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State v. Coker Appellant's Brief Dckt. 47352

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. BRADY LAWSON COKER, Defendant-Appellant.	NOS. 47352-2019, 47353-2019, 47354-2019 & 47355-2019 KOOTENAI COUNTY NOS. CR-2014-2867, CR-2014-7240, CR-2014-11700 & CR28-18-10607 APPELLANT'S BRIEF

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Mr. Coker appeals from the district court's order relinquishing jurisdiction. In Supreme Court Docket No. 47355, he asserts the district court abused its discretion when it imposed a sentence of five years fixed, along with a $50,000 fine, following Mr. Coker's plea of guilty to one count of witness intimidation. Additionally, in Supreme Court Docket Nos. 47352, 47353, 47354, and 47355, Mr. Coker asserts the district court abused its discretion when it relinquished jurisdiction.

Statement of the Facts and Course of Proceedings

Supreme Court Docket Nos. 47352-2019 (district court case number CR 2014-2867), 47353-2019 (district court case number CR-2014-7240), 47354-2019 (district court case number CR-2014-11700), and 47355-2019 (district court case number CR28-18-10607), have been consolidated for appellate purposes. (R., p.156.)[1]

In July of 2018, police responded to a report of a battery that occurred between Mr. Coker and his girlfriend, Madison Hall. (Presentence Report (PSI), p.6.)[2] Ms. Hall told the responding officer that, when she told Mr. Coker that she did not want to spend the night at his house, "he became irate and took [her] keys from the ignition and threw them in the bushes." (PSI, p.6.) She said when she got out of her truck to look for them, Mr. Coker followed her around yelling at her, and when she went to look for a spare key in the bed of the truck, Mr. Coker, "grabbed her purse strap, which was wrapped around her neck and shoulder. He pulled her out of the truck, and she landed on her back on the ground." (PSI, p.6.) She explained that Mr. Coker continued pushing her into his house even though she said she wanted to leave. (PSI, p.6.) She stated that he then put his hands on her throat and squeezed for about two seconds. (PSI, p.6.) When the couple went to Mr. Coker's bedroom, he told Ms. Hall to take off her clothes, and when she refused, "he grabbed her and forced her clothing off her body." (PSI, p.7.) Ms. Hall said she continued to tell Mr. Coker she wanted to leave, but he would not let her go. (PSI, p.7.) The following morning, she told Mr. Coker she had to go to work, and she stated that she told Mr. Coker she loved him so he would let her go and not "go off on her again." (PSI, p.7.)

[1] All citations to the Clerk's Record refer to the 158-page electronic document.
[2] All citations to the PSI refer to the 139-page electronic document.

Subsequently, the State charged Mr. Coker with one count of attempted strangulation, one count of second-degree kidnapping, and a persistent violator enhancement. (R., pp.11-13.) Mr. Coker was later released on bail but failed to appear at a preliminary hearing status conference, and the magistrate court issued a bench warrant for his arrest. (R., p.35.) After he was arrested, the magistrate court held a preliminary hearing, but Ms. Hall did not appear. (R., p.41.) The State requested a continuance and alleged that Mr. Coker was making calls to discourage Ms. Hall from attending the hearing. (R., p.41.) Thereafter, the State filed an amended complaint adding a charge of witness intimidation. (R., pp.46-48.) Mr. Coker subsequently waived his right to a preliminary hearing, and the State charged him, by Information, with one count of attempted strangulation, one count of second-degree kidnapping, one count of witness intimidation, and a persistent violator enhancement. (R., pp.53-56.) The State alleged that Mr. Coker committed the offense of witness intimidation by, among other things, telling others to contact Ms. Hall to "make sure she is still on his side and/or to make sure she doesn't show up for court and/or to tell her that he loves her and/or to tell the prosecution/police it was all a lie; and/or trying to convince Madison Hall not to testify against him . . . ." (R., p.55.)

