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

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
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. 46945-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-18-1179
v.)	
)	
CANDACE JOY BARNES,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Candace Barnes appeals, asserting the district court abused its discretion by imposing an excessive sentence and failing to sufficiently consider the mitigating factors in her case. As such, this Court should reduce her sentence as it deems appropriate, or alternatively, vacate her sentence and remand this case for a new sentencing determination.

Statement of the Facts & Course of Proceedings

Pursuant to a plea agreement, Ms. Barnes pled guilty to possession of a controlled substance. (Tr., p.4, Ls.16-18.) In exchange, the State agreed to dismiss other misdemeanor charges and to recommend a unified sentence of seven years, with three years fixed, and retained

jurisdiction. (Tr., p.4, Ls.19-23.) At that time, Ms. Barnes informed the district court that she suffers from several mental health issues. (Tr., p.10, Ls.1-9; R., p.53.) Unfortunately, Ms. Barnes missed her PSI appointments. (R., p.65.) As a result, the district court held a hearing, at which it revoked her bond. (R., p.65.) Ms. Barnes attempted to run from the courtroom, fighting with a bailiff as she did so. (R., p.65; PSI, p.46.)¹ Ms. Barnes subsequently apologized and took responsibility for her conduct at the bond revocation hearing, recognizing the impact it had on everyone involved. (Tr., p.41, Ls.1-14, p.42, Ls.2-5.)

The presentence report explained that, while Ms. Barnes had received mental health treatment in the past, she had stopped taking her medications in 2015. (PSI, p.11.) It noted that, since being incarcerated, Ms. Barnes had started receiving her medications again. (PSI, p.11.) The presentence evaluations gave rule-out diagnoses for post-traumatic stress disorder, major depression, generalized anxiety, somatic disorders, and attention deficit hyperactivity disorder. (PSI, p.18.) However, they did not make any recommendations for treatment of those conditions because Ms. Barnes was already receiving treatment for those conditions. (PSI, p.30.) They did recommend intensive outpatient treatment for her substance abuse issues. (PSI, p.27.)

At the ensuing sentencing hearing, the district court found that, due to Ms. Barnes' conduct, the prosecution was no longer bound by the terms of the plea agreement. (Tr., p.27, Ls.2-3, p.33, Ls.3-15.) The prosecutor stood by its recommendation for the length of the sentence, but did argue that sentence should be executed instead of subject to retained jurisdiction. (Tr., p.27, Ls.17-20.) Defense counsel noted that Ms. Barnes had been doing better after being incarcerated, as she had started getting stabilized on her mental health medications. (Tr., p.39, Ls.15-18.) As such, he recommended the district court retain jurisdiction to see if her

¹ "PSI" refers to the electronic document "Barnes 46945 psi" and uses the electronic page numbers.

new stability and sobriety would actually take hold. (Tr., p.39, Ls.19-24.) The district court expressed its concern that Ms. Barnes conduct in this case reflected a pattern of short-term efforts at rehabilitation which usually ended in a relapse. (Tr., p.44, L.25 - p.45, L.5.) This was due to poor judgment, where bad decisions outweighed her good qualities and efforts. (Tr., p.45, L.20 - p.46, L.11.) It ultimately decided to impose a unified sentence of seven years, with two and one-half years fixed. (Tr., p.47, Ls.9-11.) It explained it would not impose a harsher sentence because it needed to be balanced against the magnitude of the original offense. (Tr., p.47, Ls.11-14.) However, it explained it would not give more leniency either because there needed to be some balancing against her poor judgment, evidenced by her actions at the bond revocation hearing. (Tr., p.46, Ls.14-19.) Ms. Barnes filed a notice of appeal timely from the resulting judgment of conviction. (R., pp.72-76.)

ISSUE

Whether the district court abused its discretion by imposing an excessive sentence on Ms. Barnes.

