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State v. Banfield Appellant's Brief Dckt. 47123

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4/28/2020 2:36 PM
Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	
Plaintiff-Respondent,	NO. 47123-2019
	ADA COUNTY NO. CR01-18-45883
v.	
THOMAS UMBERTO BANFIELD,	APPELLANT'S BRIEF
Defendant-Appellant.	

STATEMENT OF THE CASE

Nature of the Case

Thomas Umberto Banfield pled guilty to domestic battery. He was sentenced to a unified term of ten years, with two years fixed, and the court retained jurisdiction. Mr. Banfield argues that argues that the district court abused its discretion by imposing an excessive sentence and, later, by relinquishing jurisdiction.

Statement of the Facts & Course of Proceedings

In late August 2018, police responded to a domestic dispute at the residence of Mr. Banfield and his long-time girlfriend, J.K. (PSI, p.3.)[1] J.K. alleged that over the course of several hours, Mr. Banfield had physically assaulted her in the presence of her two children. (PSI, p.3.) Mr. Banfield was then arrested and charged with domestic violence in the presence of a child, and attempted strangulation. (R., pp.9-10.). The State then dismissed the original case without prejudice, as "the State was not prepared to proceed to preliminary hearing." (R., p.96.)

A new complaint was then filed as an Amended Complaint in mid-October. (R., pp.42-44.) In addition to the charges from the first Complaint, Mr. Banfield was also charged with two counts of violating a no-contact order. (R., pp.42-44.) After being bound over, an Information was filed with the four charges from the Amended Complaint. (R., pp.50-52.)

As part of a plea agreement with the State, Mr. Banfield's attorney informed the court that

> Mr. Banfield will plead guilty to Count I. The State will move to amend Count I from domestic violence in the presence to regular felony domestic violence, striking any language that references the presence of the children. Mr. Banfield will also plead guilty to Counts III and IV [no-contact order violations]. The State would move to dismiss Count II [attempted strangulation].

(Tr., p.10, Ls.15-22.) The State agreed to dismiss another unrelated case. (Tr., p.10, Ls.22-24.) The State also agreed to recommend probation with an underlying seven-year sentence, with two years fixed, provided that Mr. Banfield complied with the recommendations from a domestic violence evaluation. (Tr., p.12, Ls.1-5.) "[A]ll other terms [were] open for argument." (Tr., p.12, Ls.7-8.) After conducting a plea colloquy with Mr. Banfield regarding the three charges to which he was pleading guilty, the court accepted his plea. (Tr., p.13, L.22 – p.27, L.24.)

[1] References to the presentence investigation report ("PSI") are to the electronic file "Banfield 47123 psi.pdf."

At the sentencing hearing, the court heard from the victim, J.K., who asked the court to release Mr. Banfield on probation. (Tr., p.31, L.11 – p.36, L.21.) Consistent with the plea agreement, the State recommended a suspended sentence of seven years, with two years fixed, probation, and "365 days of jail at the Ada County jail to allow him to begin programming first before he is released back into the community." (Tr., p.41, Ls.4-9.) Counsel for Mr. Banfield also recommended that Mr. Banfield be placed on probation. (Tr., p.43, Ls.16-21.) It imposed a sentence of ten years, with two years fixed, and retained jurisdiction. (Tr., p.65, Ls.6-19.)[2]

Six months into Mr. Banfield's retained jurisdiction program ("rider"), the court held a review hearing. (RR., Tr., pp.4-11.)[3] At that hearing, the State recommended that the district court relinquish jurisdiction. (RR., Tr., p.4, Ls.11-21.) Counsel for Mr. Banfield asked that the court allow him to complete his rider programming at a different correctional facility. (RR., Tr., p.7, Ls.15-24.) When directly addressing the court, Mr. Banfield echoed his counsel's statements and expressed particular interest in enrolling in the anger management course originally recommended by the court. (RR., Tr., p.8, L.14 – p.9, L.2.) However, the court instead relinquished jurisdiction and executed his underlying sentence of ten years, with two years fixed. (Tr., p.9, L.13 – p.10, L.25.)

Mr. Banfield timely appealed from the court's order relinquishing jurisdiction. (R., pp.91-92.)[4]

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[2] In addition, over the objection of Mr. Banfield and the victim, the court also "sign[ed] an absolute no-contact order." (Tr., p.65, Ls.20-21.)

