

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

11-25-2019

State v. Schoonover Appellant's Brief Dckt. 46767

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

Recommended Citation

"State v. Schoonover Appellant's Brief Dckt. 46767" (2019). *Not Reported*. 6024.
https://digitalcommons.law.uidaho.edu/not_reported/6024

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. 46767-2019 |
| |) | |
| v. |) | ADA COUNTY NO. CR01-17-21734 |
| |) | |
| ROBYN DEANNE SCHOONOVER, |) | |
| |) | APPELLANT'S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Robyn Deanne Schoonover was charged with possession of a controlled substance based on methamphetamine residue detected on two plastic baggies found inside her backpack. She was convicted by a jury and the district court sentenced her to five years, with two years fixed, and placed her on probation. On appeal, Ms. Schoonover asserts that the length of her underlying sentence is excessive under the circumstances, representing an abuse of the district court's discretion.

Statement of the Facts and Course of Proceedings

Ms. Schoonover and Michael Pilkerton were planning to grill hamburgers with friends at the West River Inn, in Garden City. (10/5/18 Tr., p.161, Ls.1-18.) At about 10:00 o'clock in the evening, they left the Inn to drive to the grocery store. (10/5/18 p.161, Ls.1-18.) A police officer who had observed them leave the Inn decided to follow them and ran a records check on their vehicle's license plates. (10/5/18 p.87, L.22 – p.88, L.23, p.161, Ls.1-18.) After discovering the color of the vehicle did not match the reported registration information, the officer pulled over the vehicle and stopped behind it. (10/5/18 Tr., p.113, L.5 – p.116, L.3.) Three other patrol cars pulled in behind the officer, including one with a drug dog. (10/5/18 Tr., p.115, Ls.2-3.) The officer approached the vehicle and spoke to the driver, Mr. Pilkerton, about the reason for the stop and asked to see his and Ms. Schoonover's identification. (Tr. p.91, Ls.20-25.) The officer observed Ms. Schoonover as she reached down to retrieve her license from her purse, which was in the backpack resting between her feet. (Tr. p.91, L.20 – p.92, L.2.) The officer later testified he had observed nothing during this encounter to suggest Ms. Schoonover or Mr. Pilkerton had been using or were about to use drugs, or that they were otherwise under the influence of anything. (10/5/18 Tr., p.114, Ls.6-24.) After the officer had begun the licensing and records checks, however, another officer's drug dog alerted on the vehicle. (10/5/18 Tr., p.95, L.16 – p.96, L.21, p.153, L.22 p.154, L.6.) The officers directed Ms. Schoonover and Mr. Pilkerton to step out of the vehicle, and instructed Ms. Schoonover to leave her personal belongings in the car. (10/5/18 Tr., p.95, L.16 – p.96, L.21, p.153, L.22 p.154, L.6.) During the search of the vehicle and its contents, the officers detected a residue of methamphetamine on two small plastic baggies found inside of Ms. Schoonover's purse. (10/5/18 Tr., p.95, L.16 – p.96, L.21, p.153,

L.22 p.154, L.6.) The State did not determine any weight for the residue, only that with it a baggy weighed .4 grams. (*See* 10/5/18 Tr., p.121, Ls.20-22.)

The State charged Ms. Schoonover with possession of a controlled substance. (R., p.16.) A jury convicted her of that crime. (R., p.75.) The district court sentenced Ms. Schoonover to five years, with two years fixed, and placed Ms. Schoonover on probation. (R., p.84; 1/10/19 Tr., p.24, Ls.5-20.)

Ms. Schoonover filed a timely Notice of Appeal. (R., p.88.)

ISSUE

Did the district court abuse its discretion by imposing an excessive sentence of five years, with two years fixed, with probation, given the circumstances of this case?

ARGUMENT

The District Court Abused Its Discretion By Imposing And Excessive Sentence Of Five Years, With Two Years Fixed, With Probation, Given The Circumstances Of This Case

A. Introduction

Ms. Schoonover claims that her sentence of five years, with two years fixed, although suspended, is excessive in light of the immeasurably small amount of drugs involved in this crime, along with other mitigating, personal circumstances.

