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State v. Erickson Appellant's Brief Dckt. 46982

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46982-2019
	)	
v.	)	ADA COUNTY NO. CR01-18-15329
	)	
DAVID CLAYTON ERICKSON,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

David Clayton Erickson appeals from the judgment of conviction sentencing him to prison for an aggregate term of ten years, with three fixed, for two counts of battery on an officer and one count of resisting arrest. He argues that the district court abused its discretion by imposing an excessive sentence and by relinquishing jurisdiction.

Statement of the Facts and Course of Proceedings

Mr. Erickson had been staying with a friend as a guest at the Trailwinds apartments, in Garden City. (PSI, p.227.) On the evening of March 29, 2018, a resident confronted him about

why he was there and a loud argument ensued; the apartment manager came out of her office and told Mr. Erickson to leave and called the police. (PSI, pp.226-27, 318-330.) Upset, Mr. Erickson gathered his belongings and left. (PSI, p.226.) When the police arrived at the apartment complex, the manager reported Mr. Erickson had been screaming and threatening her and other residents and she wanted him trespassed from the property. (PSI, p.226.) The officers located Mr. Erickson on the Greenbelt and questioned him about the incident; Mr. Erickson denied making any threats. (PSI, p.226.) Mr. Erickson appeared to be drunk and the officers observed a pocketknife protruding from his front pocket. (PSI, p.226.) They asked Mr. Erickson for his identification and to leave his knife in his pocket; at the same time, they also told him not to put his hands in his pockets. (PSI, p.226.) Mr. Erickson retrieved his wallet for the officers but put his hands again in his pockets. (PSI, p.226.) When they saw him put his hands in his pockets, the officers forcibly tried to detain him. (PSI, p.227.) Mr. Erickson resisted; he struck and grabbed the officers, and the officers decided to take him to the ground. (PSI, p.227.) The officers deployed their Tasers and used hand-strikes against Mr. Erickson and eventually subdued him. (PSI, pp.226-27.) In their attempt to subdue Mr. Erickson, both officers sustained injuries requiring medical attention and treatment.[1] (PSI, p.227.)

The State charged Mr. Erickson with two felony counts of battery on an officer and also charged him with two misdemeanors: resisting arrest and trespass. (R., pp.9, 19.) Pursuant to a plea agreement, Mr. Erickson pled guilty to the two battery counts and to resisting arrest. (R., pp.9, 19.) In exchange, the State dismissed the trespass charge and recommended an aggregate sentence of ten years, with two years fixed. (R., p.45; 7/19/19 Tr., p.19 – p.6, L.3.)

[1] One of the officers underwent two knee surgeries, and Mr. Erickson agreed to a restitution order in an amount in excess of ninety thousand dollars. (R., pp.72, 73.)

At sentencing, Mr. Erickson asked the district court for concurrent sentences of five years, with two years fixed. (9/13/18 Tr., p.35, Ls.12-25.) He did not request probation at that time but instead asked for programming and a chance on a rider. (9/13/18 Tr., p.35, Ls.12-25.) The district court sentenced Mr. Erickson an aggregate term[2] of ten years, with three fixed, and retained jurisdiction. (9/13/18 Tr., p.40, L.23 – p.42, L.13; R., pp.61-65.)

Mr. Erickson arrived at the Department of Correction's CAPP rider facility. (PSI, p.340.) However, he did not complete the rider program because Mr. Erickson had difficulty adjusting to CAAP environment and its much-younger inmates. (PSI, p.341.) Although he was doing well in the classes he had begun, he was removed from the program after receiving his second DOR, which was for fighting with another inmate (the first one was for trying to start a fight). (PSI, p.341.) The Department transferred Mr. Erickson to the Idaho State Correctional Institution (ISCI) and, citing safety concerns, recommended that the district court relinquish jurisdiction. (PSI, p.342; (3/14/19 Tr., p.55, Ls.7-17.)

