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State v. Loiselle Appellant's Brief Dckt. 46381

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46381-2018
	)	
v.	)	BANNOCK COUNTY NO. CR-2017-3301
	)	
CALLI V. LOISELLE,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

Calli Loiselle pled guilty to felony injury to a child, and the district court imposed a unified sentence of eight years, with four years fixed. In a prior direct appeal, Ms. Loiselle challenged the length of her sentence as an abuse of the district court's sentencing discretion; however, the Court of Appeals affirmed in an unpublished opinion.

In the meantime, Ms. Loiselle filed a motion pursuant to Idaho Criminal Rule 35 seeking a sentence reduction. That motion was supported by a wealth of new, mitigating evidence. However, the district court denied her motion. Thereafter, Ms. Loiselle appealed again. She contends that the district court's denial of her Rule 35 motion represents an abuse of discretion.

Statement of the Facts and Course of Proceedings

On February 26, 2017, Ms. Loiselle gave birth to a healthy six-pound, nine-ounce baby boy. (No. 45503 PSI, pp.16, 26.)[1] However, the baby tested positive for amphetamines, methamphetamine, and marijuana (No. 45503 PSI, pp.4, 30, 32), and the police and the Department of Health and Welfare ("CPS") were called (No. 45503 PSI, pp.4, 28). Upon questioning, Ms. Loiselle admitted that she had used methamphetamine while she was pregnant. (No. 45503 PSI, p.4.)

Out of fear of being arrested, Ms. Loiselle fled the hospital. (No. 45503 PSI, pp.4, 6; Tr., p.12, L.6.) But she didn't run for long. Ms. Loiselle contacted a detective a few days later (on or about March 6, 2017), and indicated she wanted to "make things right." (No. 45503 R., p.13; No. 45503 PSI, p.6.) That detective urged Ms. Loiselle to call CPS, which she did. (No. 45503 PSI, p.6.) By doing so, she was able to see her son a few times before being charged and, ultimately, arrested in this case. (*See* No. 45503 PSI, p.6.)

On March 29, 2017, Ms. Loiselle was charged with felony injury to a child, in violation of I.C. § 18-1501(1). (No. 45503 R., pp.6-7.) Eventually, Ms. Loiselle entered into a plea agreement with the State. In exchange for Ms. Loiselle's guilty plea to the charged offense, the State agreed not to file a "persistent violator" sentencing enhancement under I.C. § 19-2514.[2] (No. 45503 Tr., p.6, Ls.2-22.) It also agreed that if Ms. Loiselle were accepted into Family

[1] On September 27, 2018, the Idaho Supreme Court augmented the record in the appeal with the Clerk's Record and Reporter's Transcript from Ms. Loiselle's prior direct appeal, *State v. Loiselle*, No. 45503-2017. All citations to the record from the prior appeal include the prefix, "No. 45503."

[2] This promise from the State was of no benefit to Ms. Loiselle, as the State apparently had no basis to charge a persistent violator enhancement anyway. Section 19-2514 provides for a sentencing enhancement for third and subsequent felony convictions, but Ms. Loiselle only had one prior felony conviction on her record (a 2011 burglary conviction). (*See* No. 45503 R., pp.6-15.)

Treatment Court, it would recommend probation. (No. 45503 R., p.78; No. 45503 Tr., p.6, L.2, p.7, L.3, p.7, L.23 – p.8, L.3.) If Ms. Loiselle did not get into Family Treatment Court, the State was free to recommend any sentence. (No. 45503 Tr., p.6, L.2 – p.7, L.3, p.7, L.23 – p.8, L.3.)

Ms. Loiselle was not accepted into Family Treatment Court.[3] (No. 45503 Tr., p.17, Ls.11-14, p.20, Ls.7-10.) Thus, at sentencing, the State recommended a prison sentence of eight years, with four years fixed. (No. 45503 Tr., p.19, Ls.13-15.) Ms. Loiselle argued for probation or, at the most, retained jurisdiction, so that she might have an opportunity to be a mother to her son. (No. 45503 Tr., p.17, L.23 – p.18, L.7, p.21, Ls.2-6.) The district court, however, chose to follow the State's recommendation, and it sentenced Ms. Loiselle to eight years, with four years fixed, though it ordered that sentence to run concurrently with the sentence in an unrelated case.[4] (No. 45503 R., pp.95-97; No. 45503 Tr., p.22, Ls.18-20.)

Ms. Loiselle timely appealed from the judgment of conviction. (No. 45503 R., pp.100-02.) In that first appeal, No. 45503, she argued the district court abused its sentencing discretion by imposing a sentence which was excessive given any view of the facts. Specifically, she contended the district court should have either placed her on probation or retained jurisdiction and allowed her to participate in a "rider" program. However, in an unpublished, *per curiam* opinion, the Court of Appeals affirmed her sentence. (*See* R., pp.18-19.)

