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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47187-2019
)	
v.)	ADA COUNTY NO. CR01-18-52964
)	
SHASHONNIE MOENAE BROWN,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Shashonnie Moenae Brown pled guilty to grand theft and the district court sentenced her to five years, with one year fixed. On appeal, Ms. Brown asserts her sentence is excessive, representing an abuse of the district court's sentencing discretion.

Statement of the Facts and Course of Proceedings

On November 4, 2018, Ms. Brown made two trips to the Walmart on Overland Road, in Boise. (PSI, pp.4, 24.) Each trip, Ms. Brown had a cashier electronically transfer store money onto a gift card, but she never actually paid the cashier for the transfers. (PSI, pp.4, 19, 36.)

After leaving the store the second time, Ms. Brown was arrested. (PSI, p.4; 4/2/19 Tr., p.14, Ls.10-25.)

The State charged Ms. Brown with two counts of burglary and one count of grand theft. (R., pp.18, 35.) Pursuant to an agreement with the State, Ms. Brown pled guilty to grand theft, and the State agreed to dismiss the burglary charges and to recommend a sentence not to exceed seven years, with two years fixed, and probation. (4/2/19 Tr., p.6, Ls.6-18; R., pp.46, 54.) The State made its agreed-to sentencing recommendation, requesting a suspended sentence and probation; Ms. Brown asked the district court for probation and a suspended sentence of four years, with one year fixed. (6/4/19 Tr., p.26, Ls.6-10.) The district court disregarded the parties' joint recommendation for probation and sentenced Ms. Brown to five years, with one year fixed. (R., p.59.) Ms. Brown filed an Idaho Criminal Rule 35 motion arguing that her sentence was excessive under the circumstances, and the district court denied that motion.¹ (R., p.81.) Ms. Brown agreed to pay Walmart restitution of \$1,059. (R., pp.86-88.)

Ms. Brown filed a timely Notice of Appeal. (R., p.63.)

ISSUE

Did the district court abuse its discretion by sentencing Ms. Brown to an excessive term of five years, with one year fixed, for grand theft?

ARGUMENT

The District Court Abuse Its Discretion By Sentencing Ms. Brown To An Excessive Term Of Five Years, With One Year Fixed, For Grand Theft

A. Introduction

Ms. Brown asks this Court to vacate her sentence because it is excessive, and therefore unreasonable, in light of the circumstances of her case.

¹ The motion did not present additional information not already before the sentencing court. (R., p.68-72.)

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, 12 (2018).

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.

C. Ms. Brown's Sentence Of Five Years, With Two Years Fixed, Is Excessive In Light Of The Mitigating Facts Of Her Case

At thirty-one and a single mother, Ms. Brown had been the caregiver and sole provider for her three young children. (PSI, pp.1, 3.) Ms. Brown's home and family are in Nevada. (PSI, p.11.) She had difficulty making all of her appointments in Idaho due to travel and transportation hurdles, which she explained to the district court judge. (6/4/19 Tr., p.26, Ls.15-18.)

Ms. Brown grew up as the oldest child of a single working mother; her father died when she was just four. (PSI, p.9) Ms. Brown began working in her teens cutting hair to make money for her family. (PSI, p.9.) She has stayed away from drugs her entire life and suffered no abuse as a child; however, she has been impacted by her family's struggle with financial problems. (PSI, p.11.)

Although she did not complete high school when she was young, she earned her GED and has employable skills. (PSI, p.11.) Ms. Brown generally made her living in Nevada doing hair on referral from friends and their friends. (PSI, p.11.) In the months preceding sentencing, Ms. Brown had also worked steadily to support her family at a property management office. (PSI, p.11; 6/4/19 Tr., p.26, Ls.15-18.)

Ms. Brown understands she has made poor choices in her past but has learned her lesson the hard way from these events. (PSI, pp.5, 13.) She is committed to make better choices in her future, not only for her sake but for the sake of her children. (PSI, pp.5, 13.) As recommended by the presentence investigator, Ms. Brown would benefit from a cognitive behavioral program, and she would likely find such programming in the community. (See PSI, p.15.) Ms. Brown has agreed to pay restitution to the victim in this case. (R., pp.87, 88.) The sooner she is released to the community, the sooner she can begin working to meet that obligation.

Ms. Brown understands that none of the above facts excuses her conduct. However, all of these circumstances should be taken into account, and if properly considered, warranted a less severe sentence for Ms. Brown. The district court's decision to impose a prison term of five years, with one year fixed, was unreasonable and represents an abuse of its sentencing discretion. This Court should vacate Ms. Brown's sentence and remand her case with instructions to impose a less harsh underlying sentence and to place her on probation.

CONCLUSION

Ms. Brown respectfully requests that this Court vacate her sentence and remand her case to the district court with instructions that the district place her on probation, in accordance with the parties' joint recommendation, and impose a reasonable, less severe sentence.

DATED this 14th day of November, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 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