additional charges. (7/31/17 Tr., p.5, Ls.17-20;

[1] All citations to the PSI refer to the 160-page electronic document, which, in addition to the PSI, contains other relevant sealed documents.

R., p.122.) Pursuant to a plea agreement in the 2017 case, Mr. Bruna entered *Alford*[2] pleas to one count of attempted strangulation and one count of aggravated assault. (9/5/17 Tr., p.20, L.22 – p.21, L.5.) In exchange, the State agreed not to file any no contact order violations, additional charges, or a motion to revoke bond; it also agreed, pursuant to I.C.R. 11(f), that the sentences for the two counts would run concurrent to each other and to the sentence in the 2016 Case. (9/5/17 Tr., p.15, L.2 – p.16, L.12; R., p.385.)

The parties stipulated to a joint sentencing hearing. (9/5/17 Tr., p.23, L.22 – p.26, L.9.) At that hearing, the State recommended the district court impose a sentence of ten years, with five years fixed, in the 2016 Case. (12/20/17 Tr., p.8, Ls.14-17.) For the 2017 Case, the State recommended that the district court impose a sentence of fifteen years, with ten years fixed, on the attempted strangulation charge, and a concurrent sentence of five years, with zero years fixed, on the assault charge. (12/20/17 Tr., p.8, L.22 – p.9, L.11.) Mr. Bruna's counsel requested that the district court retain jurisdiction in both cases. (12/20/17 Tr., p.25, Ls.13-18, p.26, Ls.15-21.) In the 2016 case, the district court imposed a sentence of ten years, with five years fixed. (12/20/17 Tr., p.32, Ls.22-25; R., pp.212-13.) In the 2017 Case, the district court imposed concurrent sentences of fifteen years, with seven years fixed, and five years, with four years fixed, for the respective charges, and ordered that those sentences run concurrent to the sentence in the 2016 Case. (12/20/17 Tr., p.33, Ls.2-10; R., pp.458-59.)

Mr. Bruna filed notices of appeal timely from the judgments of conviction. (R., pp.214-15, 461-62.) Subsequently, he filed Rule 35 motions requesting leniency in both cases. (R., pp.225-26, 472-73.) The district court denied the motions after a hearing. (6/29/18 Tr., p.40, L.1 – p.42, L.10.)

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

ISSUES

I. Did the district court abuse its discretion when it imposed concurrent sentences of ten years, with five years fixed; fifteen years, with seven years fixed; and five years, with four years fixed, following Mr. Bruna's pleas of guilty to domestic battery, attempted strangulation, and aggravated assault?

II. Did the district court abuse its discretion when it denied Mr. Bruna's Idaho Criminal Rule 35 Motions?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed Concurrent Sentences Of Ten Years, With Five Years Fixed; Fifteen Years, With Seven Years Fixed; And Five Years, With Four Years Fixed, Following Mr. Bruna's Pleas Of Guilty To Domestic Battery, Attempted Strangulation, And Aggravated Assault

Based on the facts of these cases, Mr. Bruna's concurrent sentences of ten years, with five years fixed; fifteen years, with seven years fixed; and five years, with four years fixed are excessive because they are not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, this 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." *State v. McIntosh*, 160 Idaho 1, 8 (2016). In such a review, the Court "considers the entire length of the sentence under an abuse of discretion standard." *Id*. Appellate courts conduct a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. The court considers: "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. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

"When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *McIntosh*, 160 Idaho at 8 (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). Unless it appears the length of the sentence is "necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution," the sentence is unreasonable. *Id*. When a sentence is excessive "considering any view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are multiple mitigating factors in this case that illustrate why Mr. Bruna's sentences are excessive considering any view of the facts. First, the instant offenses represent Mr. Bruna's first felony convictions. (PSI, pp.45-47.) This is a recognized mitigating factor. *See State v. Nice*, 103 Idaho 89, 91 (1982) (reducing sentence where present conviction "was the defendant's first felony with no prior history of any sexual violations"). Additionally, Mr. Bruna was only 20 years old when he committed these offenses. (PSI, pp.36-40.) This should also be considered as mitigating information. *State v. Caudill*, 109 Idaho 222, 224 (1985) ("The sentencing judge found several mitigating factors, including Caudill's youthful age, prior nonviolent nature, lack of prior criminal record, potential for rehabilitation, and remorse.").