In the meantime, following entry of the judgment of conviction, Ms. Loiselle had filed a motion seeking a reduction of sentence pursuant to Idaho Criminal Rule 35(b). (No. 45503 R., p.108.) Shortly thereafter, she filed a motion seeking to withdraw that motion (No. 45503 R.,

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[3] According to Ms. Loiselle's counsel at the time, she was not accepted into Family Treatment Court or Drug Court "because of her record, which she acknowledges is not good." (No. 45503 Tr., p.17, Ls.11-14.)

[4] The unrelated case was the one involving the 2011 burglary conviction. Ms. Loiselle was on parole in that case when the present case arose.

p.110), but that motion was never ruled upon (*see generally* No. 45503 R.). Less than three months later, with the assistance of new counsel, she filed an amended Rule 35 motion. (R., pp.14-15.) In the amended motion, she represented that she was denied admission to family treatment court, drug court, or any other specialty court prior to her sentencing hearing because she was still on parole in an unrelated case at that time, but she had since been released from parole, *i.e.*, "Gold Sealed." (R., p.14.) In light of these changed circumstances, she asked for an opportunity to re-apply to one of the specialty courts. (R., pp.14-15.)

Thereafter, Ms. Loiselle filed a second amendment to her Rule 35 motion. (R., pp.24-25.) In the second amendment, she reiterated her contention of changed circumstances regarding her parole status, and again asked for an opportunity to re-apply to one of the specialty courts. (R., pp.24-25; *see also* R., p.36 (IDOC time calculation report establishing that she had been Gold Sealed in the prior case).) She also attached a wealth of mitigating evidence. (*See* R., pp.26-35.) This evidence included: myriad documents demonstrating her impressive performance while incarcerated (R., pp.26, 30, 31, 32, 33, 35); multiple letters from Ms. Loiselle accepting responsibility for her crime, expressing remorse and regret for her actions, discussing her growth while incarcerated, and describing her efforts to mother her son even while incarcerated and voicing the hope that she could soon be permanently reunited with her baby (R., pp.27, 28, 29); and a letter from Ms. Loiselle's mother highlighting Ms. Loiselle's successful programming while in prison, noting the positive changes she has witnessed in Ms. Loiselle, and imploring the district court to let Ms. Loiselle be a mother to her baby (R., p.30).

The district court held a hearing on Ms. Loiselle's motion. (*See generally* Tr.)[5] At that hearing, Ms. Loiselle's counsel represented that she was originally denied access to Family Treatment Court because she was on parole in a separate case, and he asked for another opportunity to apply to Family Treatment Court. (*See* Tr., p.6, L.13 – p.8, L.4.) Although the district court initially viewed with skepticism counsel's stated reason for Ms. Loiselle's original rejection, it later admitted it did not know why she was initially rejected (*see* Tr., p.6, L.22 – p.7, L.19), and it indicated Ms. Loiselle was free to file a new application to Family Treatment Court (*see* Tr., p.9, L.20 – p.10, L.3, p.14, Ls.1-2).

The district court also addressed Ms. Loiselle's new mitigating evidence, ruling that positive performance in prison is not a proper basis for Rule 35 relief: "[T]he fact that somebody is doing well in prison is not a good enough reason for them to have their sentence reconsidered. Because that's what they're supposed to do, is do well in prison." (Tr., p.13, Ls.8-11.)

Two days after the hearing, after apparently receiving word that Ms. Loiselle had re-applied to, but was again denied entry into, Family Treatment Court, the district court entered an order denying Rule 35 relief. (R., p.46.) The written order was solely based on Ms. Loiselle's rejection from Family Treatment Court. (R., p.46.)

Thereafter, Ms. Loiselle filed a notice of appeal timely from the denial of her Rule 35 motion. (R., pp.48-51.) On appeal, she contends the district court abused its discretion in denying her Rule 35 motion because it failed to act consistently with applicable legal standards and failed to exercise reason.

[5] In citing to specific pages of the Reporter's Transcript, Ms. Loiselle utilizes the page numbers on the bottom right corner of each page (which match the page numbers of the electronic file), not the page numbers in the bottom center of each page.

ISSUE

Did the district court abuse its discretion in denying Ms. Loiselle's Idaho Criminal Rule 35 motion for a reduction of sentence?

ARGUMENT

The District Court Abused Its Discretion In Denying Ms. Loiselle's Idaho Criminal Rule 35 Motion Because It Incorrectly Believed That Good Performance In Prison Will Not Justify A Sentence Reduction

Ms. Loiselle's twice-amended Rule 35 motion and supporting materials presented two bases for a sentence reduction. First, Ms. Loiselle offered an argument as to why her sentence should be suspended and she should be granted probation on the condition that she participate in Family Treatment Court. Second, she offered compelling new mitigating evidence—including evidence of her successes since being incarcerated—demonstrating that her sentence of eight years, with four years fixed, should be reduced. Her first argument was rendered moot by the fact that she has again been denied entrance to Family Treatment Court (for reasons that are not clear on the record), so that argument is not being pursued in this appeal. Rather, Ms. Loiselle contends the district court abused its discretion in dismissing her compelling new evidence and failing to reduce her sentence.

