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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47152-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-18-19935
v.)	
)	
LINDA DEANN BASSETT,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Deann Bassett pled guilty to one count of exploitation of a vulnerable adult. She received a unified sentence of ten years, with one year fixed. On appeal, mindful that the plea agreement negotiated between the parties and binding on the court stipulated the sentence imposed by the district court, Ms. Bassett contends that this sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

Deann Bassett was her elderly grandfather's caretaker. (Presentence Investigation Report (*hereinafter*, PSI),¹ p.6.) Ms. Bassett utilized her grandfather's money for a trip to Las Vegas, and other personal expenses unrelated to her care of her grandfather. (PSI, pp.5-6, 13.) Ms. Bassett had previously been convicted of trafficking, possession of a controlled substance with the intent to deliver, and felony DUI. (R., p.72.)

Based on these facts, Ms. Bassett was charged by Information with felony abuse, exploitation, or neglect of a vulnerable adult, and with the persistent violator sentencing enhancement.² (R., pp.56-57, 72-73.) Pursuant to a plea agreement binding on both parties as well as the district court, Ms. Bassett pled guilty to one count of felony exploitation of a vulnerable adult. (2/1/19 Tr., p.7, L.5 – p.10, L.12;³ p.17, L.10 – p.25, L.25; 6/6/19 Tr., p.6, Ls.19-23; R., pp.1600-1613.) As part of the plea agreement, Ms. Bassett agreed to pay restitution, the amount of which was to be resolved later. (2/1/19 Tr., p.7, L.15; R., p.1602.)

At the sentencing hearing, the State asked the district court to follow the plea agreement. (6/6/19 Tr., p.20, L.24 – p.21, L.1.) Ms. Bassett's counsel asked the district court to follow the plea agreement. (6/6/19 Tr., p.2, Ls.18-19.) The district court agreed to be bound by the plea agreement and sentenced Ms. Bassett to ten years, with one year fixed. (6/6/19 Tr., p.26, Ls.3-21; R., pp.1629-1632.) The court ordered the sentence to be served concurrently with Ms. Bassett's sentence in Ada County case number CRFE14-13773. (Tr., p.27, Ls.2-16; PSI,

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

² Ms. Bassett's case was consolidated with Ada County case number CR01-18-19936, in which Jim Neaderhiser was charged as a co-defendant. (R., p.14.)

³ The official transcript does not contain pagination; thus, appellate counsel has calculated these designations.

p.11.) Ms. Bassett filed a notice of appeal timely from the judgment of conviction. (R., pp.1634-1638, 1664-1667.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of ten years, with one year fixed, upon Ms. Bassett following her plea of guilty to exploitation of a vulnerable adult?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With One Year Fixed, Upon Ms. Bassett Following Her Plea Of Guilty To Exploitation Of A Vulnerable Adult

Mindful that the parties and the court agreed to the sentence imposed pursuant to the terms of the plea agreement, Ms. Bassett asserts that, given any view of the facts, her unified sentence of ten years, with one year fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

Ms. Bassett does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision through an exercise of reason, Ms. Bassett must show that in light of the governing

criteria, the sentence was excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.*

In light of the mitigating factors present in this case, Ms. Bassett's sentence is excessive considering any view of the facts.

Ms. Bassett is addicted to methamphetamine. (PSI, p.18.) She was able to stop using methamphetamine from 1999 to 2014, but relapsed after her son committed suicide. (PSI, p.18.) Ms. Bassett knows she is an addict, but she has learned tools and skills so that she can remain sober. (6/6/19 Tr., p.24, Ls.12-24; PSI, pp.7, 12, 19.) At the time of her sentencing, Ms. Bassett had completed classes to assist her in remaining sober. (6/6/19 Tr., p.24, L.12 - p.25, L.2; PSI, pp.7, 12, 19.) As she told the court at sentencing:

Today I'm able to identify my risky thoughts and behaviors that could lead me to relapse, and I can and will ask for help before that happens today.

This journey has been a blessing and it has given me a perfect opportunity to look deep within myself and to grow a deeper connection with God and to ask him for what I need to truly succeed. I have a deep inner peace. I value and I trust myself and I accept the path God has given me.

I've learned true acceptance through pain and knowledge and I know I use -- I know that I'll be able to use all of that to create a good life with healthy boundaries with the people who love and support me in my life of recovery.

(6/6/19 Tr., p.24, L.25 – p.25, L.13.)

Further, Ms. Bassett expressed remorse and accepted responsibility for her actions. (2/1/19 Tr., p.7, L.5 – p.10, L.12; p.17, L.10 – p.25, L.25; PSI, p.6.) At her sentencing hearing, Ms. Bassett expressed regret and told the court how sorry she was for her actions:

First I want to take accountability with deep regret and remorse for my part in this crime. I did use my grandpa's credit card in Las Vegas while I was on a business

trip with Jim Neiderheiser. I apologize to my family and to the court for my actions. The damage that this has caused to our family is pretty devastating.

I also want to take -- I want the court to know that I had apologized to my grandpa on several occasions prior to him passing away for this incident -- for the trip to Vegas

And I've been working with Richard [Ms. Bassett's uncle] to restore the relationship, to resolve the restitution and my grandfather's estate. And he is also, like, been my spiritual mentor and we've been talking over the phone quite frequently trying to get through a lot of these things.

(6/6/19 Tr., p.22, L.24 – p.23, L.14.) Idaho recognizes that some leniency is required when a defendant expresses remorse for her conduct and accepts responsibility for her acts. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Ms. Bassett asserts that the district court abused its discretion by imposing an excessive sentence upon her. She asserts that had the district court properly considered her remorse and substance abuse, it would have imposed a less severe sentence.

CONCLUSION

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

DATED this 19th day of March, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 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

SJC/eas