[3] References to the rider review hearing transcript will be cited as "RR., Tr.," and refer to the electronic file "Banfield 47123 tr 06.17.19.pdf."

[4] Mr. Banfield filed a Motion for Reduction of Sentence just over three months after the court's order relinquishing jurisdiction; however, that motion did not present any "new information that the court could properly consider." *State v. Huffman*, 144 Idaho 201, 203 (2007). Accordingly, Mr. Banfield does not appeal the district court's denial of that motion three months later. (Denial of Motion for Reduction of Sentence, iCourt Portal, last accessed April 24, 2020.)

ISSUES

I. Did the district court impose an excessive sentence?

II. Did the district court abuse its discretion when it relinquished jurisdiction?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Two Years Fixed, Upon Mr. Banfield Following His Plea Of Guilty To Domestic Battery

A. Introduction

Mr. Banfield asserts that, given any view of the facts, his unified sentence of ten years, with two years fixed, is excessive. Specifically, he asserts the district court abused its discretion by failing to give sufficient weight to mitigating factors.

B. Standard Of Review

There are "four objectives of criminal punishment: (1) protection of society, (2) deterrence of the individual and the public generally, (3) possibility of rehabilitation, and (4) punishment or retribution for wrongdoing." *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982) (citing *State v. Wolfe*, 99 Idaho 382, 384 (1978)). Even so, "the primary consideration is the good order and protection of society, [and a]ll other factors must be subservient to that end." *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982) (internal quotation marks and citations removed).

> When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018) (emphasis in original). "However, in exercising that discretion, reasonableness is a fundamental requirement." *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982) (citing *State v. Dillon*, 100 Idaho 723, 604 P.2d 737 (1979)). "'[R]easonableness' implies that a term of confinement should be tailored to the purposes for which the sentence is imposed." *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982).

Courts are required to consider mitigating evidence in favor of the defendant. *See State v. Strand*, 137 Idaho 457, 460 (2002) (noting that when reviewing a sentence, Idaho's appellate courts will "review the record on appeal, having due regard for the nature of the offense, the character of the offender, and the protection of the public interest"); *State v. Oliver,* 144 Idaho 722, 726 (2007) (same). This includes consideration of the support a defendant has from his family. *State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing sentence of defendant who, *inter alia*, had the support of his family and his employer). In addition, a defendant "working and helping to support his children at the time of the conviction" can be mitigating evidence in favor of the defendant. *State v. Nice*, 103 Idaho 89, 91 (1982). A defendant's acceptance of responsibility or remorse for his conduct is also a mitigating factor. *See State v. Shideler*, 103 Idaho 593, 594 (1982) (reducing the defendant's sentence, in part, because "the defendant has accepted responsibility for his acts"); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991) (holding that some leniency was required, in part, because the defendant expressed "remorse for his conduct"). Courts should also look at "a willingness to seek treatment" as a mitigating factor. *State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008).

C. The District Court Imposed An Excessive Sentence Without Giving Proper Weight To Mitigating Factors

Mr. Banfield asserts that, given any view of the facts, his unified sentence of ten years, with two years fixed, is excessive. Specifically, Mr. Banfield submits that the court did not give sufficient weight to mitigating factors such as the support of his family, his employability and willingness to financially care for his family, his acceptance of responsibility and remorse for his actions, and his amenability to treatment.

Mr. Banfield has been supported by his family, including the victim of his offense and her children, throughout this entire process. At sentencing, the victim, J.K., gave a victim impact statement where she described how her children "love their daddy" despite them not being his biological children. (Tr., p.35, Ls.19-22; PSI, p.5 ("Thomas might not be their biological father, but, he is the only daddy they know and will ever have.").) She asked the court at sentencing, and in a letter sent to the court, for the no-contact order to be lifted so the children could be with him. (*See* Tr., p.36, Ls.5-11; PSI, p.5.) At the sentencing hearing, J.K. also reported that she and her children were homeless. (Tr., p.34, L.19.) In the letter she sent the court before sentencing, she said that Mr. Banfield "wants nothing more than to provide for his family, as we are still homeless, living in a shelter and struggling daily without his support, both mentally and financially." (PSI, p.7.)

