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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46143-2018
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-39455
v.)	
)	
FELICIA LYNETTE HARDY,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

A jury found Felicia Hardy guilty of forgery, grand theft, and burglary, all related to her cashing a check from her father's account, without his permission. Ms. Hardy asserts that her total sentence of five years, with 230 days fixed, ordered to run consecutively to a previously imposed sentence, is excessive in light of the mitigating factors that exist in this case.

Statement of the Facts & Course of Proceedings

The State filed a complaint charging Ms. Hardy with one count of forgery, one count of grand theft, and one count of burglary. (R., pp.7-8.) Ms. Hardy waived her right to a

preliminary hearing, was bound over into the district court, and a second amended information was filed charging her with the above crimes. (R., pp.20-22; Augmentation.)¹ Ms. Hardy exercised her right to a jury trial and the jury found her guilty of all three counts. (R., pp.46-53, 73-74.)

During the sentencing hearing, the State asked the court to impose concurrent sentences of five years fixed, with one year indeterminate, to run consecutively to a sentence Ms. Hardy had already been serving in a separate case. (Tr., p.238, Ls.18 – p.242, L.6.) Ms. Hardy asked the court to impose concurrent sentences of six years, with one year fixed, but to suspend the sentence and place her on probation. (Tr., p.242, Ls.11-13.) Alternative, Ms. Hardy asked that any prison sentence run concurrently with her previously imposed sentence. (Tr., p.244, Ls.16-21.) The district court imposed concurrent five-year sentences, with 230 days fixed, and ordered them to run consecutively to Ms. Hardy's prior sentence. (R., pp.77-81; Tr., p.247, Ls.2-22.) Ms. Hardy filed a timely Notice of Appeal. (R., pp.82-84.)

ISSUE

Did the district court abuse its discretion by imposing an excessive sentence, in light of the mitigating factors that exist in this case?

ARGUMENT

The District Court Abused Its Discretion By Imposing An Excessive Sentence, In Light Of The Mitigating Factors That Exist In This Case

Mr. Hardy asserts that, given any view of the facts, her sentence is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the

¹ Concurrently with this brief, Ms. Hardy has filed a motion to augment the record with the Second Amended Information. The motion to augment is pending.

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. 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.

The evidence presented at trial was sufficient for the jury to conclude that Ms. Hardy presented a check in the amount of \$860.60 from her father's checking account, with Ms. Hardy named as the payee, to a bank where the teller cashed the check, all without her father's permission. (Tr., p.106, L.12 – p.229, L.24.) Though Ms. Hardy exercised her right to remain silent during the Presentence Investigation process (PSI, p.4),² Ms. Hardy did express that she wanted, “[t]o better myself for my kids and their future, to do the right thing even when no one is looking” (PSI, p.13). Idaho Courts recognize that a desire for rehabilitation is a mitigating factor that should be considered by the district court when imposing sentence. *See State v. James*, 112 Idaho 239 (Ct. App. 1986). Ms. Hardy asserts that, in light of the mitigating factors that exist in her case, the district court abused its discretion by imposing an excessive sentence.

² Citations to the Presentence Investigation Report and its attached documents will include the designation “PSI,” and the page number associated with the 395-page electronic file containing those documents.

CONCLUSION

Ms. Hardy respectfully requests that this Court remand her case to the district court with instructions to either place Ms. Hardy on probation, or to order her sentences to run concurrently with her previously imposed sentence, or for whatever other relief this Court deems appropriate.

DATED this 11th day of January, 2019.

/s/ Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January, 2019, 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

JCP/eas