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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46715-2019
Plaintiff-Respondent,)	
)	BINGHAM COUNTY NO. CR-2018-3586
v.)	
)	
KELLI ANN ALVAREZ,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Kelli Ann Alvarez appeals from her judgment of conviction for possession of a controlled substance. Ms. Alvarez pleaded guilty and the district court imposed a unified sentence of seven years, with three years fixed. Ms. Alvarez appeals, and she asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On August 15, 2018, Blackfoot Police Department officers were speaking with a probation and parole officer when the probation and parole officer recognized Ms. Alvarez

driving a truck. (Presentence Investigation Report (*hereinafter*, PSI), p.4.) The probation and parole officer informed the police officers that Ms. Alvarez did not have a driver's license. (PSI, p.4.) The officers stopped Ms. Alvarez and she acknowledged that she did not have a driver's license. (PSI, p.4.) During the stop, Ms. Alvarez admitted that she had methamphetamine in an Altoids container. (PSI, p.4.)

Ms. Alvarez was charged with possession of a controlled substance and possession of drug paraphernalia. (R, p.32.) The State also filed a persistent violator enhancement. (R., p.34.) Ms. Alvarez pleaded guilty to possession of a controlled substance and the dismissed the dismissed the other charge and enhancement. (R., p.42.) The district court imposed a unified sentence of seven years, with three years fixed. (R., p.71.) Ms. Alvarez appealed. (R., p.78.) She asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of seven years, with three years fixed, upon Ms. Alvarez following her plea of guilty to possession of a controlled substance?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Three Years Fixed, Upon Ms. Alvarez Following Her Plea Of Guilty To Possession Of A Controlled Substance

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Ms. Alvarez's sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Ms. Alvarez

“must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

When asked about the instant offense, Ms. Alvarez stated, “I feel remorseful, ashamed, embarrassed, [and] dumb.” (PSI, p.5.) During her presentence interview, Ms. Alvarez was “prepared, polite and friendly,” and explained that her parole had been going well until she ran into a friend and started using again. (PSI, p.5.) At the sentencing hearing, counsel emphasized that Ms. Alvarez had been clean for about 13 months when she relapsed. (Sent. Tr., p.7, Ls.4-10.) Ms. Alvarez recognized that she needed treatment. (Sent. Tr., p.7, Ls.11-17.)

Ms. Alvarez addressed the district court at the sentencing hearing. She stated, “I would just like to let you guys know, I am an addict, and I did relapse. But I’m – I’ve come to terms with this whole “in and out of jail” business and I – you know, I really want to take my sobriety seriously this time. And I did plan on going to Four Directions to get treatment there – or the program there.” (Sent. Tr., p.11, Ls.18-24.) Ms. Alvarez requested that the court place her back on probation so that she could prove herself. (Sent. Tr., p.12, Ls.3-5.)

Further, Ms. Alvarez has family that needs her support. Her sister suffers from cirrhosis and Ms. Alvarez wanted to be there to help her. (Sent. Tr., p.8, Ls.2-9.) Her father was 84 years old and wanted to be able to help him, and “so that’s further incentive for her to make sure that she’s staying clean and is complying with probation if the Court is inclined to put her on probation at this point. (Sent. Tr., p.8, Ls.5-9.)

Finally, counsel emphasized that Ms. Alvarez’s attitude had changed significantly because “she’s had a long period of incarceration. And I think that she’s in the frame of mind that the principles that are taught up there would apply a lot better with her and she would be able to take those in.” (Sent. Tr., p.8, Ls.16-24.) Counsel therefore requested that the court place Ms. Alvarez on probation or retain jurisdiction. (Sent. Tr., p.7, Ls.1-3.)

Considering that Ms. Alvarez was clean for 13 months prior to her relapse, that she recognized that she needed treatment and was seeking out with the Four Directions program, and wanted to be able to help her family, Ms. Alvarez respectfully submits that the district court abused its discretion by imposing an excessive sentence in this case.

CONCLUSION

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

DATED this 8th day of August, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of August, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JMC/eas