ARGUMENT

The District Court Abused Its Discretion By Imposing An Excessive Sentence On Ms. Barnes

Sentencing decisions are committed to the district court's discretion. *State v. Reinke*, 103 Idaho 771, 771 (Ct. App. 1982). 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. *See id.* at 772. Accordingly, in order to show an abuse of discretion in the district court's sentencing decision, he must show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *State v. Jackson*, 130 Idaho

293, 294 (1997); *see Lunneborg v. My Fun Life*, 163 Idaho 856, 863-64 (2018) (articulating the standard for reviewing whether the district court abused its discretion). The governing criteria, or sentencing objectives, 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. *State v. Charboneau*, 124 Idaho 497, 500 (1993).

The protection of society is the primary objective the court should consider. *Id.* The Idaho Supreme Court has indicated that rehabilitation is usually the first means the district court should consider to achieve that goal. *See State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015); *accord State v. Bickhart*, 164 Idaho 204, 206 (Ct. App. 2018) (noting the preference identified in *McCoy* does not preclude a sentence of incarceration, if that is ultimately the best method to achieve the goals of sentencing). In other words, while the district court may place significant weight on one of the goals of sentencing, that does not mean it can ignore mitigating factors speaking to one of the other goals as being insignificant or unimportant. *See State v. Knighton*, 143 Idaho 318, 320 (2006) (noting that the failure to sufficiently consider various mitigating factors has resulted in abuses of sentencing discretion in several cases).

In this case, the district court noted the importance of trying to fashion a sentence for the crime which Ms. Barnes actually admitted in this case. (*See Tr.*, p.47, Ls.11-14.) To that point, when considering the nature of the underlying offense, the prosecutor agreed to recommend a period of retained jurisdiction. (*See Tr.*, p.4, Ls.19-22.) It was only in light of Ms. Barnes' conduct at the bond revocation hearing that he decided to recommend an executed sentence instead. (*See Tr.*, p.27, L.17 - p.28, L.10.)

It is, however, important to remember the roll that Ms. Barnes' mental health issues played in her behavior at the bond revocation hearing (though it does not excuse that behavior). Ms. Barnes was not on her medication at the time of the bond revocation hearing. (See PSI, p.11.) As defense counsel pointed out, she was beginning to show signs of improvement in that regard in the jail, as she was getting stabilized on proper medication and achieving sobriety. (Tr., p.39, Ls.15-18.) Therefore, defense counsel's recommendation for a period of retained jurisdiction would have best served all the goals of sentencing.

A period of retained jurisdiction would encompass appropriate deterrence and retribution for the underlying charge,² particularly given the incarceration that occurs during the rider program. However, it would better promote rehabilitation and, ultimately, the protection of society, because it would allow the district court to see if her new sobriety and stability would hold, and, through the benefits of this particular program,³ Ms. Barnes could break the cycle of short-term gains undermined by poor judgment. (See Tr., p.39, Ls.19-24; compare Tr., p.44, L.25 - p.45, L.5 (the district court pointing out the cycle that Ms. Barnes had been in).)

As such, the district court abused its discretion by not retaining jurisdiction in Ms. Barnes' case.

² Since the fight with the officer was being addressed in a separate case (see Online Repository for CR01-18-1179), this sentence did not need to try to address deterrence and retribution for that conduct. See *State v. Findeisen*, 133 Idaho 228 (Ct. App. 1999) (discussing the situation when multiple judges are handling different aspects of a case. In *Findeisen*, one judge was addressing new charges and the other was addressing an allegation of probation violation based on those new charges).

³ As the prosecutor pointed out, Ms. Barnes has been afforded treatment opportunities in prior cases. (Tr., p.33, L.22 - p.32, L.6.) However, one was the Therapeutic Community rider program (PSI, p.7), which has since been abandoned because it was not effective. See Betsy Z. Russell, *Idaho prisons halt treatment program that was actually leading to more recidivism*, The Spokesman-Review, Sept. 18, 2015, available at <https://www.spokesman.com/blogs/boise/2015/sep/18/idaho-prisons-halt-treatment-program-actually-was-leading-more-recidivism/>.

CONCLUSION

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

DATED this 9th day of October, 2019.

/s/ Brian R. Dickson
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of October, 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

BRD/eas