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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46620-2018
Plaintiff-Respondent,)	
)	MINIDOKA COUNTY NO. CR-2016-3098
v.)	
)	
TUCKER BIRD,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Tucker Bird pled guilty to possession of methamphetamine and was sentenced to a unified term of five years, with two year fixed. Ms. Bird asserts that the district court abused its discretion by imposing an excessive sentence, in light of the mitigating factors that exist in her case. She further asserts that the district court abused its discretion by denying her Rule 35 motion.

Statement of the Facts & Course of Proceedings

The State filed a criminal complaint alleging that Ms. Bird had committed the crimes of possession of methamphetamine, possession of marijuana, and possession of drug paraphernalia. (R., pp.10-12.) Ms. Bird waived her right to a preliminary hearing, was bound over into the district court, and an information was filed charging her with the above crimes. (R., pp.19, 29-32.) Pursuant to a plea agreement, Ms. Bird pled guilty to possession of methamphetamine and was free to argue for any sentence; in exchange, the State agreed to dismiss the misdemeanor charges and to recommend the district court impose a suspended sentence of five years, with two years fixed, with Ms. Bird being placed on probation for a period of five years. (R., pp.42-53, 55-57.)

Ms. Bird violated the terms of her release agreement; entered into and was later removed from drug court; and failed to appear for her scheduled sentencing hearing. (R., pp.65-102.) Eventually, Ms. Bird was brought back for sentencing, and the district court imposed a unified term of five years, with two years fixed, concurrently with a sentence imposed in a separate case,¹ and the district court declined to place her on probation. (R., pp.119-124; Tr., p.3, L.6 – p.15, L.2.) Ms. Bird filed a timely Notice of Appeal. (R., pp.125-127.) Additionally, Ms. Bird filed a timely Rule 35 motion asking the district court to reduce her sentence to a unified term of two and one-half years, with one year fixed. (Aug., pp.1-5.)² The district court denied the motion. (Aug., pp.6-7.)

¹ The sentence imposed in the separate case is the subject of the appeal in *State v. Bird*, Docket No. 46621-2018.

ISSUES

- I. In light of the mitigating factors present in this case, did the district court abuse its discretion when it imposed upon Ms. Bird a unified sentence of five years, with two years fixed?
- II. Did the district court abuse its discretion by denying Mr. Bird's Rule 35 motion?

ARGUMENT

I.

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

Ms. Bird asserts that, given any view of the facts, her unified sentence of five years, with two years fixed, is excessive. Sentencing decisions are left to the sound discretion of the district court. 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 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.

Ms. Bird had a difficult childhood and, unfortunately, over the years she has turned to alcohol and illegal drugs to help her deal with her issues. Her parents were divorced when she was six, and she spent her early years living with her mother. (PSI, p.6.)³ Ms. Bird's mother had some mental health issues, was an alcoholic and abused drugs, and she physically abused both

² A motion to augment the record with Ms. Bird's Rule 35 motion and the district court's denial of that motion has been filed contemporaneously with this brief.

³ Citations to the Presentence Investigation Report and its attached documents will use the designation "PSI," and will include the page numbers associated with the 125-page electronic file containing those documents.

Ms. Bird and her brother. (PSI, p.6.) Ms. Bird started using alcohol when she was 12 years old, and her mother let her drink in the house until the age of 14, when Ms. Bird moved in with her father. (PSI, p.2, 6, 12.) Although life for Ms. Bird was better with her father, as an adult she became addicted to methamphetamine. (PSI, p.12.) She has also used marijuana occasionally and has tried cocaine and ecstasy. (PSI, p.12.) In addition to her substance abuse issues, during the time Ms. Bird was participating in Drug Court, she was trying to leave a severely abusive boyfriend and her mental state was very poor. (Tr., p.10, Ls.21-25.) Ms. Bird recognizes her drug use caused her family and employment problems, not to mention legal issues, and she expressed a desire for treatment. (PSI, pp.12-13, 70-71.)

Fortunately for Ms. Bird, her father is still a source of support for her. He sent an e-mail to the PSI writer describing Ms. Bird as an intelligent and caring person, who has the support and love of her father and step-mother. (PSI, p.7.) He later wrote an additional letter again expressing that Ms. Bird has the support of her family, and that she is a caring person who donates her time and money to help those in need. (PSI, p.124.)

Idaho Courts recognize that a substance abuse problem coupled with the desire for treatment, in addition to support from family, are mitigating factors that should counsel a court to impose a less-severe sentence. *See State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982). Ms. Bird asserts that, in light of the mitigating factors that exist her case, the district court abused its discretion by imposing an excessive sentence upon her.

II.

The District Court Abused Its Discretion By Denying Ms. Bird's Rule 35 Motion

Like other sentencing decisions, the determination as to whether or not to grant a Rule 35 motion seeking leniency is left to the sound discretion of the district court. Ms. Bird's Rule 35

motion was based upon the progress that she had made since the time she was sentenced. (Aug., pp.1-5.) Ms. Bird informed that court that she was learning a lot from the drug and alcohol classes that she was taking and her mental health has improved significantly since she was no longer in an abusive relationship and was free from drug abuse. (Aug., p.2.) She also expressed that she was learning how to be more flexible in her job and plans to put the skills that she is learning into practice when she is released from prison. (Aug., p.2.) Ms. Bird also informed the court that she had not been a disciplinary problem and that she will continue to work hard and make progress in her treatment. (Aug., pp.2-3.) Ms. Bird supported her request for leniency with a letter from her case manager, who confirmed that Ms. Bird was not a disciplinary problem, and who expressed that Ms. Bird was doing “exceptionally well” in her Cognitive Behavioral Interventions for Substance Abuse group. (Aug., p.5.)

In light of the progress that she had been making since she was incarcerated, Ms. Bird asserts that the district court abused its discretion by denying her Rule 35 motion.

CONCLUSION

Ms. Bird respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 10th day of June, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 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

JCP/eas