Mr. Banfield has accepted responsibility for his role in this crime, telling the court that "I would just like to apologize to [J.K.], my children if they were here, and the courts for what is going on right now." (Tr., p.50, Ls.18-20; *see also* PSI, p.17 ("I want to [apologize] to my family.").) Mr. Banfield has acknowledged he needs help and assistance. (*See* Tr., p.49, L.22 – p.50, L.3 (discussing conversations he has had with "different counselors" and others regarding things he could change).) Mr. Banfield told the presentence investigator that "he had talked to

[J.K.] about marriage counseling prior to being arrested for this crime." (PSI, p.16.) The prosecutor agreed at sentencing that domestic violence treatment would be "appropriate." (Tr., p.41, Ls.12-14.) But counsel for Mr. Banfield informed the court that the recommended 52-week domestic violence classes "are not available in custody to do." (Tr., p.44, Ls.5-6.)

Accordingly, Mr. Banfield asserts the sentence imposed by the district court was excessive and an abuse of discretion because it did not give the mitigating factors in the record sufficient weight.

II.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

A. Introduction

Mr. Banfield asserts that when the district court relinquished jurisdiction and executed his underlying sentence, it abused its discretion.

B. Standard Of Review

"The decision to relinquish jurisdiction or grant probation is committed to the district judge's discretion." *State v. Le Veque*, 164 Idaho 110, 113 (2018) (internal quotation marks omitted); *see also State v. Reed*, 163 Idaho 681, 684 (Ct. App. 2018) ("The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion"). As previously discussed, a court's discretionary decisions will be reviewed for four essentials. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018). "A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial

court has sufficient information to determine that a suspended sentence and probation would be inappropriate." *State v. Hansen*, 154 Idaho 882, 889 (Ct. App. 2013).

C. The District Court Abused Its Discretion When It Relinquished Jurisdiction

Mr. Banfield asserts that by not allowing him to complete the rehabilitation and programming available in the retained jurisdiction program, the court abused its discretion. During the rider review hearing, counsel for Mr. Banfield said, "It is somewhat troubling that the program put him in the substance abuse and the Thinking for a Change rather than the aggressor in placement [sic] that may have been more appropriate given the nature of the charges." (RR., Tr., p.7, Ls.1-4.) This was despite the court's specific statement at sentencing that it was "going to retain jurisdiction so that he can get the ART program, the Aggression Replacement Therapy" in addition to those other classes. (Tr., p.64, L.22 – p.65, L.1.) The court acknowledged this was also a "serious concern to me that he needs aggression replacement therapy." (RR., Tr., p.10, Ls.19-21.)

Mr. Banfield discussed how he has "learned a lot about [himself] during the rider program. (RR., Tr., p.8, Ls.2-3.) He also discussed how the administrators and teachers within the rider program, along with the correctional officers he has worked with, have all "seen a large change" in his behaviors and thinking. (RR., Tr., p.8, Ls.4-8.) He admitted to his initial struggles during the program, but discussed how those in charge of the programming had helped him overcome those struggles. (RR., Tr., p.8, Ls.9-12.) He also relayed his discussions with officials at the new location where he was now being housed expressed their willingness to allow him to continue his programming there "because [he] had nine weeks left to graduation." (RR., Tr., p.8, L.20 – p.9, L.2.) He ended by "asking if I could possibly finish this out at the facility I'm at now

to accomplish what I was trying to learn and hopefully be released on probation." (RR., Tr., p.9, Ls.6-8.)

However, the court rejected his request, instead focusing on his struggles during the rider program, his "prior record[, and] behavior awaiting sentencing." (RR., Tr., p.10, Ls.15-20.) The court said that Mr. Banfield needed specific programming because "I do think it would be beneficial for everybody if [those issues] would get addressed." (RR., Tr., p.10, Ls.23-24.) Despite that acknowledgement, by relinquishing jurisdiction, the court did not allow Mr. Banfield to complete the training he started during the rider program. Accordingly, Mr. Banfield asserts the court abused its discretion when it relinquished jurisdiction.

CONCLUSION

Mr. Banfield respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing, or to be returned to the retained jurisdiction program.

DATED this 28th day of April, 2020.

/s/ R. Jonathan Shirts
R. JONATHAN SHIRTS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2020, 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

RJS/eas