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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46537-2018
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-38017
v.)	
)	
CLINTON D. HALL,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Clinton D. Hall pled guilty to grand theft by criminal possession of a financial transaction card, the district court sentenced him to a unified term of five years, with two years fixed. Mr. Hall appeals from his judgment of conviction and asserts that his sentence is excessive in light of the mitigating factors in his case.

Statement of Facts and Course of Proceedings

The State charged Mr. Hall with grand theft and forgery of a financial transaction card for allegedly taking the bank card of his former employer, Luciano's restaurant in Boise, and withdrawing \$100. (R., pp.7-8, 25-26.) Mr. Hall later pled guilty to grand theft by criminal possession of a financial transaction card, with both parties free to argue at sentencing.

(R., pp.48-51; Tr., p.6, L.1-p.15, L.12.)

At the sentencing hearing, the State asked that the court impose a five year sentence, with one and one-half of those years fixed, due largely to Mr. Hall's criminal history. (Tr., p.17, Ls.22-p.19, L.7.) Defense counsel asked that the court impose a sentence that would get Mr. Hall into treatment immediately, either by commuting his sentence and placing him on probation, or by imposing no fixed time, or a fixed sentence of credit for time served and retaining jurisdiction so that he could participate in "Thinking for a Change." (Tr., p.19, Ls.19-22, p.22, L.5-p.23, L.8.) Defense counsel acknowledged Mr. Hall's criminal history, but explained that Mr. Hall, who was in his forties, was finally on the cusp of turning his life around. (Tr., p.20. L.19-p.21, L.10.) Finally, Mr. Hall told the court:

I just want to apologize to Luciano's. And I feel horrible for all of this. I broke everyone's trust. They were all my friends. Just for being a liar and a thief, it's not worth it. It's a hard thing to come back from. But I want to earn their trust back. They are still my friends. And I feel bad. I feel horrible for doing this. And it was a one-time thing. It won't happen again.

I'm sorry that I hurt my family. I was ripped out of everyone's lives. And I'm not there to help. My parents are getting older, and I'm not home. I still have a place to live. I still have a job. Upon release of whatever happens, I still have a job and a place to go. So I'm thankful for that.

I just want to put all this behind me. And I'm embarrassed.

(Tr., p.25, Ls.3-20.)

The district court explained that it did not believe Mr. Hall was a good candidate for probation because he posed a high risk of reoffending.¹ (Tr., p.27, L.23–p.28, L.5.) The court acknowledged that Mr. Hall had “a lot of talent and a lot of skill, a lot to give to the community,” but said that Mr. Hall needed to decide whether to take control of his impulsivity. (Tr., p.26, Ls.6–12.) The court believed it could best help Mr. Hall by giving him harsh consequences, and therefore sentenced him to serve five years, with two of those years fixed. (Tr., p.26, Ls.13–24; R., pp.56–59.) It ordered that sentence to run consecutively to any earlier sentence. (Tr., p.26, L.25–p.26, L.4; R., pp.56–59.) Mr. Hall timely appealed. (R., pp.62–63.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Hall to a unified term of five years, with two years fixed, for grand theft by criminal possession of a financial transaction card?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Hall To A Unified Term Of Five Years, With Two Years Fixed, For Grand Theft By Criminal Possession Of A Financial Transaction Card?

When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v.*

¹ Contrary to this conclusion, the PSI found that Mr. Hall has a moderate risk of reoffending. (PSI, p.19.)

Toohill, 103 Idaho 565, 568 (Ct. App. 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.” *Miller*, 151 Idaho at 834. In light of Mr. Hall’s accountability and remorse, motivation to be successful in the community and potential for rehabilitation, and support from his family and friends, Mr. Hall’s sentence is excessive.

To begin, Mr. Hall’s accountability and remorse stands in mitigation. At sentencing Mr. Hall told the court, “I feel horrible for all of this. I broke everyone’s trust.” (Tr., p.25, Ls.4–5.) And he told the PSI investigator that he feels “[s]hame, embarrassed. I broke the trust of my friends, family, and coworkers.” (PSI, p.5.) Finally, he wrote that:

I apologize to Luciano’s and anybody else involved in dealing with this. If this took anytime away from your family in having to deal with police and detectives I’m sorry. What I did was impulsive and careless. In an act of stupidity, I cost myself my freedom and broke the trust if [sic] my friends and family. I did pay the money back, but it doesn’t bring back the lost time and trust. The dollar amount doesn’t matter. I’ve caused a massive gap and hole in my family and my life for something so petty and for something that could’ve been avoided by returning their card when I found it. I feel absolutely horrible for this and have thought about how my actions effect others every single day. Need to put this into daily practice.

(PSI, p.18.)

Next, Mr. Hall’s motivation to be successful in the community and potential for rehabilitation favor a lower sentence. Mr. Hall acknowledges that he has a lengthy criminal history, but as defense counsel discussed at sentencing, he is ready to turn a corner. (Tr., p.20. L.19–p.21, L.10.) He is in his forties, his parents are getting older, and he doesn’t want to continue down this path. (Tr., p.25, Ls.3–20.) Although Mr. Hall was on parole when he committed this offense, he had generally done well in the community between when he was released on parole in June 2015 and when he committed this offense in May 2017. (PSI, pp.3,

12.) Mr. Hall's main struggle while on parole was with alcohol; he has no other substance abuse problems. (PSI, pp.12, 17; *see also* PSI, p.122 (discussing Mr. Hall's history of alcohol use).) Further, it appears that Mr. Hall has not had any alcohol treatment in nearly fifteen years. (PSI, pp.20, 123.) When Mr. Hall is released from prison, he plans to live with his girlfriend and their dog in Garden City. (PSI, p.13.) He has employable skills as a chef, painter, warehouseman, and in electrical installation and delivery logistics, and also has a job waiting for him at Wild Root in Boise, where he worked until he was incarcerated in this case. (PSI, pp.15–16; Addendum,² p.2.) The most important things in Mr. Hall's life are having a stable job so that he can pay off debt and help out his family, getting off of parole, and spending time with his loved ones. (PSI, p.18.)

Finally, Mr. Hall's ties to and support from the community also mitigate his sentence. In the year preceding this offense, he joined a running group and a river surfing group, and volunteered his time with the White River cleanup project and at the animal shelter. (PSI, p.13.) Fully aware of Mr. Hall's charges, his former boss at Wild Root wrote a letter to the court in support of Mr. Hall. (Addendum, p.2.) He explained that Mr. Hall was an exemplary employee who never missed a shift, showed up early for work, and worked hard. (*Id.*) He also showed his "true character and his generosity" by volunteering to help them with charity events when other employees wouldn't do so without compensation. (*Id.*) Mr. Hall's mother wrote to the court to offer some insight into their family and Mr. Hall, and to show she supports him despite his bad choices. (Addendum, pp.3–4.) Finally, Mr. Hall's friend of fifteen years described Mr. Hall as dependable friend and a person who can move forward in a positive way. (Addendum, p.5.)

² Mr. Hall refers to the electronic file that begins with two addendums to the PSI as "Addendum."

In light of these mitigating factors, the district court abused its discretion by sentencing him to serve a total of five years, with two years fixed.

CONCLUSION

Mr. Hall respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 8th day of May, 2019.

/s/ Maya P. Waldron

MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of May, 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/ Teal M. Vosburgh

TEAL M. VOSBURGH
Administrative Assistant

MPW/tmv