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### State v. Eisler Appellant's Brief Dckt. 47640

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47640-2019
Plaintiff-Respondent,	)	
	)	BONNER COUNTY NO. CR09-19-2571
v.	)	
	)	
AARON JOHN RAY EISLER,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Aaron John Ray Eisler pleaded guilty to felony violation of a no contact order. The district court imposed a unified sentence of five years, with two years fixed. Mr. Eisler then filed an Idaho Criminal Rule 35(b) motion for a reduction of sentence. The district court did not place Mr. Eisler on probation, but amended his sentence to a unified sentence of four years, with one year fixed. On appeal, Mr. Eisler asserts the district court abused its discretion when it imposed his original sentence. Mr. Eisler also asserts the district court abused its discretion when it denied in part his Rule 35(b) motion.

Statement of the Facts & Course of Proceedings

Mr. Eisler is married to Sara Blevins. (*See* Presentence Report (*hereinafter*, PSI), pp.19-21.)<sup>1</sup> At the time of Mr. Eisler’s arrest in the instant case, their two small children were [REDACTED] [REDACTED] (*See* 11/18/19 Tr., p.15, Ls.2-7.) Mr. Eisler’s mother testified at the sentencing hearing that Mr. Eisler “was a doting father. He loved his kids, he would do anything for them.” (11/18/19 Tr., p.19, Ls.10-12.) In a presentence self-evaluation, Mr. Eisler reported that his children and their well-being meant the most to him. (*See* PSI, pp.43-44.)

During the presentence investigation, Mr. Eisler stated that he and Ms. Blevins had both been on misdemeanor probation. (*See* PSI, pp.20-21.) He indicated that he had been under a no-contact order, with his wife as the protected party, after his domestic violence conviction for pulling a phone out of her hand during an argument. (*See* PSI, pp.20-21, 33; R., p.39 (Information in this case, referencing Bonner County No. CR09-19-54).) The no contact order, as amended, allowed Mr. Eisler in-person contact with his wife between the hours of 10:00 am and 5:00 pm. (*See* PSI, pp.19-21.)

While Mr. Eisler was supposed to be living with his mother in Newport, Washington, he moved back in with Ms. Blevins. (*See* PSI, pp.20-21.) During the sentencing hearing, Mr. Eisler described their routine: “Sara[] would get up at 5:00 o’clock in the morning. I would get her coffee, she would go to work.” (11/18/19 Tr., p.24, L.24 – p.25, L.1.) Mr. Eisler continued: “I would get the babies up, I would get them ready, I’d take them over to Ms. Julia’s, the day care provider, and then I would go to work. This happened for month after month after month while I was on misdemeanor probation.” (11/18/19 Tr., p.25, Ls.1-5.)

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<sup>1</sup> All citations to “PSI” refer to the 149-page PDF version of the Presentence Report and its attachments.

One evening, Mr. Eisler's misdemeanor probation officer conducted a probation check at Ms. Blevins' home in Sagle. (*See* PSI, p.19.) While searching the home, the probation officer found Mr. Eisler hiding in the shower at around 7:11 pm. (*See* PSI, p.19.) Mr. Eisler indicated he had stayed late to have dinner with his children. (PSI, p.19.) Bonner County Sheriff's Department deputies arrived at the home, arrested Mr. Eisler, and took him to the Bonner County Jail. (*See* PSI, p.19.)

The State charged Mr. Eisler by Information with felony violation of a no contact order, I.C. § 18-920. (R., pp.39-40.) The Information alleged Mr. Eisler had two previous convictions for a violation of Section 18-920 or a substantially similar foreign statute, based on convictions in Bonner County and Washington State. (*See* R., p.40.) Mr. Eisler entered a not guilty plea. (R., p.48.)

