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State v. Yangya Appellant's Brief Dckt. 47184

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	
Plaintiff-Respondent,	**NO. 47184-2019**
v.	**ADA COUNTY NO. CR01-18-56809**
AMURI MMENENWA YANGYA,	**APPELLANT'S BRIEF**
Defendant-Appellant.	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE DEBORAH A. BAIL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Mr. Yangya pleaded guilty to one count of battery with the intent to commit a serious felony. The district court imposed a sentence of fifteen years, with three years fixed. On appeal, Mr. Yangya asserts that the district court abused its discretion by imposing an excessive sentence and by failing to strike a letter written by a different defendant in a different case—and commentary related to that letter in the addendum to the PSI—which was erroneously attached to the PSI.

Statement of the Facts and Course of Proceedings

In November of 2018, a woman called law enforcement to report she had been raped. (Presentence Report (PSI), p.4.)[1] She stated that Mr. Yangya had offered to give her and two other people a ride home. (PSI, p.4.) She said that after Mr. Yangya dropped off the other two people, he stopped his vehicle and got in the backseat with her. (PSI, p.4; 3/11/19 Tr., p.16, Ls.11-23.) She said he then penetrated her vagina with his fingers, and she told him to stop, but Mr. Yangya ultimately penetrated the woman with his penis. (PSI, p.4.)

Subsequently, the State charged Mr. Yangya with one count of rape, and one count of forcible sexual penetration by use of a foreign object. (R., pp.30-31.) Pursuant to a plea agreement, the State agreed to file an amended information, which charged Mr. Yanga with battery with the intent to commit a serious felony, and forcible penetration by use of a foreign object; Mr. Yangya agreed to plead guilty to the battery charge, and to misdemeanors in two unrelated cases. (R., pp.37-51; 3/11/19 Tr., p.5, Ls.4-8.) In exchange, the State agreed to recommend that the district court retain jurisdiction. (3/11/19 Tr., p.5, Ls.9-12.)

[1] All citations to the PSI refer to the 1174-page electronic document.

At the sentencing hearing, when the district court asked if there were any necessary corrections to the PSI, the State said there was an addendum to the PSI, with a letter attached that was not from Mr. Yangya. (6/17/19 Tr., p.6, Ls.6-10.) Therefore, the State asked that the letter, and any reference to it in the addendum be stricken; it noted that the logs attached to the addendum pertained to Mr. Yangya's case, but the letter did not. (6/17/19 Tr., p.6, Ls.10-14.) Mr. Yangya's counsel also asked that the letter be stricken along with "any commentary by the evaluator that does appear to be from a different defendant, referencing a trial, facts of a different case, witnesses that don't apply to this." (6/17/19 Tr., p.6, Ls.19-24.) The district court said that it would "direct that the letter be removed from this file and – because it doesn't relate to this case." (6/17/19 Tr., p.6, Ls.15-17.) Later, the district court said again that the "letter doesn't relate to anything, so it should be removed." (6/17/19 Tr., p.7, Ls.18-19.)

With respect to sentencing, Mr. Yangya's counsel requested that the district court retain jurisdiction, with an underlying sentence of ten years, with two years fixed. (6/17/19 Tr., p.9, Ls.3-11.) The State also recommended that the district court retain jurisdiction but asked for an underlying sentence of twenty years, with five years fixed. (6/17/19 Tr., p.7, L.25 – p.8, L.25; R., p.46.) The district court imposed a sentence of fifteen years, with three years fixed. (6/17/19 Tr., p.18, Ls.6-9; R., pp.57-58.) Mr. Yanga then filed a notice of appeal timely from the district court's judgment of conviction. (R., pp.60-61.)

ISSUES

I. Did the district court abuse its discretion by failing to strike the parts of the PSI that the State and defense counsel pointed out were erroneous?

II. Did the district court abuse its discretion when it imposed a sentence of fifteen years, with three years fixed, following Mr. Yangya's plea of guilty to one count of battery with the intent to commit a serious felony?

ARGUMENT

I.

The District Court Abused Its Discretion By Failing To Strike The Parts Of The PSI That The State And Defense Counsel Pointed Out Were Erroneous

Both parties agreed that the letter attached to the addendum to the PSI, and any commentary by the PSI investigator that pertained to that letter, should be struck from the PSI because the letter was written by a different defendant. (6/17/19 Tr., p.6, Ls.6-24.) The district court agreed with the parties. (6/17/19 Tr., p.7, Ls.18-19.) However, the letter and the commentary in the addendum is still part of the PSI. (PSI, pp.1161-66.)

"A district court's denial of a motion to strike or delete portions of a PSI is reviewed on appeal for an abuse of discretion." *State v. Molen*, 148 Idaho 950, 961 (Ct. App. 2010). A district court abuses its discretion when: (1) it fails to recognize the issue as one of discretion; (2) it acts beyond the outer bounds of its discretion; (3) it acts inconsistently with the applicable legal standards, or (4) it reaches its decision without exercising reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863-64 (2018). In *Molen*, the Court of Appeals addressed a similar situation to this one and held that, while the district court correctly refused to consider the unreliable information, it still committed reversible error by not striking that information from the PSI. *Molen*, 148 Idaho at 961. Therefore, the court remanded the case so the district court could strike unreliable information from the PSI and "send a corrected copy to the Department of Correction." *Id.* at 962; *see also State v. Mauro*, 121 Idaho 178, 183 (1991). (remanding the case so that a corrected PSI could be obtained).