Pursuant to a plea agreement, Mr. Coker pled guilty to one count of misdemeanor domestic violence, one felony count of intimidating a witness, and one misdemeanor count of violating a no contact order. (R., pp.57, 60.) He also admitted to violating his probation in three prior cases for which he was on probation at the time of the offense. (R., pp.58-59.) In exchange, the State agreed to file an amended information and not pursue the persistent violator enhancement. (R., pp.57-63.)

At the joint sentencing/probation violation disposition hearing, the district court revoked probation in the prior cases in which Mr. Coker pled guilty to criminal possession of a financial transaction, bribery, and concealment of evidence; it then executed those underlying sentences. (Tr., p.24, Ls.10-24.)[3] For the witness intimidation case, it imposed a sentence of five years fixed, as well as a $50,000 fine, and it ordered that the sentence run consecutive to the sentences in the prior cases. (Tr., p.24, L.25 – p.25, L.7; R, pp.96-99.) It retained jurisdiction "only to see if [Mr. Coker] could get into Mental Health Court," and it said it would not consider probation unless Mr. Coker's rider was "essentially perfect." (Tr., p.25, Ls.8-11.)

Mr. Coker successfully completed the rider, and the Idaho Department of Correction recommended that he be placed on probation. (PSI, p.99.) At the rider review hearing, the State noted that Mr. Coker received some disciplinary warnings on the rider, and thus recommended that the district court relinquish its jurisdiction and execute the underlying sentences. (Tr., p.31, Ls.2-24.) Mr. Coker's counsel pointed out that Mr. Coker made excellent progress on the rider and requested that the district court place Mr. Coker on probation, so he could finish the screening process for Mental Health Court. (Tr., p.35, L.12 – p.36, L.17, p.41, Ls.10-14.) Nevertheless, the district court relinquished jurisdiction and executed Mr. Coker's sentences. (Tr., p.42, L.24 – p.43, L.21; R., pp.111-13.) Mr. Coker filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.123-25.)

[3] All citations to the transcript refer to the 17-page electronic document. There are four pages contained on each of the 17 pages, and the citations here refer to those individual pages.

ISSUES

I. Did the district court abuse its discretion when it imposed a sentence of five years fixed, and a fine of $50,000, following Mr. Coker's plea of guilty to one count of witness intimidation?

II. Did the district court abuse its discretion when it relinquished jurisdiction instead of placing Mr. Coker on probation after his rider?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Sentence Of Five Years Fixed, And A Fine of $50,000, Following Mr. Coker's Plea Of Guilty To One Count Of Witness Intimidation

Given the facts of this case, Mr. Coker's sentence of five years fixed, along with a $50,000 fine, 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).

The fourth factor is the most important for sentencing purposes, and the one that is absent in this case. "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 facts that illustrate why Mr. Coker's sentence is excessive under any view of the facts. First, Mr. Coker has significant mental health issues. The psychological evaluation filed in this case showed that Mr. Coker was "subject to manic episodes of an expansive and hostile character . . . ." (PSI, p.57.) It also revealed that Mr. Coker has a "significant mental disorder, as well as a clear history of substance abuse and dependence." (PSI, p.57.) Similarly, the evaluation noted that Mr. Coker "evidenced rather clear depressive symptoms, which include fatigue, weakness, sleep disturbance, and appetite disturbance." (PSI, p.57.) The evaluation also noted that Mr. Coker had "symptoms of anxiety in the form of sweating (not due to heat), feeling tense, and having impaired concentration." (PSI, p.57.)

