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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 47558-2019 |
| Plaintiff-Respondent, |) | |
| |) | ADA COUNTY NO. CR01-19-14975 |
| v. |) | |
| |) | |
| GERHARD CRIDER, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, [REDACTED] Gerhard “Gary” Crider pleaded guilty to felony attempted strangulation. The district court imposed a unified sentence of ten years, with four years fixed. Mr. Crider filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. On appeal, Mr. Crider asserts the district court abused its discretion when it imposed his sentence, and when it denied his Rule 35 motion.

Statement of the Facts & Course of Proceedings

The State charged Mr. Crider by Information with attempted strangulation. (R., pp.29-30.) He initially entered a not guilty plea. (R., p.32.) Pursuant to a plea agreement, Mr. Crider later agreed to plead guilty to attempted strangulation, and the State agreed to dismiss a separate case. (See Tr., p.5, L.4 – p.7, L.12.) The State would recommend “a sentence of seven years, the first three years fixed, that sentence to be imposed, to run concurrently with his parole violation.”¹ (Tr., p.5, Ls.10-13.) During the change of plea hearing, Mr. Crider admitted to grabbing his wife, Elizabeth Perkins, by the throat and applying pressure during an argument at the house where they lived. (See Tr., p.12, L.17 – p.14, L.24.) The district court accepted Mr. Crider’s guilty plea. (Tr., p.14, L.25 – p.15, L.11.)

Mr. Crider waived the preparation of a new presentence report. (See Tr., p.15, L.14 – p.17, L.4.) At the sentencing hearing, the State recommended the district court impose a sentence of seven years, with three years fixed, to be served concurrently with the sentence in his parole violation case. (See Tr., p.26, Ls.10-17.) Mr. Crider’s counsel told the district court: “Gary does not necessarily object to the outer limits of the sentence. I would ask the Court consider something less than the fixed portion the State is asking for, because it’s clear that even though Gary slipped up on his parole, he seemed to be a pretty productive member of the

¹ Mr. Crider had been on parole in Bonner County Nos. CR 98-1565 and CR 98-1591, where he had been convicted of, respectively, misdemeanor battery, misdemeanor reckless driving, and three counts of felony aggravated assault (No. CR 98-1565), and two counts of attempted first degree murder (No. CR 98-1591). (See Conf. Docs., pp.143-47; Tr., p.26, L.20 – p.27, p.6.) Before his parole, Mr. Crider served nineteen years of an aggregate unified sentence of twenty-two years, with seventeen years fixed. (See Conf. Docs., p.145; Tr., p.29, Ls.14-18.) At the sentencing hearing, defense counsel told the district court Mr. Crider had approximately four years left on parole. (See Tr., p.27, Ls.2-3.) All citations to “Conf. Docs.” refer to the 286-page PDF version of the Confidential Documents in the appellate record.

community.” (Tr., p.28, Ls.17-22.) But the district court went beyond the recommendations of the parties, imposing a unified sentence of ten years, with four years fixed. (R., pp.63-66.)

Mr. Crider filed a Notice of Appeal timely from the district court’s Judgment of Conviction and Commitment. (R., pp.67-69.) He also filed a Rule 35 Motion and Memorandum in Support. (R., pp.72-75.) The district court denied the Rule 35 motion. (R., pp.78-80.)

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of ten years, with four years fixed, upon Mr. Crider following his plea of guilty to attempted strangulation?
- II. Did the district court abuse its discretion when it denied Mr. Crider’s Idaho Criminal Rule 35 motion for a reduction of sentence?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Four Years Fixed, Upon Mr. Crider Following His Plea Of Guilty To Attempted Strangulation

Mr. Crider asserts the district court abused its discretion when it imposed his unified sentence of ten years, with four years fixed. The district court should have instead followed Mr. Crider’s recommendations, or at least the recommendations of the State, by imposing a unified sentence of seven years, with a fixed sentence of three years or less. (See Tr., p.26, Ls.10-17, p.28, Ls.17-22.)