The reason that erroneous information needs to be stricken from the PSI is that "the use of a PSI does not end with the defendant's sentencing. The report goes to the Department of Correction[] and may be considered by the Commission of Pardons and Parole in evaluating the

defendant's suitability for parole. In addition, if the defendant reoffends, any prior PSI is usually presented to the sentencing court with an updated report from the presentence investigator." *State v. Rodriguez*, 132 Idaho 261, 262 n.1 (Ct. App. 1998). Moreover, "the timeframe for alterations of the report is explicitly tied to the sentencing hearing; it is at the sentencing hearing—and not beyond—that the defendant is given the opportunity to object to its contents." *State v. Person*, 145 Idaho 293, 296 (Ct. App. 2007). That means "a district court's authority to change the contents of a PSI ceases once a judgment of conviction and sentence are issued." *Id.* Therefore, this one and only opportunity to correct the PSI needs to be employed, since "a PSI follows a defendant indefinitely, and information inappropriate included therein may prejudice the defendant even if the initial sentencing court disregarded such information." *Rodriguez*, 132 Idaho at 262 n.1.

This does not mean that the district court is required to redline every point which a defendant challenges. *See, e.g., State v. Carey*, 152 Idaho 720, 722 (Ct. App. 2012). It does, however, mean that, "where the trial court was rejecting information in the PSI as unfounded or unreliable, it is insufficient to simply disregard the information at sentencing and, instead, the court should also redline it from the PSI so that this information could not prejudice the defendant in the future." *Id.*

In this case, it is clear the district court was aware of the problem as it agreed with the parties that the letter did not "relate to this case." (6/17/19 Tr., p.6, Ls.15-17, p.7, Ls.18-19.) Therefore, the issue is preserved for appeal. *See State v. DuValt*, 131 Idaho 550, 553 (1998) (citation omitted) (noting that when an issue was "argued to or decided by the trial court," it may be raised for the first time on appeal). Despite the district's court's statements, however, for some reason the letter and commentary was not stricken from the PSI. As such, the district court

did not act consistently with the applicable legal standards and thus abused its discretion. Therefore, as in *Molen* and *Mauro*, this case should be remanded so that Mr. Yangya's PSI can be corrected.

II.

The District Court Abused Its Discretion When It Imposed A Sentence Of Fifteen Years, With Three Years Fixed, Following Mr. Yangya's Plea Of Guilty To One Count Of Battery With The Intent To Commit A Serious Felony

Given the facts of this case, Mr. Yangya's sentence of fifteen years, with three years fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, this 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." *State v. McIntosh*, 160 Idaho 1, 8 (2016). In such a review, the Court "considers the entire length of the sentence under an abuse of discretion standard." *Id.* An appellate court conducts a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. It considers 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).

"When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *McIntosh*, 160 Idaho at 8 (quoting *State v. Hooper,* 119 Idaho 606, 608 (1991)). Unless it appears that the length of the sentence is "necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution," the sentence is unreasonable. *Id.* When a sentence is

excessive "considering any view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Mr. Yangya's sentence is excessive under any reasonable view of the facts. First, Mr. Yangya accepted responsibility for his actions. In a letter to the district court, he wrote that he took ownership for what he did, and he was sorry. (PSI, p.59.) This is a long-recognized mitigating factor. *State v. Shideler*, 103 Idaho 593, 594 (1982) (reducing the defendant's sentence, in part, because "the defendant has accepted responsibility for his acts"). Similarly, at the sentencing hearing, Mr. Yangya told the court that he accepted the accusations and confessed. (6/17/19 Tr., p.12, Ls.20-22.)

Additionally, Mr. Yangya admitted he was intoxicated when he committed the offense in this case. He said he was drinking on the night in question, and he felt that he would not have done what he did if he did not consume alcohol. (PSI, pp.6, 59.) He also acknowledged that he believed alcohol was a problem for him, and he needed treatment. (PSI, p.13.) He said he did not drink at all prior to emigrating with his parents from Congo in 2016. (PSI, pp.6, 9-10.) Moreover, he admitted that he did not understand the laws of this country, and he wanted to take classes to learn the laws. (PSI, pp.6, 14.) As such, he asked the district court to give him an opportunity on a rider so he could learn more about American culture and norms. (PSI, p.15.) A defendant's problems with alcohol should also be considered as mitigating information. *State v. Nice*, 103 Idaho 89, 91 (1982) (reducing defendant's sentence, in part, because "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime [the defendant had been drinking at the time of the offense] and the suggested alternatives for treating the problem").

Mr. Yangya also enjoys the support of his family, and he has been the family's main source of financial support since they came to this country. (6/17/19 Tr., p.10, Ls.3-8; PSI, p.8.) Indeed, prior to this offense Mr. Yangya was working full-time to provide for his family. (6/17/19 Tr., p.7, Ls.4-15; PSI, p.12.) A defendant's positive work history and family support are also recognized mitigating factors that should be considered by the sentencing court. *State v. Nice,* 103 Idaho 89, 90-91 (1982) (highlighting the fact that the defendant was a skilled a mechanic who was employed as a truck driver at the time of his sentencing, then going on to reduce the defendant's sentence, in part, because he "was working and helping to support his children at the time of the conviction"); *Shideler*, 103 Idaho at 595 (reducing sentence of defendant who, *inter alia*, had the support of his family and his employer).

In light of the multiple mitigating factors in this case, Mr. Yangya asserts his prison sentence was not necessary to achieve the goals of sentencing, and the district court failed to adequately consider the mitigating information in the case. Therefore, it abused its discretion because it failed to reach its sentencing decision through an exercise of reason.

CONCLUSION

Mr. Yangya respectfully requests that this Court remand this case so the erroneous information can be stricken from his PSI. He also requests that this Court reduce his sentence as it deems appropriate.

DATED this 6th day of February, 2020.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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RPA/eas