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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47172-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-18-59209
v.)	
)	
SHANE ERNEST PEREZ,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, Shane Perez was convicted of one count of felony domestic violence. He was sentenced to serve three years fixed. Mr. Perez contends that his sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts.

Statement of the Facts and Course of Proceedings

On the evening of December 16, 2018, Mr. Perez and his girlfriend, Jennifer Blewett, got into a disagreement about the number of people living in Mr. Perez's house. (Trial Tr., p.197,

L.24 – p.198, L.2; p.228, L.14 – p.230, L.18; p.286, L.25 – p.288, L.15.) While they were Mr. Perez’s relatives, he wanted the seven additional people living in his 1,100 square foot house to either pay rent or leave. (Trial Tr., p.178, Ls.7-11; p.186, L.25 – p.188, L.4; p.197, L.22 – p.198, L.2; p.248, L.7 – p.249, L.13.) During the argument, Mr. Perez uttered an obscenity to Ms. Blewett. (Trial Tr., p.199, Ls.5-7.) Ms. Blewett admitted that she responded by spitting in Mr. Perez’s face, and then angrily shoving all the items off a dresser, onto the floor. (Trial Tr., p.200, Ls.1-4; p.201, Ls.14-17.) Mr. Perez grabbed Ms. Blewett by the arm and then by the neck of her sweater, which caused red marks on her arms and a red mark on her neck. (Trial Tr., p.204, Ls.17-20; p.205, L.12 – p.207, L.22; State’s Exh. 4-9.) Later the next day, a mark on her arm developed bruising. (Trial Tr., p.221, L.21 – p.222, L.23; State’s Exh. 12, 13, 15.)

Ms. Blewett suffered a bruise to her arm. (Trial Tr., p.554, Ls.12-19.) Law enforcement initially cited Mr. Perez for misdemeanor domestic battery, citing him with domestic battery without traumatic injury. (Presentence Investigation Report (“PSI”),¹ pp.420, 697-711.) The charge was amended to a felony by way of alleging a traumatic injury (R., pp.9-10) and later, Mr. Perez was charged in the alternative, elevating the misdemeanor charge to a felony due to a prior domestic battery conviction in the last fifteen years (R., pp.20-22). One month later, Ms. Blewett contacted law enforcement and gave them photos she took of the bruise that developed on her arm several days after the incident.² (PSI, pp.804-10.)

Based on these facts, the State filed an Amended Information alleging Mr. Perez committed the crime of felony domestic violence. (R., pp.30-31, 68-69.)

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 The crime was charged in the alternative because Mr. Perez had a prior conviction for felony domestic violence. (R., pp.30-31.)

After a jury trial, Mr. Perez was found guilty of felony domestic violence. (Trial Tr., p.539, Ls.15-24; R., p.154.) At sentencing, the State recommended a sentence of ten years, with four years fixed, consecutive to the sentence for which he was on probation.³ (Trial Tr., p.550, L.24 – p.551, L.22.) The defense recommended probation or a year in jail with credit for time served. (Trial Tr., p.556, Ls.5-10.) The district court sentenced Mr. Perez to three years fixed. (Trial Tr., p.564, Ls.4-13; R., pp.165-68.) Mr. Perez filed a Notice of Appeal timely from the district court’s judgment of conviction.⁴ (R., pp.169-72; 175-79.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of three fixed years, upon Mr. Perez following his conviction for felony domestic violence?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Sentence Of Three Fixed Years Upon Mr. Perez Following His Conviction For Felony Domestic Violence

Mr. Perez asserts that, given any view of the facts, his sentence of three fixed years 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*

³ Mr. Perez was 55-days short of completing his probation for a felony domestic violence conviction in 2014. (PSI, pp.422, 687.)

⁴ Mr. Perez filed a timely motion for leniency pursuant to I.C.R. 35. (R., p.180.) The district court denied Mr. Perez’s motion, finding that he did not submit new or additional information in support of the motion. (Aug., pp.3-6.) *See State v. Huffman*, 144 Idaho 201, 203 (2007) (holding “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.”) Mr. Perez does not challenge the denial of his I.C.R. 35 motion on appeal.

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).

Mr. Perez does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by the exercise of reason, Mr. Perez must show that in light of the governing criteria, the sentences were 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, Mr. Perez's sentence is excessive considering any view of the facts.

One mitigating factor the district court should have more fully considered is that Mr. Perez has a good work history. (PSI, pp.435-36.) Mr. Perez was taught to drive a semi-truck by his father. (PSI, p.432.) Mr. Perez's father was an owner/operator truck driver and Mr. Perez's mother advised, "Shane went with him at a very young age. His father taught him how to drive." (PSI, p.432.) Mr. Perez spent eighteen years driving a truck and is proud of his work. (PSI, pp.432, 435-36.) However, Mr. Perez's alcohol use eventually cost him the job he loved. In 2012, he lost his job after being charged with DUI. (PSI, p.436.) Since 2012, Mr. Perez operated a forklift for five years and was employed in customer service for three years. (PSI, p.436.)

Another aspect that should have received the attention of the district court is the fact that Mr. Perez has strong support from family members and friends. *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts). His ex-girlfriend, Michelle Finnegan, wrote a letter to the court to show her support of Mr. Perez. (R., p.162; PSI, p.687.) She told the court that Mr. Perez was a great father to her two children, helping to raise them and participating in family activities. (R., p.162; PSI, p.687.) Ms. Finnegan wrote that Mr. Perez was a loving and caring man who tries to help others. (R., p.162; PSI, p.687.) Mr. Perez has a [REDACTED] [REDACTED] whom he has helped to raise since [REDACTED] (PSI, p.434.) Mr. Perez said of his stepson, “I love my step son he’s a great kid we get along really well.” (PSI, p.434.)

Further, Mr. Perez expressed remorse and accepted responsibility for his actions. (Trial Tr., p.555, Ls.20-24; p.560, Ls.4-11.) He realized he should not have engaged with Ms. Blewett, or tried to diffuse the situation—he should have walked away. (Trial Tr., p.555, Ls.20-24.) He told the court,

I just want to make it very clear, Your Honor, that I did not have any malicious intent that day in December last year to hurt my girlfriend when I had physical contact with her. I was just trying to defuse the situation and realized that I definitely should have stepped back and let her do whatever she was going to do, and I should have just walked away.

(Trial Tr., p.560, Ls.4-11.) Idaho recognizes that some leniency is required when a defendant accepts responsibility for his 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, Mr. Perez asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered the facts in this case, Mr. Perez’s good employment history, his strong

community support, and his acceptance of responsibility, it would have imposed a less severe sentence.

CONCLUSION

Mr. Perez 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.

DATED this 28th day of April, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
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

SJC/eas