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State v. Quijas Appellant's Brief Dckt. 46695

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46695-2019
Plaintiff-Respondent,	)	
	)	BOISE COUNTY NO. CR08-18-137
v.	)	
	)	
CONCETTA LEE QUIJAS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Concetta Lee Quijas appeals from the district court's Judgment of Conviction and Commitment. Ms. Quijas was sentenced to a unified sentence of twelve years, with ten years fixed, for her attempted murder conviction. She asserts that the district court abused its discretion in sentencing her to an excessive sentence without giving proper weight and consideration to the mitigating factors that exist in her case.

Statement of the Facts & Course of Proceedings

On February 26, 2018, and Information was filed charging Ms. Quijas with attempted first degree murder. (R., pp.32-33.) The charges were the result of a report to police that Mr. Gordon had been attacked by his ex-girlfriend, Ms. Quijas, suffered multiple lacerations, and a stab wound to his chest. (PSI., p.3.)[1]

Ms. Quijas entered an *Alford*[2] plea to the charge. (R., pp.89-90.) At sentencing, the prosecution requested the imposition of a unified sentence of fifteen years, with ten years fixed. (Tr., p.40, Ls.14-17.) Defense counsel recommended a unified sentence of ten years, with three years fixed. (Tr., p.51, Ls.18-20.) The district court imposed a unified sentence of twelve years, with ten years fixed. (R., pp.135-137.) Ms. Quijas filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.139-140.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Ms. Quijas, a unified sentence of twelve years, with ten years fixed, following her conviction for attempted murder?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed, Upon Ms. Quijas, A Unified Sentence Of Twelve Years, With Ten Years Fixed, Following Her Conviction For Attempted Murder

Ms. Quijas asserts that, given any view of the facts, her unified sentence of twelve years, with ten years fixed, is excessive. Where a defendant contends that the sentencing court

[1] For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as "PSI" and referenced pages will correspond with the electronic page numbers contained in this file.

[2] *North Carolina v. Alford*, 400 U.S. 25 (1970).

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. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

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) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Ms. Quijas does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Quijas must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id*. (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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*. (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Appellate courts use a four-part test for determining whether a district court abused its discretion: Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018). Ms. Quijas asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in her case and, as a result, did not reach its decision by an exercise of reason.

Specifically, she asserts that the district court failed to give proper consideration to her strong support system. In *State v. Shideler*, 103 Idaho 593, 594 (1982), the Idaho Supreme Court noted that family and friend support were factors that should be considered in the Court's decision as to what is an appropriate sentence. *Id.* Ms. Quijas has the support of her family and friends. Her mother and children appeared at the sentencing hearing to show their support. (Tr., p.29, Ls.1-5.) Additionally, several people supplied letters in support including: Ms. Quijas' mother, Sherry Christison; daughter, Alyssa Quijas; sons, Timothy James Quijas and John Quijas; family friends, Mr. and Mrs. Mingus and Susan Ann Olson; a client of her housekeeping business, Hilary Howerton; members of her church, Brenda Elliot, Susan Barrett, and Mona Johnson; and a neighbor. (PSI, pp.24-35.)

Specifically, Alyssa Quijas noted:

> I have worked with my mother for the last 3 years cleaning houses before she went to jail. My mother had her own business cleaning houses for 30+ years. She had always been a very hard worker and took her job serious[ly]. Her clients loved her hard working and friendly attitude. She always went over and beyond for her clients for no extra cost because of how giving she was. I remember last year one of her elderly clients was telling my mom how she loved to go up north to banks on little road trips. But her client said she never gets out of the house [be]cause her kids don't like to take her anywhere. My mom then said I'll take you this weekend. Her client got so excited. Then the next time I saw her client while cleaning her house she stopped me and said how much she admired and loved my mom for taking her out of her house and spending the day with her. [W]hile tearing up[,] she said my mom took her out all day[,] took her out to eat[,] and talked to her about everything. I was very touched about how wonderful and generous of a person my mother is.

(PSI, p.25.)