Later, Mr. Eisler pleaded guilty to felony violation of a no contact order. (R., pp.61-69; 09/20/19 Tr., p.5, L.9 – p.9, L.6.) Because there was no plea agreement, sentencing would be open. (*See* R., pp.63-64; 09/20/19 Tr., p.6, Ls.16-18, p.7, Ls.17-20.) The district court accepted Mr. Eisler's guilty plea. (09/20/19 Tr., p.9, Ls.7-11.)

At the sentencing hearing, Mr. Eisler recommended that the district court place him on probation. (*See* 11/18/19 Tr., p.17, L.7 – p.18, L.1.) The State recommended that the district court impose a unified sentence of five years, with three years fixed. (*See* 11/18/19 Tr., p.13, Ls.13-18.) The district court imposed a unified sentence of five years, with two years fixed. (R., pp.77-80.)

Mr. Eisler filed a Notice of Appeal timely from the district court's Judgment of Conviction. (R., pp.90-92.)

Mr. Eisler also filed a Motion for Reconsideration of Sentence Pursuant to I.C.R. 35, made as a plea for leniency. (R., pp.105-06.) At the hearing on the Rule 35(b) motion, Mr. Eisler’s counsel explained that Mr. Eisler did not believe that he should have been charged with a felony violation of the no contact order. (See 12/31/19 Tr., p.6, Ls.3-17.)

In his comments to the district court, Mr. Eisler apologized for his actions to his family, and emphasized he was no longer trying to make excuses for his conduct. (See 12/31/19 Tr., p.8, L.1 – p.62, L.15.) The district court told Mr. Eisler, “I do appreciate the fact that you’re taking some responsibility.” (12/31/19 Tr., p.10, Ls.16-18.) The district court next stated, “And while I’m not willing to put you on probation or send you on a rider, I do think my sentence may have been—I look back and I did a two plus three and imposed—I think that is a little bit harsh.” (12/31/19 Tr., p.10, Ls.21-25.) The district court amended Mr. Eisler’s sentence to a unified sentence of four years, with one year fixed. (R., pp.113-14.)

### ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of five years, with two years fixed, upon Mr. Eisler following his plea of guilty to felony violation of a no contact order?
- II. Did the district court abuse its discretion when it denied in part Mr. Eisler’s Idaho Criminal Rule 35(b) motion for a reduction of sentence?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Two Years Fixed, Upon Mr. Eisler Following His Plea Of Guilty To Felony Violation Of A No Contact Order

Mr. Eisler asserts the district court abused its discretion when it imposed his original unified sentence of five years, with two years fixed. The district court should have instead

followed Mr. Eisler's recommendations and placed him on probation. (See 11/18/19 Tr., p.17, L.7 – p.18, L.1.)

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. Eisler does not assert that his original sentence exceeded the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Eisler 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. Eisler asserts his original sentence was excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district

court did not give adequate consideration to Mr. Eisler's remorse and acceptance of responsibility. During the presentence investigation, Mr. Eisler advised that he and his wife were aware of the no contact order, and he acknowledged breaking the law, but stated, "it's hard when you're away from your family." (*See* PSI, p.21.) At the sentencing hearing, Mr. Eisler told the district court: "I do take responsibility for what I did. I knew I shouldn't have been there. There was no doubt in my heart and mind that I shouldn't have been there." (11/18/19 Tr., p.29, Ls.11-14.) Later, he stated: "I knew that I was violating a no-contact order, I knew that whole-heartedly and I knew it was wrong; and so did Sara[], we both knew it was wrong. I am not excusing that." (11/18/19 Tr., p.33, Ls.4-7.)

Additionally, the district court did not adequately consider Mr. Eisler's devotion to his small children. In a self-evaluation done as part of the presentence investigation, Mr. Eisler "reported that 'my children and the well being of them . . .' is what means most to him", and "that in the future, he hopes to 'be a better man for my children, and my self as an individual.'" (PSI, p.28.) While in her first letter to the district court, Ms. Blevins stated that Mr. Eisler caused her anxiety and scared her, she also wrote, "But as father to the kids he's good as long as it's away from me & at his house." (*See* PSI, p.86.) Further, in her second letter to the district court, Ms. Blevins explained, "In my first letter at his first appearance, I had said negative things that were not true," because the prosecutor had threatened that CPS would take her kids if she and her mother did not testify. (*See* PSI, p.88.)