The evaluation went on to explain that Mr. Coker "evidences rather significant emotional dyscontrol, with frequently changing moods, and being erratic emotionally." (PSI, p.58.) It also stated that Mr. Coker "presents as bipolar disordered, with his history of depressive episodes, as well as, clear manic or hypomanic episodes." (PSI, p.58.) Additionally, it stated that Mr. Coker "presents with what would appear to be a substance-induced psychotic disorder." (PSI, p.58.) Given these severe symptoms, the evaluator concluded that Mr. Coker was "clearly in need of ongoing mental health treatment," and he was "in need of being medically assessed for use of an antidepressant medication . . . ." (PSI, p.58.) Finally, the evaluator diagnosed Mr. Coker with

recurrent and severe "Major Depression," an "Unspecified Personality Disorder," a "Bipolar Disorder," and a "Generalized Anxiety Disorder." (PSI, p.58.) This was mitigating information that should have been considered by the district court in reaching its sentencing decision. *State v. Odiaga*, 125 Idaho 384, 391 (1994) ("Idaho Code § 19–2523, which requires that the trial court consider the defendant's mental illness as a sentencing factor, was an integral part of the legislature's repeal of mental condition as a defense.").

However, the district court disregarded this mitigating information, and indeed imposed the maximum sentence allowed for this offense. (*See* I.C. §§ 18-2604 and 18-112.) At the sentencing hearing, it said, "Your mental health diagnosis doesn't have anything to do with why you're here." (Tr., p.22, Ls.24-25.) It then said to Mr. Coker, "You're not running around the park buck naked because you're psychotic. You're making horribly bad decisions every single day, and that doesn't have anything to do with your mental health does it?" (Tr., p.22, L.25 – p.23, L.4.) When Mr. Coker attempted to reply, the district court cut him off and said, "When are you going to grow up and be a man and admit what you need to admit?" (Tr., p.23, Ls.7-8.) It then told Mr. Coker, "I want you to grow a pair and be a man and tell me whether I'm wrong or right." (Tr., p.23, Ls.9-11.)

Mr. Coker has also struggled with substance abuse issues for many years. (PSI, pp.8-9.) He acknowledged that he had a problem with substance abuse and needed treatment. (PSI, p.35.) And the psychological evaluator concluded that he had a "clear history of substance abuse and dependence," and diagnosed him with both opioid and alcohol dependence. (PSI, pp.57-58.) This is another recognized mitigating factor. *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. Coker asserts that imposing the maximum sentence allowed in this case was an abuse of discretion because the district court did not act consistently with the applicable legal standards when it failed to consider Mr. Coker's mental health and substance abuse problems as mitigating factors. He also submits the district court failed to reach its sentencing decision through an exercise of reason because the sentencing transcript clearly shows that the court based its decision, at least in part, on its animosity towards Mr. Coker as opposed to the nature of the offense. The maximum sentence allowed in this case—particularly the $50,000 fine—was not necessary to achieve the goals of sentencing in this case, and indeed was not reasonable in light of the facts of the case, and the mitigating information in the case.

II.

The District Court Abused Its Discretion When It Relinquished Jurisdiction Instead Of Placing Mr. Coker On Probation After His Rider

Mr. Coker's rider was very successful; this was reflected at multiple points in the APSI. Despite all of the case manager's positive comments, however, the district court relinquished its jurisdiction and sent Mr. Coker to prison. This decision devalued Mr. Coker's efforts on the rider, and disregarded how those efforts demonstrated his rehabilitative potential and suitability for probation.

The decision to relinquish jurisdiction is a matter of discretion for the court. *State v. Schultz*, 149 Idaho 285, 288-89 (Ct. App. 2010). "Where the trial court has exercised its discretion after careful consideration of relevant factual circumstances and principles of law, without arbitrary disregard for such facts and principles of justice, the reviewing court will not

disturb the action without a clear showing of abuse of discretion." *Deford v. State*, 105 Idaho 865, 868 (1983). In determining whether a court abused its discretion, the appellate court will determine 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).

The purpose of retaining jurisdiction is to evaluate the offender's potential for rehabilitation and suitability for probation. *State v. Urrabazo*, 150 Idaho 158, 161 (2010); *State v. Lutes*, 141 Idaho 911, 915 (Ct. App. 2005) ("The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant's rehabilitative potential and suitability for probation."). This illustrates that a district court should not retain jurisdiction in the first place if it does not intend to engage in a careful analysis of these factors when a defendant completes a rider. This would constitute a clear abuse of discretion because it would not be consistent with applicable legal standards, and it would demonstrate an arbitrary disregard for the facts regarding a defendant's performance on a rider. Yet that is precisely what happened in this case.

