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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47582-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-35531
v.)	
)	
GARY WAYNE CARTER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Gary Wayne Carter appeals from his judgment of conviction for possession of a controlled substance, amphetamine. Mr. Carter pleaded guilty, and the district court imposed a unified sentence of seven years, with six years determinate. He filed an Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion for reduction of sentence, which was denied. Mr. Carter appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence and by denying his Rule 35 motion.

Statement of the Facts & Course of Proceedings

Mr. Carter was on parole and was unaware that an agent's warrant had been issued. (Presentence Investigation Report (*hereinafter*, PSI), p.2.) The Boise Police, aided by Probation and Parole investigators, contacted Mr. Carter at a McDonald's in Meridian. (PSI, p.1.) Mr. Carter was taken into custody and searched; officers found a pill bottle containing amphetamines. (PSI, p.1.) Mr. Carter stated that he had ADHD and sleep apnea and should have had his doctor prescribe the medication. (PSI, p.2.)

Mr. Carter was charged with possession of a controlled substance. (R., p.23.) He pleaded guilty and the district court imposed a unified sentence of seven years, with six years determinate. (R., p.43.) He filed a Rule 35 motion, which was denied. (Augmentation.)¹ Mr. Carter appealed. (R., p.47.)

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of seven years, with six years determinate, upon Mr. Carter following his plea of guilty to possession of a controlled substance?
- II. Did the district court abuse its discretion when it denied Mr. Carter's Rule 35 motion for reduction of sentence?

¹ A motion to augment the record with the Rule 35 motion, the memorandum in support, and the order denying the motion is being filed contemporaneously with this Appellant's Brief.

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Six Years Determinate, Upon Mr. Carter Following His Plea Of Guilty To Possession Of A Controlled Substance

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Carter’s sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Carter “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

At the sentencing hearing, counsel for Mr. Carter acknowledged that a prison sentence was appropriate due to Mr. Carter’s criminal history and requested 12 to 18 months determinate. (Sent. Tr., p.9, Ls.1-4.) Counsel noted that Mr. Carter had been released on parole in April,

2019, and, “it appeared that he was doing well and making his after care and UAs and that he was following through.” (Sent. Tr., p.9, Ls.5-10.) Then, in August, Mr. Carter “began to slip.” (Sent. Tr., p.9, Ls.11-15.) Mr. Carter was injured at work and was given cortisone shots and he relapsed on Adderall that was not his. (Sent. Tr., p.9, Ls.11-18.)

Mr. Carter addressed the district court at the sentencing hearing. He stated,

I just want to get out of prison. I had a full-time job working 12 hours a day. Like [my attorney] said, I passed every drug test my parole officer gave me. There at the end – I have sleep apnea – and it’s not a good excuse and I take responsibility for my actions – but I was adjusting pills because I was in the process of going to the doctor to keep me awake because my machine had broke from the prison that they gave me when I got released.

But, I mean, I done really good on parole, and, you know, I didn’t return to the crime that I did commit in my past life. I do have a very bad criminal history and I’ve been in prison half my life. I did change a little bit.

(Sent. Tr., p.10, Ls.6-21.)

Considering that Mr. Carter had been doing well on parole, was employed, accepted responsibility for his actions and acknowledged his guilt, Mr. Carter respectfully submits that the district court abused its discretion by imposing an excessive sentence in this case.

II.

The District Court Abused its Discretion By Denying Mr. Carter’s Rule 35 Motion For Reduction Of Sentence

In the memorandum in support of his Rule 35 motion, Mr. Carter noted that he was self-medicating with an illegal drug rather than getting a prescription. (Memorandum in Support of Motion to Reduce Sentence, p.2.) Mr. Carter was cooperative with law enforcement at the time of his arrest and allowed authorities to search his cell phone. (Memorandum in Support of Motion to Reduce Sentence, p.2.) Mr. Carter acknowledged that he had a criminal history, but pointed out that his felony conviction from 1995 to 2000 consisted largely of breaking and

entering charges that were charged separately but consolidated for sentencings. (Memorandum in Support of Motion to Reduce Sentence, p.3.)

Finally, Mr. Carter attached his Offender History Notes to the memorandum, which demonstrate that he was engaged in programming and had proven to be a hard worker in the kitchen. (Memorandum in Support of Motion to Reduce Sentence, p.4.) He had completed Aggression Replacement Training and Cognitive Behavioral Intervention and was granted parole on his first opportunity because of his performance while in custody. (Memorandum in Support of Motion to Reduce Sentence, p.4.)

Considering this information, as well as the sentence before the court at the time of sentencing, Mr. Carter submits that the district court abused its discretion by imposing an excessive sentence in this case.

CONCLUSION

Mr. Carter 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 26th day of May, 2020.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May, 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

JMC/eas