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Further, a trial court “generally has the discretion to commute a felony prison sentence and confine a defendant in the county jail.” *State v. Brooks*, 131 Idaho 608, 609 (Ct. App. 1998) (citing I.C. §§ 19-2601 & 19-2513). Mr. Crider does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Crider must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. Crider asserts his sentence is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider Mr. Crider’s physical health problems. During the sentencing hearing, Mr. Crider’s counsel told the district court: “Gary does have some significant health problems. He’s got a pacemaker, he’s also got prostate cancer, he’s got diabetes, and so he requires quite a bit of medical attention.” (Tr., p.28, Ls.6-9.) Mr. Crider explained that he and Ms. Perkins married at a time when his doctors had mistakenly told him that his prostate cancer had spread to his liver and pancreas and he only had a few months to live. (*See* Tr., p.30, L.20 – p.31, L.1.) He reported that three months after they were married, the doctors told him he would

not be dying and he did not have cancer in his liver or pancreas. (*See* Tr., p.31, Ls.1-5.) Mr. Crider told the district court: “Now I just want to live and get on with my life, and in order to live I must get the prostate removed. I don’t want to die in prison.” (Tr., p.35, Ls.11-13.)

Additionally, the district court did not adequately consider Mr. Crider’s rehabilitation in other aspects of his life. At the sentencing hearing, Mr. Crider informed the district court, “Two-and-a-half years ago I was released from prison after 19 years.” (Tr., p.29, Ls.14-15.) His defense counsel stated, “But it is noteworthy that he did serve a lot of time for those [prior] convictions and the parole board saw fit to allow him to be released prior to him topping out that sentence, and that’s also relevant here because he is currently on parole.” (Tr., p.26, L.22 – p.27, L.1.) Mr. Crider told the district court: “My behavior changed in prison. During the 19 years I was there, I received one DOR for having a fight.” (Tr., p.31, Ls.18-19.) He further stated, “Prison changed me for the better, and when I was out on parole, I did everything right until I met and married the wrong woman, because I thought I would be dead in six months or less and I had just wanted a small piece of my old life back” (Tr., p.31, Ls.20-24.) Mr. Crider suggested that his relationship with Ms. Perkins was initially a good one, before it deteriorated. (*See* Tr., p.30, L.20 – p.31, L.14, p.31, L.24 – p.32, L.4, p.32, L.21 – p.34, L.20.) He reported that, after he got out on parole, he bicycled to AA meetings and worked eight hours a day, seven days a week. (*See* Tr., p.29, L.21 – p.30, L.3.)

Moreover, the district court did not adequately consider Mr. Crider’s remorse and acceptance of responsibility. Mr. Crider addressed the district court on this point during the sentencing hearing, stating: “Yes, I grabbed her by the throat and squeezed, and for that I was wrong. No matter what the reason, I should not have done it.” (Tr., p.31, Ls.14-16.) He later

stated: “I’m sorry I did what I did, and after 19 years in prison, I never thought I would be going back to prison. I thought I had learned my lessons.” (Tr., p.35, Ls.5-7.)

Because the district court did not adequately consider the above mitigating factors, Mr. Crider’s sentence is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed his sentence.

II.

The District Court Abused Its Discretion When It Denied Mr. Crider’s Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Mr. Crider asserts that the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence, in view of the new and/or additional information presented in support of the motion. “A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citation omitted). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

Mr. Crider asserts his sentence is excessive in view of the new and/or additional information presented in support of the Rule 35 motion. In the Rule 35 motion, he explained that his allocution at the sentencing hearing “was rather scattered and failed to convey to the Court his true sentiments.” (R., p.72.) Mr. Crider stated that, although he had blamed Ms. Perkins for

other bad acts and appeared to be justifying or excusing his actions because of those bad acts, he did “not have any justification for the actions for which he pleaded guilty and said so in his statement.” (R., pp.72-73.) Further, Mr. Crider’s “taking responsibility . . . for his actions was overshadowed by his other comments about [Ms. Perkins’] past conduct” at the sentencing hearing. (R., p.73.) According to Mr. Crider, he focused his allocution on defending himself because he had reviewed Ms. Perkins’ statement, which upset him, before his sentencing. (*See* R., p.73.)

The Rule 35 motion asserted that, at the sentencing hearing, “Mr. Crider wished only that the Court were aware that in the past both sides had acted inappropriately and he was often on the receiving end of his wife’s aggression.” (R., p.74.) Additionally, “Mr. Crider is ordinarily an articulate gentleman but he was in a rather unordinary situation on that day and failed to convey his feelings.” (R., p.74.) He stated that he may have been hampered in expressing himself because he had spent a good portion of his life in penal institutions. (*See* R., p.74.)

Mr. Crider submits that his sentence is excessive in view of the above new and/or additional information presented in support of the Rule 35 motion. Thus, the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence.

CONCLUSION

For the above reasons, Mr. Crider respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 6th day of April, 2020.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th 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

BPM/eas