Mr. Bruna was also steadily employed before these incidents, and he continued working during the pendency of the cases. (12/20/17 Tr., p.20, Ls.7-9; PSI, pp.53-54.) A defendant's positive work history is also considered a mitigating circumstance. *State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing sentence of defendant who, *inter alia*, had been steadily employed, enjoyed his work, and expressed a desire to advance within his company). Additionally, as his counsel pointed out at sentencing, Mr. Bruna was goal-oriented and had aspirations of setting up and running his own real estate business. (12/20/17 Tr., p.20, Ls.11-14; PSI, p.52.) To that end,

he had already attained his Idaho real estate license and was in the process of getting his Washington license. (PSI, p.143; R., pp.416-20.)

Additionally, Mr. Bruna participated in a batterer treatment program; he also sought individual counseling and registered to attend an "intensive accountability workshop rated equivalent to eighteen (18) months of individual counseling." (12/20/17 Tr., p.22, Ls.8-17; PSI, p.1.) Mr. Bruna also submitted multiple letters of support to the district court prior to sentencing. (R., pp.421-34.)[3] In the letters, he was described as "very kind and intelligent," "amazing, motivating, positive, respectful," and "honest and trustworthy." (R., pp.422, 424, 426.) Other friends wrote that Mr. Bruna was "one of the kindest people I've ever met" and described him as a "hard worker," as well as a "very genuine human being." (R., pp.430-31.) Those letters provided further mitigating information. *See e.g. State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991).

The wealth of mitigating information in this case shows that Mr. Bruna's sentences were excessive because they were not necessary to achieve the goals of sentencing. Society would certainly be protected if Mr. Bruna received shorter fixed sentences as he would be supervised on parole after his release. Shorter sentences would also serve as a strong deterrent and ensure there was significant retribution for these offenses. And shorter fixed terms would provide Mr. Bruna an opportunity to engage in meaningful rehabilitation more quickly, as well as continue his education and begin a career. Indeed, given the facts of these cases and the goals of sentencing, Mr. Bruna's extended sentences were not necessary and were therefore unreasonable and an

[3] Because some of the letters reference the nature of the allegations in 2017 case and/or contain names or email addresses of the writers, a motion to seal this portion of the record is filed contemporaneously with this appellant's brief.

abuse of discretion because the district court did not reach its sentencing decisions through an exercise of reason.

II.

The District Court Abused Its Discretion When It Denied Mr. Bruna's Rule 35 Motions

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* As such, the Court considers, "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. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018). "If the sentence was not excessive when pronounced," the defendant can later show that it is excessive in view of "new or additional information presented with the motion for reduction." *Trent*, 125 Idaho at 253.

In this case, Mr. Bruna presented new information regarding his experiences and good conduct since being incarcerated, his willingness to participate in sex offender treatment, and his progress and efforts to improve during his incarceration. At the hearing on the Rule 35 motions, he explained that he had spent some time at the Idaho State Correctional Center when he was first incarcerated, and it was an "extremely intimidating" experience as he was placed on a tier with gang activity and violence. (6/29/18 Tr., p.7, L.24 – p.8, L.6.) He said his time spent there was a "learning experience" and a "culture shock" that made him realize this was "definitely not" how he wanted to live his life. (6/29/18 Tr., p.8, Ls.1-10.) He said he had since been

moved to the prison in Orofino, but he had no disciplinary issues during his incarceration at either institution. (6/29/18 Tr., p.7, Ls.19-21, p.8, Ls.19-23.)

Mr. Bruna went on to explain that he was not eligible for programming due to the length of his sentence, but he had tried to take as many "self-help" classes as possible and to further his education. (6/29/18 Tr., p.8, L.24 – p.9, L.16.) He said he was in a "Toastmasters class," an "admin services class," and he would be participating in college classes taught by University of Idaho professors. (6/29/18 Tr., p.9, Ls.15-24.) He said he had been invited to participate in the Toastmasters class, which focused on practicing "professional communication skills" in order to be prepared for a "professional career in the real world." (6/29/18 Tr., p.10, L.23 – p.11, L.14.) Additionally, he stated he had a job working in the kitchen, and he had received two promotions since he started. (6/29/18 Tr., p.10, Ls.3-15.)

Mr. Bruna also told the district court that he had become a "tier representative" at the prison. (6/29/18 Tr., p.11, Ls.15-19.) That position involved communicating with other inmates and meeting once a month with the warden, deputy warden, and the education coordinator at the prison in order to bring the inmates' issues and ideas for positive changes to their attention. (6/29/18 Tr., p.11, L.17 – p.12, L.3.) Mr. Bruna explained that it was unusual for a person his age, who had only been at the institution for a few months, to be appointed to the position. (6/29/18 Tr., p.12, Ls.4-21.) He also said that he would like to be involved in programming focused on anger management and chemical dependency, so he could "focus on the underlying issues" that led to his incarceration. (6/29/18 Tr., p.13, Ls.2-8.)