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 under the third and fourth prongs of the standard, if it is unreasonable "under any reasonable view of the facts." See *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. Schoonover's Underlying Sentence Of Five Years, With Two Years Fixed, Is Excessively Harsh Under The Circumstances Of Her Case

Ms. Schoonover's underlying sentence of five years, with two fixed, is excessive given that her offense is not a particularly serious one: she possessed a mere residue amount of methamphetamine. Moreover, the arresting officer testified there was no evidence suggesting Ms. Schoonover had ingested or was under the influence of any type of drugs (Tr., p.114, Ls.24), and the State later confirmed it had no evidence she was engage in any type drug sales (1/10/19 Tr., p.18, Ls.16-19). This small amount, which had no weight discernable from the baggies, does not balance against the sentence of five-years, with two fixed, that the district court imposed upon Ms. Schoonover. The district recognized that the small amount involved was "the biggest factor weighing in her favor" when it decided to grant Ms. Schoonover probation instead

of sending her to prison. (1/10/19 p.18, L.20-22.) However, the underlying sentence – five years, with two years fixed – is still excessive and unreasonable for this crime, especially in light of the other mitigating circumstances in this case.

Ms. Schoonover was 44 at the time of her sentencing. (PSI, p.383.)¹ There is no question she has made poor choices in her life, but she also endured many challenges worthy of consideration. Ms. Schoonover has had to live with Bipolar Disorder, Anxiety Disorder, Attention Deficit Disorder, and Manic Depression; she has at times been mentally unstable. (PSI, pp.222-23, 252, 261.) Regrettably, due to personal financial constraints, as well as the destructive effects of these conditions, her disorders had not been fully understood or adequately addressed until recently. (See PSI, pp.96, 223.)

Nearly two decades had elapsed since her only other felony in 2005, for injury to a child. (PSI, p.90.) That event marked a particularly dreadful time for Ms. Schoonover, as she lost custody of her three young children, all of whom were ultimately adopted-out to other families. (PSI, pp.226, 335.) She became reliant on drugs to deal with her emotional pain and make her life bearable. (See PSI, p.265.) For years, Ms. Schoonover has known she is a drug addict and for years she has fought for her sobriety. (PSI, pp.97, 253.) Recovery had remained elusive until just recently. (PSI, p.328.) Although she admits having used drugs twice during the summer after her arrest in this case (PSI, p.97), she has remained sober, employed, and housed for the year and a half that preceded her sentencing, and she is determined to prevent another relapse. (PSI, p.97.)

¹ Citations to the Presentence Investigation Report and attached materials will use the designation “PSI” and will include the page numbers associated with the 403-page electronic file containing those documents.

Ms. Schoonover has made positive strides even since her arrest in this case. She has cut ties with her former associates who continue to use drugs, and she now surrounds herself with supportive influences, including her church and its Celebrate Recovery program. (PSI, p.87; (1/10/19 Tr., p.11, Ls.14-15.) She provides live-in care for her elderly father, and instead of going out to parties, now she is home with him at night. (1/10/19 Tr., p.7, Ls.14-19, p.13, Ls.15-23.) By the time of her sentencing, Ms. Schoonover had secured a second job, working fulltime cleaning for a hotel, in addition to working at a laundromat. (PSI, p.95; 1/20/19 Tr., p.10, Ls.11-22).

Finally, but importantly, Ms. Schoonover enjoys a renewed relationship with her now [REDACTED] son, the eldest of her three children. As a sober and more mature individual, Ms. Schoonover has reason to hope that her other children, too, will reach out and reconnect when they become of age, and she is motivated by that hope. (1/10/19 Tr., p.14, L.21 – p.15, L.13.)

Ms. Schoonover submits that in light of the small drug amount involved in this case and her personal characteristics, her sentence is excessive and therefore unreasonable, representing an abuse of discretion.

CONCLUSION

Ms. Schoonover respectfully requests that this Court reduce the length of her sentence to a term not to exceed four years, with one year fixed, as she requested at her sentencing hearing.

DATED this 25th 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 25th 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