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### State v. Wheeler Appellant's Brief Dckt. 46656

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46656-2019
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR14-18-9228
v.	)	
	)	
BRADLEY FRANK WHEELER,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, Bradley Frank Wheeler was convicted of battery on a correctional officer. The district court imposed a unified sentence of fifteen years, with five years fixed. Mr. Wheeler filed an Idaho Criminal Rule 35 (“Rule 35”) motion for a reduction of sentence, which the district court denied. On appeal, Mr. Wheeler asserts the district court abused its discretion when it imposed his sentence, and when it denied his Rule 35 motion.

## Statement of the Facts & Course of Proceedings

The district court charged Mr. Wheeler by Information with battery on a correctional officer, felony, I.C. §§ 18-915(2) and 18-903(b), and a persistent violator sentencing enhancement under I.C. § 19-2514. (R., pp.32-37.) Mr. Wheeler entered a not guilty plea to the charges. (R., pp.38-39.)

Mr. Wheeler chose to testify in his own defense at his jury trial. (*See generally* Tr., pp.433-593.) He testified that, while he was at the Canyon County Jail, Deputy Ryan Regis took his identification wristband without replacing it. (*See* Tr., p.433, L.25 – p.436, L.15.) Deputy Regis had also confiscated items, such as food, from Mr. Wheeler's cell on other occasions, but Mr. Wheeler testified officers were not supposed to take a detainee's food. (*See* Tr., p.436, L.24 – p.438, L.13.)

Mr. Wheeler testified that, after Deputy Regis took his wristband, he was lying down in his cell when Deputy Regis was conducting a headcount. (*See* Tr., p.438, L.14 – p.440, L.1.) When Deputy Regis asked him about a wristband, Mr. Wheeler replied that the deputy had taken it. (*See* Tr., p.441, Ls.2-8.) According to Mr. Wheeler, Deputy Regis then entered the cell and took a roll of toilet paper and a bottle of pink soap/shampoo. (*See* Tr., p.441, L.22 – p.443, L.12.) Mr. Wheeler testified that another guard had given him two rolls of toilet paper. (*See* Tr., p.444, Ls.1-8.) He also testified that the jail, once per day, allowed inmates to fill whatever bottles they had with the soap. (*See* Tr., p.445, Ls.3-16.) Mr. Wheeler had originally bought the bottle Deputy Regis confiscated when he purchased shampoo from the jail commissary. (*See* Tr., p.457, L.17 – p.458, L.4.)

Mr. Wheeler testified that he told Deputy Regis he could not take his shampoo, and he was yelling because he was frustrated. (*See* Tr., p.459, L.12 – p.460, L.17.) He testified that

when he tried to stand up from his bunk, Deputy Regis attacked him. (*See Tr.*, p.460, L.18 – p.461, L.16.) The attack happened too quickly for him to focus on what was going on, and Mr. Wheeler ended up on the floor on his back after Deputy Regis picked him up and slammed him down. (*See Tr.*, p.461, L.13 – p.462, L.5.)

Deputy Regis testified that Mr. Wheeler claimed he had taken the wristband when he asked for it, but he had not taken the wristband. (*See Tr.*, p.223, L.25 – p.224, L.15.) When Deputy Regis entered Mr. Wheeler's cell, he noticed an extra roll of toilet paper and an extra bottle of jail-issued soap, in violation of the rules. (*See Tr.*, p.225, Ls.5-21.) He confiscated the extra items by putting them on his clipboard on his person. (*See Tr.*, p.234, Ls.16-22.) According to the deputy, Mr. Wheeler became a little more belligerent and swore at him, sat up on his bunk, stood and advanced towards him, and clenched his fists. (*See Tr.*, p.235, L.13 – p.236, L.21.) Deputy Regis testified Mr. Wheeler then threw a punch, causing the deputy's clipboard to hit his face and leave a small cut. (*See Tr.*, p.239, L.18 – p.240, L.13.) He then pushed Mr. Wheeler onto his bunk before restraining him on the floor with the help of another deputy. (*See Tr.*, p.241, L.10 – p.242, L.14.)

At the conclusion of the trial, the jury found Mr. Wheeler guilty of battery on a correctional officer, and of being a persistent violator. (*R.*, pp.169-71.) The district court ordered a mental health evaluation pursuant to I.C. § 19-2522. (*R.*, pp.176-78.) Mr. Wheeler elected to not participate in the mental health evaluation. (*Conf. Exs.*, p.1.)

During the sentencing hearing, Mr. Wheeler recommended the district court impose a unified sentence of five years, with two years fixed, suspend the sentence, and place him on probation for a period of five to ten years. (*See Tr.*, p.814, Ls.17-25.) The State recommended the district court impose a unified sentence of fifteen years, with five years fixed. (*Tr.*, p.802,

Ls.13-14.) The district court imposed a unified sentence of fifteen years, with five years fixed. (R., pp.232-33.)

Mr. Wheeler filed a Notice of Appeal timely from the district court's Judgment and Commitment. (R., pp.221-25.)

Mr. Wheeler also filed, pro se, a Motion for Correction or Reduction of Sentence, ICR 35. (R., pp.234-36.) He requested that his sentence be reduced to time served. (R., p.236.) The district court issued an Order Denying Motion for Correction or Reduction of Sentence Pursuant to I.C.R. 35. (Limited R., pp.13-17.)

### ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of fifteen years, with five years fixed, upon Mr. Wheeler following his conviction for battery on a correctional officer?
- II. Did the district court abuse its discretion when it denied Mr. Wheeler's Idaho Criminal Rule 35 motion for a reduction of sentence?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fifteen Years, With Five Years Fixed, Upon Mr. Wheeler Following His Conviction For Battery On A Correctional Officer

Mr. Wheeler asserts the district court abused its discretion when it imposed a unified sentences of fifteen years, with five years fixed, upon him following his conviction for battery on a correctional officer. The district court should have instead followed Mr. Wheeler's recommendation by imposing a unified sentence of five years, with two years fixed, suspending the sentence, and placing him on probation. (See Tr., p.814, Ls.17-25.)

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 “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Mr. Wheeler does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Wheeler must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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. *Id.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

“A trial court’s decision regarding whether imprisonment or probation is appropriate is within its discretion.” *State v. Reber*, 138 Idaho 275, 278 (2002). Before imposing and executing a sentence, a district court must consider the criteria of I.C. § 19-2521 regarding whether a defendant should be placed on probation. *See id.* “A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521.” *Id.*

Mr. Wheeler asserts the sentence imposed by the district court is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider that the sentencing goal of rehabilitation would not be best served by Mr. Wheeler's continued incarceration. At the sentencing hearing, Mr. Wheeler's counsel informed the district court he had asked Mr. Wheeler: "What's the big deal about this? Why—why not just wear the dang wristband and go and walk to the door?" (Tr., p.807, Ls.21-22.) Mr. Wheeler replied: "Because I'm not a dog. I'm a human being." (Tr., p.807, Ls.22-23.) Defense counsel also asked the district court to remember, "after being in this jail for months and months and being treated in a manner that is less than dignified, people get frustrated. People make mistakes. People get angry. People say things." (Tr., p.809, L.24 – p.810, L.2.) Later, counsel explained: "This is a situation where we keep putting Mr. Wheeler in jail. We keep treating him the same way in the jail. If we sent him to prison, it's going to be more of the same. It's not going to be anything different." (Tr., p.813, Ls.3-6.) According to Mr. Wheeler's counsel, "But we're asking him to completely change his behavior when the situation that he's placed in agitates him and makes things worse." (Tr., p.813, Ls.6-8.) As counsel put it, while "Mr. Wheeler probably needs some help . . . my experience has been is he's not going to get that help in prison." (Tr., p.814, Ls.6-10.)

Additionally, the district court did not give adequate consideration to other mitigating factors. For example, one of Mr. Wheeler's daughters was fighting leukemia. (*See* Tr., p.810, Ls.12-13, p.817, Ls.22-23.) Further, while the State argued Mr. Wheeler had threatened his brother's life in a jail phone call, Mr. Wheeler explained that he would not hurt his brother, and that his brother was supposed to be handling the family inheritance trust, but was instead withholding the money from Mr. Wheeler and their other siblings. (*See* Tr., p.800, Ls.15-24,

p.817, L.9 – p.818, L.2.) Moreover, as Mr. Wheeler related to the district court, several other cases against him were ultimately dismissed. (*See* Tr., p.819, L.10 – p.821, L.24, p.824, L.17 – p.825, L.3.) While the district court stated it would not be considering the dismissed charges (Tr., p.832, Ls.6-10), the district court should have recognized that the dismissal of the charges indicated Mr. Wheeler was not the threat to society that the State portrayed him as.

Because the district court did not adequately consider the above mitigating factors, the sentence imposed is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed Mr. Wheeler’s sentence. The district court should have instead followed Mr. Wheeler’s recommendation by imposing a unified sentence of five years, with two years fixed, suspending the sentence, and placing him on probation.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Wheeler’s Rule 35 Motion For A Reduction Of Sentence

Mr. Wheeler asserts that the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence, in view of the new and/or additional information presented in support of the motion. “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) (citation omitted). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not

excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

Mr. Wheeler asserts his sentence is excessive in view of the new and/or additional information presented in support of the Rule 35 motion. *See State v. Adair*, 145 Idaho 514, 517 (recognizing new and additional information both serve as a basis for an appellate court to find that a denial of a Rule 35 motion was an abuse of discretion); *State v. Huffman*, 144 Idaho 201, 203 (2007) (same). Beyond continuing to maintain his innocence, Mr. Wheeler asserted in the Rule 35 motion: “I am no risk. I have no crimes outside of the jail.” (R., p.235.) Mr. Wheeler also asserted: “I am a general building contractor who employ[s] lots of people. Nothing at all will be ga[i]ned by me sitt[ing] in jail. I have 2 sons and 2 daughters a wife and 2 grandchildren.” (R., p.235.) Further, he asserted: “It serves no purpose me sitt[ing] in jail. It will cause no changes and the state will pay out lots of money to care for me rather than [receiving] tax income from me.” (R., p.235.)

Mr. Wheeler’s sentence is excessive in view of the above new and/or additional information presented in support of the Rule 35 motion. Thus, the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence.

#### CONCLUSION

For the above reasons, Mr. Wheeler respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 6<sup>th</sup> day of August, 2019.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of August, 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](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BPM/eas