Similarly, Mr. Bruna talked about how he realized that this was a "defining moment in [his] life," and that the decisions he was making now would define his character going forward. (6/29/18 Tr., p.14, Ls.4-14.) He said he realized the effect of his actions on other people, and the

fact that he needed to "take accountability" for his actions in order to make positive changes. (6/29/19 Tr., p.14, Ls.14-24.) He also made it clear that he would have "no issues" engaging in sex offender treatment because he wanted to change his thought process so something like this never happened again, and he felt differently about that treatment than he did when he participated in the psychosexual evaluation. (6/29/18 Tr., p.18, Ls.7 – p.19, L.15.)

Additionally, Mr. Bruna accepted responsibility and demonstrated remorse over his actions. He stated, "I would just like to say I apologize for my actions, and I realize that I was definitely in the wrong with a lot of decisions I was making in the past." (6/29/18 Tr., p.24, Ls.12-15.) He said he never expected to be in the situation he was in, but he was glad to have had time to reflect on his behavior and realize that he needed to take accountability for his actions. (6/29/18 Tr., p.24, Ls.17-21.)

Mr. Bruna's counsel told the district court that he thought Mr. Bruna's behavior since being incarcerated was much different than most other defendants. He said, "Mr. Bruna is a young man that was given a very lengthy sentence, and he very well could have . . . done nothing." (6/29/18 Tr., p.26, L.25 – p.27, L.3.) He said many people did that, but Mr. Bruna was an exception in that he had "taken advantage of every program" he could and "utilized that time to the best of his ability." (6/29/18 Tr., p.28, Ls.1-16.) Counsel then asked the district court to consider reducing Mr. Bruna's sentence in light of the progress he had made, the motivation he demonstrated, and his desire for programming. (6/29/18 Tr., p.28, L.21 – p.32, L.8.) Finally, he noted that he was impressed by Mr. Bruna's drive to improve himself, and that Mr. Bruna took those steps on his own without any prompting. (6/29/18 Tr., p.32, Ls.9-24.)

Mr. Bruna's counsel also submitted multiple documents in support of the Rule 35 motions.[4] Some of those were offender concern forms showing Mr. Bruna had applied for the tier representative position and inquired as to whether he could take classes for college credit; other documents confirmed his position as a representative and the fact that he had a seat reserved for him in the University of Idaho "lecture series." (Augmentation, pp.4-6, 9-10.) Certificates of completion and schedules confirming Mr. Bruna's shifts working in the kitchen were also submitted. (Augmentation, pp.11-14.) Counsel also submitted, among other things, several more letters of support. (Augmentation, pp.16-32.)

All this new information supported granting the Rule 35 motions and reducing Mr. Bruna's sentences. A defendant's exemplary conduct in prison, his amenability to sex offender treatment, and his acceptance of responsibility are all long-recognized mitigating factors. *See State v. Barreto*, 122 Idaho 453, 455 (Ct. App. 1992) ("[I]n a Rule 35 hearing, the district court may consider facts presented at the original sentencing as well as any other information concerning the defendant's rehabilitative progress while in confinement."); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991) (holding that consecutive sentences for two counts of lewd conduct with a minor were excessive, in part, because the defendant expressed a "willingness to accept treatment"); *State v. Shideler*, 103 Idaho 593, 594-95 (1982) (reducing the defendant's sentence, in part, because "the defendant has accepted responsibility for his acts" and expressed regret for what he had done).

Given Mr. Bruna's remarkable efforts to better himself as well as the institution where he was incarcerated, his willingness to engage in further treatment, and his acceptance of

[4] Those documents are not currently part of the record on appeal. Therefore, a motion to augment the record with the documents—as well as the district court's orders denying Mr. Bruna's Rule 35 motions—is filed contemporaneously with this appellant's brief.

responsibility, the district court should have reduced his sentences. However, the district court did not adequately consider this new information. As such, it did not reach its decision to deny Mr. Bruna's Rule 35 motions through an exercise of reason and therefore abused its discretion.

CONCLUSION

Mr. Bruna respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that the orders denying his Rule 35 motions be vacated and the case be remanded to the district court for further proceedings.

DATED this 28th day of November, 2018.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 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

RPA/eas