At the rider review hearing, Mr. Erickson explained the hostilities he experienced at the CAAP facility and asked the district court to allow him to complete a rider at ISCI, where he believed he would be more successful. (3/14/19 Tr., p.54, L.11 – p.55, L.17.) He also pointed out that, although he had spent five weeks at CAAP, he had barely started his anger management program, having had only two classes before his expulsion. (3/14/19 Tr., p.55, L.23 – p.56, L.5; PSI, p.341.) Adopting the Department's recommendation, the district court relinquished jurisdiction over Mr. Erickson and ordered that he serve his sentence as originally imposed.

[2] The sentence is comprised of the following: five years, with three years fixed, on the first battery count; a consecutive indeterminate term of five years, with zero fixed, on the second batter count; and 169 days' time served on the misdemeanor resisting count. (9/13/18 Tr., p.42, Ls.5-13.)

(3/14/19 Tr., p.57, Ls.217-25.) The district court additionally ruled, *sua sponte*, that "I won't consider any Rule 35 or other changes." (3/14/19 Tr., p.57, Ls.21-22.)

Mr. Erickson filed a Notice of Appeal that is timely from his judgment and from the order relinquishing jurisdiction. (R., p.73.) I.A.R. 14(a).

ISSUE

Did the district court abuse its discretion by relinquishing jurisdiction over Mr. Erickson and by declining to reduce his sentence?

ARGUMENT

The District Court Abused Its Discretion By Relinquishing Jurisdiction Over Mr. Erickson And By Declining To Reduce His Sentence

A. Introduction

Mr. Erickson claims that, given the mitigating facts of this case, the circumstances surrounding his removal from the CAPP rider program, and his potential for program success at his new facility, the district court abused its discretion by relinquishing jurisdiction over him instead of allowing him the opportunity to complete needed programming and treatment. Alternatively, he argues that the district court abused its discretion when it ruled, sua sponte, not to reduce his sentence pursuant to Rule 35. This Court should remand Mr. Erickson's case to the district court for resentencing.

B. Standard Of Review

The district court's sentencing decisions are reviewed under the multi-tiered abuse of discretion standard. *State v. Miller*, 151 Idaho 826, 834 (2011). The relevant inquiry is whether the district court: correctly perceived the issue as one of discretion; acted within the boundaries

of its discretion; acted consistently with the legal standards applicable; and reached its decision by an exercise of reason. *Id; see also State v. Le Veque*, 164 Idaho 110, 112 (2018).

C. The District Court Abused Its Discretion By Relinquishing Jurisdiction Rather Than Allowing Mr. Erickson To Complete His Rider Programming At His New Facility

The determination whether to place a defendant on probation or instead to send him to prison is governed by the legal standards set forth in Idaho Code § 19-2521, which require that the district court *not* impose a prison sentence "unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public…" *Id.* (Emphasis added).

Where, as in the present case, the district court lacks sufficient information at the time of sentencing to decide if a defendant is suitable for probation, the court has discretion to impose sentence and retain jurisdiction for further evaluation by the Department of Correction, and afford the defendant an opportunity to demonstrate his rehabilitation potential and suitability for probation. *See* I.C. § 19-2601(4); *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005); *State v. Lee*, 117 Idaho 203, 205-06 (Ct. App. 1991). During the retained jurisdiction period, the Department determines the placement of the defendant and the education, programming, and treatment as it deems appropriate. I.C. § 19-2601(4). The Department may then provide the district court with a recommendation in the form of an addendum to the presentence report ("APSI"). *Id.* However, it is the district court that decides whether to relinquish its jurisdiction over the defendant. *Id.*; *Le Veque*, 164 Idaho at 12.

The district court's refusal to retain jurisdiction for such further evaluation will not be deemed an abuse of discretion if the district court already has sufficient information to determine

that a suspended sentence and probation would be inappropriate under Idaho Code § 19-2521. *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982).

Because Mr. Erickson's rider was cut short, and because he had yet to begin and benefit from the anger management program, the district court's decision to relinquish jurisdiction was unreasonable, representing an abuse of discretion. This is particularly so given the fact that Mr. Erickson had the opportunity to complete the programming in a less hostile setting at ISCI.

