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State v. Everitt Appellant's Brief Dckt. 46701

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46701-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-18-42236
v.	)	
	)	
ROBERT EUGENE EVERITT,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Mr. Everitt pled guilty to one count of intimidating, impeding, influencing, or preventing the attendance of a witness. The district court imposed a sentence of five years, with one year fixed. On appeal, Mr. Everitt asserts the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In September of 2018, the State charged Mr. Everitt, by Information, with one felony count of intimidating, impeding, influencing, or preventing the attendance of a witness and four misdemeanor counts of violation of a no contact order. (R., pp.27-29.) The charges were based on phone calls Mr. Everitt allegedly made to a woman who was scheduled to testify in a case where Mr. Everitt had been charged with aggravated assault. (R., pp.28-29; 12/17/18 Tr., p.23, L.4 – p.29, L.5.) The State later filed an Information Part II in which it charged Mr. Everitt with a persistent violator enhancement. (R., pp.32-33.) Pursuant to a plea agreement, Mr. Everitt agreed to plead guilty to the felony count and one of the misdemeanor counts; in exchange, the State agreed to dismiss the other charges and recommend that the district court impose a sentence of five years, with one year fixed. (R., pp.84-92; 12/17/18 Tr., p.15, L.8 – p.20, L.10.)

At the sentencing hearing, the State noted that Mr. Everitt was on probation when he committed these offenses and recommended that the district court follow the plea agreement and impose a sentence of five years, with one year fixed. (1/8/19 Tr., p.5, L.8 – p.6, L.12.) Mr. Everitt's counsel explained that Mr. Everitt had been consistently employed and had a plan going forward and thus requested that the district court consider placing him on probation with the requirement that he take regular drug tests and attend mental health treatment. (1/8/19 Tr., p.9, L.3 – p.12, L.1.)

The district court imposed a sentence of five years, with one year fixed for the felony count and gave Mr. Everitt credit for time served for the misdemeanor count. (R., pp.96-99;

1/8/19 Tr., p.16, L.24 – p.17, L.8.)[1] Subsequently, Mr. Everitt filed a notice of appeal timely from the district court's judgment of conviction. (R., pp.101-02.)

ISSUE

Did the district court abuse its discretion when it imposed a sentence of five years, with one year fixed, following Mr. Everitt's plea of guilty to one count of intimidating, impeding, influencing, or preventing the attendance of a witness?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Sentence Of Five Years, With One Year Fixed, Following Mr. Everitt's Plea Of Guilty To One Count Of Intimidating, Impeding, Influencing, Or Preventing The Attendance Of A Witness

Given the facts of this case, Mr. Everitt's sentence of five years, with one year fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, this 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." *State v. McIntosh*, 160 Idaho 1, 8 (2016). In such a review, the Court "considers the entire length of the sentence under an abuse of discretion standard." *Id.* An appellate court conducts a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. It considers 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).

[1] The district court granted Mr. Everitt's motion to consolidate this case with two others for sentencing purposes, and it revoked probation in those other two cases and executed the underlying sentences. (R., p.93; 1/8/19 Tr., p.16, Ls.10-23.)

The fourth factor is the most important for sentencing purposes. "When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *McIntosh*, 160 Idaho at 8 (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). Unless it appears that the length of the sentence is "necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution," the sentence is unreasonable. *Id.* When a sentence is excessive "considering any view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of the district court's discretion. *Id.*

There are several mitigating factors that illustrate why Mr. Everitt's sentence is excessive under any reasonable view of the facts. First, Mr. Everitt accepted responsibility for this offense. At the sentencing hearing, he said that he took "full responsibility for what [he] did," and "full accountability" for the offense. (1/8/19 Tr., p.12, L.24 – p.13, L.19.) These kind of statements have long been recognized to be mitigating information. *State v. Shideler*, 103 Idaho 593, 594 (1982) (reducing the defendant's sentence, in part, because "the defendant has accepted responsibility for his acts").

Additionally, Mr. Everitt demonstrated genuine insight into the circumstances that led to this offense. As his attorney pointed out, personal relationships are difficult for Mr. Everitt (1/8/19 Tr., p.7. L.3 – p.8, L.23), and Mr. Everitt himself admitted that this situation came about because of his relationship. He said, "I get into a relationship thinking that this is going to solve my problem, when really it hinders my problem and it makes things worse." (1/8/19 Tr., p.12, Ls.12-15. Based on this awareness, he said he was trying to work on himself and he could not "very well work on [himself] and help somebody else at the same time." (1/8/19 Tr., p.12, Ls.16-19.) He went on to acknowledge that he should not have been involved in a "troubled

relationship to begin with," and he said, "Seems like every time I do, I spiral downhill." (1/8/19 Tr., p.13, Ls.4-6.) He pointed out that he had been doing well due to engaging successfully in a rider aftercare program, "seeing a mental health counselor," and taking his medications until he got into the relationship. (1/8/19 Tr., p.13, Ls.13-18.)

Despite his mental health issues (Presentence Report ("PSI")[2], pp.18-19), Mr. Everitt has maintained steady employment as a carpenter. He acknowledged his drug problem had interfered with his ability to maintain steady employment, but one of his former employers confirmed Mr. Everitt had worked for his construction company and said he was a "great hand," and that he would "love to have [Mr. Everitt] back." (*See* PSI, p.14.) Mr. Everitt's attorney also explained that it was likely Mr. Everitt could go back to work for another construction company if he was released on probation. (1/8/19 Tr., p.9, Ls.20-23.) A defendant's mental health issues, as well as his employability, should be considered as mitigating factors. *State v. Odiaga*, 125 Idaho 384, 391 (1994); *State v. Nice*, 103 Idaho 89, 90-91 (1982) (highlighting the fact that the defendant was a skilled a mechanic who was employed as a truck driver at the time of his sentencing, then going on to reduce the defendant's sentence, in part, because he "was working and helping to support his children at the time of the conviction").

In light of this mitigating information, the district court should have placed Mr. Everitt back on probation, or imposed a shorter sentence, because Mr. Everitt's extended sentence was not necessary to achieve the goals of sentencing. The district court, however, failed to adequately consider the mitigating factors in this case and thus failed to reach its sentencing

[2] All citations to the PSI refer to the 275-page electronic document prepared in December of 2016.

decision through an exercise of reason and abused its discretion when it imposed an unreasonable and excessive sentence.

CONCLUSION

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

DATED this 16th day of July, 2019.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 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

RPA/eas