This Court reviews denials of Rule 35 motions seeking sentence reductions under an "abuse of discretion" standard. *State v. Huffman*, 144 Idaho 201, 203 (2007). In determining whether the district court abused its discretion, this Court evaluates whether the district court: "(1) perceived the issue as one of discretion, (2) acted within the outer boundaries of that discretion, (3) acted consistently with the legal standards applicable to the specific choices available to it, and (4) reached its decision by an exercise of reason." In this case, the district court abused its discretion in denying Ms. Loiselle's Rule 35 motion because it failed to act

consistently with applicable legal standards, and because it failed to exercise reason in reaching its ultimate conclusion.

In support of her Rule 35 motion, Ms. Loiselle provided the district court with a wealth of new mitigating evidence, mostly focusing on her impressive performance while incarcerated. (*See* R., pp.26-35.) This evidence included:

- An Idaho Department of Correction re-classification sheet (R., p.34) and a certificate (R., p.31), both indicating Ms. Loiselle been DOR-free.
- A certificate indicating Ms. Loiselle had successfully completed a "Grief and Loss" class. (R., p.33; *see also* R., p.35 (showing completion of all of the Grief and Loss modules).)
- A certificate indicting Ms. Loiselle had successfully completed a "Parenting" class (R., p.32), and a letter written a couple weeks earlier indicating that Ms. Loiselle was actively participating in, and close to completing, the class, and that she was "actively contribut[ing] to class [was] eager to learn" (R., p.26).
- Information that Ms. Loiselle was involved in an "Emotion Regulation" group. (R., p.30.)
- Information that Ms. Loiselle was set to begin a "Pathway" program. (R., p.30.)
- Information that Ms. Loiselle was working on obtaining her GED, and had completed all but her math requirements. (R., p.30.)

However, the district court dismissed all of this evidence. It stated that, in its view, a defendant's performance in prison, on its own, could *never* support a sentence reduction: "[T]he fact that somebody is doing well in prison is not a good enough reason for them to have their sentence

reconsidered. Because that's what they're supposed to do, is do well in prison." (Tr., p.13, Ls.8-11.)

By couching its ruling in such absolute terms, the district court failed to act consistently with applicable legal standards and thereby abused its discretion. The fact is that positive performance while incarcerated is an appropriate consideration when evaluating a motion for a sentence reduction. *See, e.g., State v. Person*, 145 Idaho 293, 300 (Ct. App. 2007 ("[W]hile we have held that although good conduct while in prison is worthy of consideration, it may not necessarily result in a reduction of a prisoner's sentence."). Obviously, evidence of positive performance in prison must still be "viewed against the entire record," *State v. Sanchez*, 117 Idaho 51, 52 (Ct. App. 1990), and in many cases, therefore, will not warrant a sentence reduction. *See, e.g., State v. McNeil*, 155 Idaho 392, 403 (Ct. App. 2013) (recognizing that the defendant's rehabilitative efforts while incarcerated were "commendable" but, given the other circumstances of the case, holding those rehabilitative efforts did not mandate a sentence reduction). But the fact that positive performance in prison often will not outweigh the aggravating facts in a given case, does not mean it never will as the district court suggested here.

Even if the district court's ruling were not inconsistent with applicable law though, it still represents an abuse of discretion for the court's failure to exercise reason. As detailed above, Ms. Loiselle has performed wonderfully while in prison. She is obviously working hard, and gaining the skills to be successful in society. In addition, she has accepted responsibility for her actions, expressed remorse for what she did to put her baby at risk, and committed herself to being a loving, responsible mom. (R., pp.27, 28, 29.) While Ms. Loiselle's crime was serious, continuing to incarcerate her cannot undo it; it merely hurts her for the sake of hurting her. But, in the process, it hurts her baby too. Little Antonio has already lived the first two years of his

life without a mother. (*See* No.45502 PSI, p.4 [redacted] Why make him go two more years without a mom? Because the district court failed to exercise reason in failing to reduce Ms. Loiselle's sentence, it abused its discretion.

CONCLUSION

For the reasons detailed above, Ms. Loiselle respectfully requests that this Court vacate the district court's order denying her Rule 35 motion, and that it remand her case with instructions that either her sentence be reduced, or that the district court reconsider her Rule 35 motion in light of the appropriate standards.

DATED this 2nd day of April, 2019.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
Chief, Appellate Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 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

ERL/eas