At the sentencing hearing, the district court warned Mr. Coker that it would not consider probation unless he got into Mental Health Court and "put together a flawless rider." (Tr., p.25, p.25, Ls.19-22.) Mr. Coker received some disciplinary warnings during his rider (PSI, pp.101-02.) However, he also demonstrated that he had turned a corner, and he was well suited for probation. For example, his case manager stated that Mr. Coker "was able to address some of his criminogenic thinking patterns, attitudes, and beliefs and use his problem-solving and social skills to address these errors in thinking. He addressed his peers respectfully and, for the most

part, *he did very well, which is in contrast to his behavior when he first arrived in the program*." (PSI, p.102 (emphasis added)). Similarly, his case manager wrote that Mr. Coker, "appeared to make a 180 degree turn around. He was a pleasant group participant. He appeared to put a lot of work into his assignments and seemed to be serious about how his former choices . . . negatively impacted his life." (PSI, p.102.) His case manager also noted that Mr. Coker "was an excellent group member overall, and an integral part of his group's final project." (PSI, p.102.) With respect to his attitude, the case manager wrote, "Mr. Coker seems to *have come a long way from when he first started the group*, as he is very open to feedback at this time." (PSI, p.103 (emphasis added)).

Mr. Coker also successfully completed the Aggression Replacement Training program, and his case manager explained he "did a great job identifying his external and internal triggers and identifying his reminders. He did a good job on the rest of the chain. Mr. Coker was an active participant in the Moral Reasoning portion. He offered his thoughts when appropriate and tended to make decisions that considered how he or his loved ones would be affected." (PSI, p.103.) She went on to write, "Mr. Coker made *tremendous progress* over the course of this program. His *entire method of thinking has changed* from a self-centered approach to an others-centered approach." (PSI, p.103 (emphasis added)). Mr. Coker also completed his GED during his rider, and he completed a Career Plan. (PSI, p.103.)

In sum, the case manager stated, "Although Mr. Coker broke rules while on his 'Rider' program, overall, he seems to have shown an ability to learn from previous problems and has not been a significant disciplinary problem. In fact, several staff members have commented that he appears to have made substantial progress, especially as far as his attitude is concerned." (PSI,

p.102.) Therefore, the case manager recommended that the district court place Mr. Coker on probation. (PSI, p.105.)

All of these comments reflected very positively on Mr. Coker's rehabilitative potential, suitability for probation, and the changes he made while on the program. But there is no indication the district court was genuinely interested in those things. In fact, it mentioned none of these positive comments at the rider review hearing. (Tr., p.42, L.23 – p.45, L.9.) It certainly had the discretion to determine, after the completion of the rider, whether Mr. Coker was ready for probation, but it had to make that determination through an exercise of reason, not arbitrary action, and it had to give genuine consideration to the Department of Corrections recommendation for probation.

However, the district court did not genuinely consider the recommendation made by the Department of Corrections. It also failed to adequately consider everything Mr. Coker accomplished on the rider, and whether he was ready for probation. Instead, it focused exclusively on Mr. Coker's disciplinary issues and the things he did not do. Mr. Coker's performance on the rider showed that he made genuine efforts to change, and he did indeed change dramatically. That is the conclusion the district court should have reached based on a sincere and genuine evaluation of his progress. As such, the district court abused its discretion when it relinquished jurisdiction because it did not act consistently with the legal standards applicable to the specific choices available to it, and it did not reach its decision to relinquish jurisdiction through an exercise of reason.

CONCLUSION

Mr. Coker respectfully requests that this Court reduce his sentence as it deems appropriate, or remand the case for a new sentencing hearing in front of a different district court judge. Alternatively, he requests that this Court vacate the district court's order relinquishing jurisdiction and remand the case to the district court.

DATED this 1st day of April, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st 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
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/s/ Evan A. Coker
EVAN A. COKER
Administrative Assistant

RPA/eas