At the sentencing hearing, Mr. Eisler's counsel told the district court, "Mr. Eisler is a great father and he spends a lot of time with his kids." (11/18/19 Tr., p.14, L.25 – p.15, L.1.) Mr. Eisler's mother testified that Mr. Eisler "was a doting father. He loved his kids, he would do anything for them." (11/18/19 Tr., p.19, Ls.10-12.) She testified that he would visit his children

every day when allowed. (*See* 11/18/19 Tr., p.19, Ls.13-16.) She also testified that the two small children loved and respected Mr. Eisler. (*See* 11/18/19 Tr., p.20, Ls.6-7.) Per Mr. Eisler's mother, Mr. Eisler "really misses his family. He needs to be with them. He's just a wreck without them." (11/18/19 Tr., p.20, Ls.10-13.)

Mr. Eisler took responsibility for what he had done, but explained to the district court, "raising a [REDACTED]—raising your babies—in my mind it's important that you as the father are present daily." (*See* 11/18/19 Tr., p.29, Ls.11-17.) He described how his daughter would wake up at 3:00 in the morning and climb into bed like clockwork, and how he would hold hands and pray with his children every night at the kitchen table. (*See* 11/18/19 Tr., p.29, L.18 – p.30, L.1.) Mr. Eisler also acknowledged that his relationship with Ms. Blevins was not perfect, "But we have two beautiful children; and my concern is to keep them safe, and I can't do that right now." (11/18/19 Tr., p.34, Ls.11-18.)

Moreover, the district court did not adequately consider the hardships that Mr. Eisler's imprisonment had inflicted on Mr. Eisler's family, especially his two small children. In her second letter to the district court, Ms. Blevins wrote, "Since Aaron's been incarcerated, our lives have hardship since I am now the sole provider of one teenager & 2 sm kids." (PSI, p.88.) Ms. Blevins' teenage daughter had previously moved in with them. (*See* PSI, p.86.) Ms. Blevins informed the district court, "And my landlord took advantage w/ Aaron gone, he evicted us, after we had some \$8,000 in remodeling because he didn't want to deal w/ it." (PSI, p.88.) Further, "my three children & I were forced to move far out of the area w/ such a sm. notice." (PSI, p.88.) Ms. Blevins also wrote, "Our children have been angry, & really sad & want their Daddy." (PSI, p.88.)



At the sentencing hearing, Mr. Eisler's mother testified: "Sara[] has come over to visit me, of course, and brought the babies and had visits with Aaron over the phone, and they just can't wait to talk to their daddy. And they keep on asking, when is he coming home, where is he?" (11/18/19 Tr., p.21, Ls.5-10.)

Mr. Eisler advised the district court that his small children "are three and four now, they were two and three. It's been a lifetime for them, six months." (*See* 11/18/19 Tr., p.15, Ls.2-7.) He also asserted, "what has happened with my family since I have been locked up is a travesty. It's terrible." (11/18/19 Tr., p.28, Ls.5-7.) According to Mr. Eisler: "Sara[], I almost guarantee you, is probably not being sober. I almost guarantee you that the living condition that she's probably living in is atrocious." (11/18/19 Tr., p.28, Ls.8-11.) Also, "We lost every one of our vehicles . . . ." (11/18/19 Tr., p.28, L.14.) Mr. Eisler further stated, "But I love those children and I think—how many months have I been in jail now—five, six on a no-contact order that was amended between ten and five I could be there." (11/18/19 Tr., p.31, Ls.11-14.) He reiterated: "And six months for a [REDACTED] old is huge. It's a long time for a [REDACTED] [REDACTED]." (11/18/19 Tr., p.31, Ls.19-21.) Mr. Eisler told the district court, "I'm sitting in here, and the quality of life of my children right now is terrible." (11/18/19 Tr., p.34, Ls.18-19.)

