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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46942-2019
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR14-18-13092
v.)	
)	
ESPERANZA ELIDA ESPINOZA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Esperanza Elida Espinoza appeals from her judgment of conviction for four counts of felony injury to a child and four counts of misdemeanor injury to a child. Ms. Espinoza was found guilty following a jury trial and the district court imposed sentences of eight years, with three years fixed, on each felony count, with counts III and IV running consecutive to counts I and II. Mindful of the fact that her notice of appeal was not filed timely, Ms. Espinoza asserts

that the district court abused its discretion by imposing excessive sentences on the felony charges.¹

Statement of the Facts & Course of Proceedings

Ms. Espinoza took care of her half-sister's children during her absence. (Presentence Investigation Report (*hereinafter*, PSI, p.6.) The children later reported that Ms. Espinoza abused them by, among other things, punching them and choking them. (PSI, p.6.)

Ms. Espinoza was charged with four felony counts of injury to a child and four misdemeanor counts of injury to a child. (R., p.32.) She was convicted on all counts following a jury trial. (R., p.85.) For the felony counts, the district court imposed sentences of eight years, with three years fixed, on each count, with counts III and IV running consecutive to counts I and II. (R., p.103.) The court imposed credit for time served on the misdemeanors. (R., p.97.)

The district court entered the judgment of conviction for the felonies on February 22, 2019. (R., p.103.) Ms. Espinoza filed her notice of appeal on April 8, 2019, 45 days after the judgment was entered. (R., p.113.) Mindful of the fact that a notice of appeal must be filed within 42 days of the judgment, *see* I.A.R. 14(a), Ms. Espinoza asserts that the district court abused its discretion by imposing excessive sentences.

ISSUE

Did the district court abuse its discretion when it imposed excessive sentences?

¹ Because Ms. Espinoza was given credit for time served on the misdemeanors she does not challenge these sentences. (See R., p.97.)

ARGUMENT

The District Court Abused Its Discretion When It Imposed Excessive Sentences

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Ms. Espinoza’s sentences do not exceed the statutory maximum. Accordingly, to show that the sentences imposed were unreasonable, Ms. Espinoza “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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. Delling*, 152 Idaho 122, 132 (2011).

Ms. Espinoza addressed the court at the sentencing hearing. She stated,

I just want to ask that I am given the opportunity to show that I’m not this horrible person. I know that the actions from my past has led up to this point today and I take full responsibility for that. Unfortunately, I can’t go back and undo anything that’s already been done. But I can ask for forgiveness and I can repent for the things that I have done. I want to apologize to the kids for failing them and hurting them in any kind of way.

I want to apologize to my mom because she raised me better than this and I want to apologize to my sister. I didn't want – I know the pain that she felt not having her kids because I feel that pain now and I hope that one day she can forgive me and I want to apologize to the courts for taking up their time.

(Tr., p.1157, Ls.7-21.) Ms. Espinoza clearly accepted responsibility and expressed remorse for her actions.

Additionally, as noted by counsel during the sentencing hearing, Ms. Espinoza's criminal history consisted only of driving offenses. (Tr., p.1152, Ls.7-17.) She is a high school graduate and had obtained a medical assistant certificate. (Tr. P.1152, Ls.18-24.) She has a desire to go back to school, get her cosmetology certification, and open up a salon. (Tr., p.1152, Ls.18-24.) She had been employed with Elwood Staffing and could go back to work for them if she were allowed to. (Tr., p.1153, Ls.3-6.)

Considering her acceptance of responsibility and remorse, the fact that she does not have a significant criminal history, and had employment opportunities if not incarcerated, Ms. Espinoza submits that the district court abused its discretion by imposing excessive sentences.

CONCLUSION

Mr. Espinoza respectfully requests that this Court reduce her sentences as it deems appropriate. Alternatively, she requests that her case be remanded to the district court for a new sentencing hearing.

DATED this 4th day of May, 2020.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 2020, 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

JMC/eas