As the district court recognized at sentencing, Mr. Erickson has never had any significant or solid programming addressing his anger management, substance abuse, or thinking error issues. (9/13/18 Tr., p.42, Ls.10-13.) Mr. Erickson was [redacted] and these were his first felonies and this was his first time in the prison system. (PSI, p.224.) While it true that the district court had warned Mr. Erickson that there would be no second chance (9/13/18 Tr., p.43, Ls.19-25), it is also true that Mr. Erickson sincerely believed he would not need one (9/13/18 Tr., p.47, Ls.1-4). Plainly, Mr. Erickson did not anticipate the challenges he would face as a middle-aged inmate surrounded by much younger men in a competitive, aggressive environment. (*See* PSI, p.224.)

Moreover, the APSI shows that, at the beginning of the CAAP rider, Mr. Erickson was an eager participant and completed his classwork; he was forthcoming with his challenges, admitting a "short fuse," and he shared his hopes and dreams for his future. (*See* C-Notes, 12/08/18 thru 1/17/18, at PSI, pp.343-45). As he explained in his letter to the district court, Mr. Erickson did not understand, or fit in with, the other, younger inmates and he became isolated. (PSI, p.342.) He openly recognized his mental health challenges and his anger issues and he asked the district court for another chance to deal those problems in a setting other than

the CAAP program. (PSI, p.342.) As he later told the court at his rider review hearing, his caseworker at ISCI advised he could, if ordered, complete the rider at his current facility. (3/14/19 Tr., p.54, L.11 – p.55, L.17.) Given this opportunity, and Mr. Erickson's need for treatment and programming, the district court's decision to relinquish jurisdiction was unreasonable, representing an abuse of discretion. The order should be vacated.

D. The District Court Abused Its Discretion By Ruling, *Sua Sponte*, Not To Reduce Mr. Erickson's Originally-Imposed Sentence

The appellate court reviews the length of a defendant's sentence under the 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 unreasonable unless 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. *See 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.

Criminal Rule 35 authorizes the district court to reduce a defendant's sentence on relinquishment of jurisdiction. I.C.R.35(b). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). Even if the sentence was not excessive when pronounced, it may be deemed excessive in light of new or additional information before the district court. *Id.*

Both parties agreed at the time of sentencing, that the fixed period warranted by the facts of this case was only *two* years. (7/19/19 Tr., p.19 – p.6, L.3, p. 35, Ls.12-25.) Mr. Erickson also asked that he serve his five-year unified sentences *concurrently*. (7/19/19 Tr., p.19 – p.6, L.3.) Mr. Erickson submits that his sentence of *ten* years, with *three* years fixed, was unwarranted by the facts and is excessive and therefore unreasonable. As noted above, Mr. Erickson had no prior felonies in his 44-year life. (PSI, p.224.)

Mr. Erickson also needs to and is willing to address his drinking and anger problems, problems that took root in his early years. By his late teens, Mr. Erickson was drinking to intoxication on a daily basis. (PSI, p.241.) In more recent times, however, he has worked to remain sober. In 2010 he began a residential treatment program but left it relating to his efforts to get custody over his son. (PSI, p.241.) And he recently tried to become sober through Terry Reilly. (PSI, p.301.) However, Mr. Erickson recognizes he is need of significant alcohol treatment in his battle for recovery. (PSI, p.241.)

Mr. Erickson also has employable talents. He holds a degree in design drafting and possesses computer skills; he has also pursued work that takes him out of an office, taking on seasonal employment as a construction worker and ironworker. (PSI, p.239.) Together with meaningful programming and treatment, Mr. Erickson will be able to put his talents to use to become productive in the community. Given all of these facts, Mr. Erickson's sentence of ten years, with three fixed, is excessive and should be vacated.

CONCLUSION

Mr. Erickson respectfully requests that this Court vacate the district court's order relinquishing jurisdiction and also vacate his sentence. He asks that his case be remanded to the district court for resentencing, with instructions that the district court retain jurisdiction and allow him to complete another rider, and that the district court also reduce his sentence.

DATED this 15th 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 15th day of October, 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

KAC/eas