Furthermore, Idaho courts have recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Ms. Quijas has been previously diagnosed with major depressive disorder, recurrent, and generalized anxiety disorder. (PSI, pp.13, 169-170.) Approximately ten years

ago she was hospitalized at Intermountain Hospital for several days after suffering a "mental breakdown." (PSI, p.169.) She has a history of attempting suicide and has also "engaged in self-injurious behavior." (PSI, p.169.) Recently, Ms. Quijas was diagnosed with posttraumatic stress disorder; major depressive disorder, recurrent, moderate, in partial remission, with anxious distress; possible bipolar disorder, depressed; and alcohol use disorder. (PSI, pp.183-184.) She has been taking Cymbalta to assist with her depression and anxiety. (PSI, p.13.) However, she acknowledges that she could use additional assistance to help her deal with her emotions. (PSI, p.41.)

It is likely that a majority of Ms. Quijas' mental health concerns are the result of her history with sexual and physical abuse. A difficult childhood involving abuse is a mitigating factor that should be considered in sentencing. *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001); *State v. Smith*, 144 Idaho 687, 690-91 (Ct. App. 2007). Ms. Quijas was sexually abused by her father as a very young child and then again as a teenager. (PSI, p.8.) Her mother was "very abusive" while she was growing up. (PSI, p.9.) And, unfortunately, as an adult Ms. Quijas married a man that was also "very violent and abusive." (PSI, pp.10, 41.) Her ex-husband punched, kicked, choked, and ran into her with the car. (PSI, p.43.) He was also "very mentally abusive" and sexually abusive. (PSI, p.43.)

Despite her limited history with a DUI in 1996 and two misdemeanor batteries in 2002 and 2008, she is normally a productive member of society and a very kind and caring person. (PSI, pp.12, 24-35.) Dr. Craig Beaver noted that her violent attack on Mr. Gordon was "not reflective of a pattern of behaviors of her being violent and aggressive." (PSI, p.186.) He also determined that, as long as she continues with appropriate psychotropic medication and refrains

from alcohol use, "she would be considered a low risk for future violence or other recidivism activities in the community." (PSI, p.186.)

Finally, Ms. Quijas has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, "In light of Alberts' expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character." *Id*. 121 Idaho at 209. Ms. Quijas has expressed her remorse for committing the instant offense stating that she feels "horrible" and wishes she "could turn back time and change it." (PSI, p.5.) At the sentencing hearing, she noted that:

> . . . I had loved Don Gordon for 14 years and took care of him through his depression and his anxiety issues and his heart surgery. Before this incident, we never fought or argued. It was very rarely. . . . It doesn't matter what Donald Gordon said or did, there's no excuse whatsoever for what I did with my behavior. I let the anger and the rage overtake me, and I made a split-second decision which had cost everyone involved a lot. My inner voice said, leave it in Jehovah's hands. I wish I would have listened to that voice or contacted the authorities.
>
> I sincerely, truly am sorry from the bottom of my heart. I am so ashamed of what I did, that it's not the person I am. Don would know that's not the person I am either. I'm not a violent person, and I don't feel that I'm a threat to the community or Donald Gordon. I would like the opportunity to apologize to Don because I feel like he has been through trauma and reassure him that I am not a future threat to him. He definitely deserves to feel safe through his senior years.
>
> I have a lot of time to think and cry in a single cell about my crime and all who are affected by it. My family, his family. I have prayed constantly to Jehovah for forgiveness. Please believe me when I say I'm truly sorry for this pain I caused everyone.

(Tr., p.55, L.12 – p.57, L.2.)

Based upon the above mitigating factors, Ms. Quijas asserts that the district court abused its discretion by imposing an excessive sentence upon her. She asserts that had the district court

properly considered her friend and family support, mental health issues, longtime abuse, low risk to reoffend, and remorse, it would have crafted a less severe sentence.

CONCLUSION

Ms. Quijas respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 14th day of May, 2019.

/s/ Elizabeth Ann Allred
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th 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/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

EAA/eas