Because the district court did not adequately consider the above mitigating factors, Mr. Eisler's original sentence was excessive considering any view of the facts. Thus, Mr. Eisler asserts the district court abused its discretion when it imposed his original unified sentence of five years, with two years fixed. The district court should have instead followed Mr. Eisler's recommendations and placed him on probation.

## II.

### The District Court Abused Its Discretion When It Denied In Part Mr. Eisler's Idaho Criminal Rule 35(b) Motion For A Reduction Of Sentence

Mr. Eisler asserts that the district court abused its discretion when it denied in part his Rule 35(b) motion for a reduction of sentence, in view of the new and/or additional information presented in support of the motion. The district court granted the motion in part by amending Mr. Eisler's sentence to a unified sentence of four years, with one year fixed, but denied it in part by not placing Mr. Eisler on probation. (*See* 12/31/19 Tr., p.10, L.21 – p.11, L.11.)

“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. Eisler asserts his sentence is excessive in view of the new and/or additional information presented in support of the Rule 35 motion. At the Rule 35 hearing, Mr. Eisler stated: “I’m here asking for a second chance at making right the situation that I have orchestrated over this period of time dealing with my offenses. I have, without a doubt, violated the law several times by breaking the NCO; with every time I have justified my actions by making excuses.” (12/31/19 Tr., p.8, Ls.1-6.) He continued: “In my head, I validated my choices. Regardless of my excuses, the choices I have in every way affected my wellbeing and

my family and my children and my wife.” (12/31/19 Tr., p.8, Ls.7-10.) He explained that he made an earlier contention, that his sentence was based in part on false information from his mother-in-law who worked at the courthouse, because he was “angry.” (See 12/31/19 Tr., p.6, Ls.18-24, p.8, Ls.12-20.) Mr. Eisler just wanted “to be a better father and husband.” (12/31/19 Tr., p.8, Ls.11-12.)

Moreover, Mr. Eisler explained that when he violated the no contact order, “I made these excuses up in my head, well, I am going to stay late to put my baby girl and my son to sleep, oh, I don’t have enough gas in my car to make it all the way back to Newport.” (12/31/19 Tr., p.8, L.22 – p.9, L.3.) He stated, “I would give myself one excuse after the other to justify my actions.” (12/31/19 Tr., p.9, Ls.4-5.) However, Mr. Eisler recognized: “What the reality of it was, I needed to buckle down and do what was necessary for the long term of my family. And I wasn’t doing that, I was going for the short term at the time.” (12/31/19 Tr., p.9, Ls.5-9.)

Addressing the district court, Mr. Eisler stated, “Your Honor, I apologize for my actions to my family and how this is affecting them.” (12/31/19 Tr., p.9, Ls.23-25.) He related that he video visited with his children every day, and, “The sweetest sound in the world is hi, Daddy, I miss you, I love you.” (12/31/19 Tr., p.9, L.25 – p.10, L.3.) He stated, “I’m trying the best I can to try to put this back together in the best way I know how.” (12/31/19 Tr., p.10, Ls.5-7.) Mr. Eisler understood “that I have got a lot of time ahead of me, and my family is suffering for it because of my choices. I put myself right where I’m at. And I’m not trying to make excuses, Your Honor, I’m not.” (12/31/19 Tr., p.10, Ls.8-12.)

In view of the above new and/or additional information presented in support of his Rule 35(b) motion for a reduction of sentence, Mr. Eisler asserts that the district court abused its discretion when it denied in part his motion.

CONCLUSION

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

DATED this 20<sup>th</sup> day of July, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20<sup>th</sup> day of July, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

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DEPUTY ATTORNEY GENERAL  
E-Service: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BPM/eas