

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

10-21-2019

State v. McCulloch Appellant's Brief Dckt. 46978

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. McCulloch Appellant's Brief Dckt. 46978" (2019). *Not Reported*. 5947.
https://digitalcommons.law.uidaho.edu/not_reported/5947

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

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

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
I.S.B. #4115
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,)	
)	
Plaintiff-Respondent,)	NO. 46978-2019
)	
v.)	CANYON COUNTY NO. CR14-18-18886
)	
CHARLES TYRONE MCCULLOCH,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Charles Tyrone McCulloch pled guilty to felony DUI and the district court sentenced him to ten years, with three years fixed. On appeal, Mr. McCulloch claims his sentence is excessive, representing an abuse of the district court's discretion.

Statement of the Facts and Course of Proceedings

Mr. McCulloch was out with an acquaintance, Steven Mocaby, and both men had been drinking. (R., p.4.) They were traveling in a borrowed pick-up when the vehicle left the roadway and crashed into a wooden pole, injuring both of them. (R., p.4.) When the police

arrived, Mr. Mocaby was in the passenger seat and Mr. McCulloch was seated behind the wheel. (R., p.4.) However, Mr. McCulloch informed the officer that he was not the one driving when they crashed. (R., p.4.) Mr. McCulloch and Mr. Mocaby were transported to the hospital for their injuries. (R., p.4.) Ultimately, the State charged Mr. McCulloch with DUI, driving with a suspended license, and threatening to harm Mr. Mocaby if he did not admit being the driver when the pick-up crashed. (R., pp.9-10, 27-28.)

Pursuant to a negotiated plea agreement with the State, Mr. McCulloch plead guilty to the DUI charge, the State dismissed the other two counts, and both parties agreed to jointly recommend a sentence of seven years, with two years fixed. (3/1/19 Tr., p.4, L.8 – p.14, L.3; R., p.54.) In providing the district court with the factual basis for his plea, Mr. McCulloch admitted he was in physical control of the truck when the officers arrived at the scene, but he explicitly denied he was the person driving when the pick-up crashed. (3/1/19 Tr., p.17, L.9 – p.19, L.14.)

At sentencing, the district court disregarded the parties' joint recommendation and instead sentenced Mr. McCulloch to ten years, with three years fixed. (3/11/19 Tr., p.14, Ls.9-12; R., p.64.) Explaining its sentencing decision, the district court emphasized the fact that Mr. McCulloch was on parole for DUI at the time of this offense, and that Mr. McCulloch's drunk driving was the cause of the crash. (3/11/19 Tr., p.13, L.4 – p.13, L.12.) Mr. McCulloch filed a motion pursuant to Criminal Rule 35(b), seeking leniency and stating again he was not driving when the vehicle crashed; in connection with his motion, he provided a letter containing additional information. (R., p.80; PSI, p.1.) The district court denied the motion. (R., p.136.) Mr. McCulloch filed a Notice of Appeal that is timely from his judgment and from the order denying his Rule 35 motion. (R., pp.136, 100.)

ISSUE

Did the district court abuse its discretion by imposing an excessive sentence?

ARGUMENT

The District Court Abused Its Discretion By Imposing An Excessive Sentence

A. Introduction

Mr. McCulloch claims that, given the mitigating facts of this case – including that both parties recommended a sentence of just seven years, with two years fixed – his sentence of ten years, with two years fixed, is excessive and therefore unreasonable, representing an abuse of the district court’s sentencing discretion.

B. Applicable Legal Standards

The appellate court reviews the district court’s sentencing decisions for an abuse of discretion. *State v. Miller*, 151 Idaho 826, 834 (2011). The relevant inquiry is: whether the trial court correctly perceived the issue as one of discretion; whether the trial court acted within the boundaries of its discretion and also consistently with the legal standards applicable; and whether the trial court reached its decision by an exercise of reason. *Id.* The appellate court reviews the length of a defendant’s sentence under the above abuse of discretion standard. *State v. Oliver*, 144 Idaho 722, 724 (2007). A sentence is excessive, representing an abuse of discretion, if it is unreasonable “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). 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. Lundquist*, 134 Idaho 831, 836 (2000). Where a defendant challenges his sentence as excessively harsh, 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. *Miller*, 151 Idaho at 834.

A Rule 35(b) motion is essentially 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). “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.*

C. Mr. McCulloch’s Sentence Of Ten Years, With Three Years Fixed, Is Excessive In Light Of The Circumstances In This Case, Including The Joint Recommendation For A Lesser Sentence

Prior to his DUI in this case, Mr. McCulloch had been clean and sober for nearly two years. (3/11/19 Tr., p.18, Ls.3-5.) He had made significant strides since his prior DUI convictions. Importantly, he had surrounded himself with positive influences – his family. (3/11/19 Tr., p.10, L.6 – p.13, L.1.) Mr. McCulloch admitted to the district court that he made a poor choice by re-connecting with a former inmate he knew from prison, and by deciding to go to a bar and drink, and he took full responsibility for those actions. (3/1/19 p.18, Ls.3-5; 3/11/19 Tr., p.10, L.6 – p.13, L.1.) However, Mr. McCulloch maintains that he was not the person driving when the truck left the roadway and crashed (*see* 3/11/18, Tr., p.18, L.12 – p.19, p.14; R., p.80; PSI, p.1), mindful of the district court’s contrary factual finding (3/11/19 Tr., p.13, L.4 – p.13, L.12), and of this Court’s deference to such findings, *see State v. Ward*, 138 Idaho 68, 72 (2000). Therefore, to the extent the district sentenced him based on its finding that his drunk

driving caused the crash, (*see* 3/11/19 Tr., p.13, L.4 – p.13, L.12), Mr. McCulloch asserts that his lengthy sentence is unreasonable and should be vacated.

Additionally, and acknowledging that the district court was not party to nor bound by the negotiated plea agreement (*see* 3/1/19 Tr., p.4, L.8 – p.14, L.3), Mr. McCulloch asserts that the district court's refusal to follow the parties' sentencing recommendation was unreasonable, given his surrender of significant constitutional rights to obtain a State recommendation for a seven-year sentence, with two years fixed. Mr. McCulloch's excessive sentence should be vacated.

CONCLUSION

Mr. McCulloch respectfully requests that this Court reduce his sentence to seven years, with two years fixed, in accordance with the parties' joint sentencing recommendation. Alternatively, he asks that his sentence be vacated and remanded to the district court for resentencing, with the instruction that the district court impose a reasonable and less harsh sentence.

DATED this 21st day of October, 2019.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st 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

KAC/eas