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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47651-2019
Plaintiff-Respondent,)	
)	GOODING COUNTY NO. CR24-19-397
v.)	
)	
DANIEL CRUZ ORTIZ,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

 Daniel Cruz Ortiz pled guilty to vehicular manslaughter and aggravated driving under the influence of alcohol (“DUI”). The district court imposed concurrent sentences of eight years, with four years determinate. Mr. Cruz Ortiz appeals, and he asserts the district court abused its discretion by imposing excessive sentences.

Statement of Facts and Course of Proceedings

On March 16, 2019, officers with the State Police responded to a serious injury crash in the highway near Gooding. (Presentence Investigation Report (*hereinafter*, PSI, p.4.) Officers were informed that one of the drivers, later identified as Mr. Cruz Ortiz, fled on foot. (PSI, p.4.)

The driver of the other vehicle, Jessie Otton, was killed in the accident and her passenger, her daughter, was flown to St. Alphonsus hospital with a broken femur. (PSI, p.4.) Ms. Otton was pregnant at the time. (PSI, p.5.) Mr. Cruz Ortiz acknowledged that he had consumed four beers prior to the accident and provided BAC samples between .085 and .091. (PSI, p.4.)

Mr. Cruz Ortiz was charged with two counts of vehicular manslaughter, aggravated DUI, and leaving the scene of an injury accident. (R., p.50.) He pleaded guilty to one count of vehicular manslaughter and to aggravated DUI and the district court imposed concurrent unified sentences of eight years, with four years fixed. (R., pp.80, 123.) Mr. Cruz Ortiz appealed. (R., p.135.) He asserts that the district court abused its discretion by imposing excessive sentences.

ISSUE

Did the district court abuse its discretion when it imposed concurrent unified sentences of eight years, with four years determinate, upon Mr. Cruz Ortiz following his plea of guilty to vehicular manslaughter and aggravated DUI?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Unified Sentences Of Eight Years, With Four Years Determinate, Upon Mr. Cruz Ortiz Following His Plea Of Guilty To Vehicular Manslaughter And Aggravated DUI

“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, Mr. Cruz Ortiz’s sentences do not exceed the statutory maximum. Accordingly, to show that the sentences imposed were unreasonable, Mr. Cruz Ortiz

“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).

When asked about the accident, Mr. Cruz Ortiz stated that he felt horrible about what happened and acknowledged that it could have been prevented. (PSI, p.4.) He stated that, prior to the accident, he had at a birthday celebration where had some beer, but he waited to drive until he thought he was sober. (PSI, p.4.) When the accident happened, Mr. Cruz Ortiz stated that he saw airbags and tried to open the door. (PSI, p.4.) His mind went blank and his ears were ringing. (PSI, p.4.) He then walked home because he was lost and afraid. (PSI, p.4.) He stated that the most difficult thing for him was knowing that he hurt someone and that life was lost. (PSI, p.4.)

Mr. Cruz Ortiz also expressed his remorse at the sentencing hearing. He stated,

Your Honor, first of all, I’d like to apologize to Jessie Otten’s family. You know, I never intended to hurt anybody and never wanted to. I’m truly sorry. I truly hope you truly forgive me one day for robbing Jessie of years with you guys. That truly hurts me. I just want to let you guys know I do have myself for taking her life from you guy and your guys’ grandson. You know, I never wanted this to

happen, and I have no words to come up for my actions. I just want to let you guys know I'm truly sorry.

And this is a life-changing moment for me, and I do want to do better and improve my life, and that's why I ask you guys for mercy on me to help me be able to at least help the Otton family with child support whatever way I can help them. It's the least I can do, you know. Knowing that I robbed them of someone who they loved truly hurts me. It hurts me at night, every night. I hate myself for doing such a thing, but I hope one day I can forgive myself as well, but just know I truly am sorry, and I'm sorry to everyone that I let down, not just Jessie's family but my own family, my friends and family for shaming them, because they knew I was better than this. And I just hope you can grant me permission to be able to still work and provide for them, help improve my life for the better. I'm just really sorry for everybody.

And I know this is hard. It's hard on me too. And Jessie's mom said it's a life sentence for them. It's also a life sentence for me, because every day I live knowing that I took a mother and a future son. And my mom is my greatest blessing to me. I truly love her, and being a son, I feel like a failure. And I didn't want that for Jessie or her son, you know, but I'm truly sorry.

(Tr., p.19, L.22 – p.21, L.10.)

In addition to expressing his remorse and his regret at sentencing, Mr. Cruz Ortiz also noted that he had agreed to pay child support to help Ms. Otton's family. (Tr., p.19, L.22 – p.21, L.10.) Recognizing this, the State recommended the sentences imposed by the court, but requested that Mr. Cruz Ortiz be placed on probation for a period of ten years "to allow for child support until the child is 18 years old, \$5,000 for each of the victims in this for the civil penalty and, of course, child support." (Tr., p.12, Ls.6-14.) Mr. Cruz Ortiz would of course have far more opportunities for employment while on probation and could work on paying this child support, which he could not do while incarcerated.

Mr. Cruz Ortiz had been enlisted in the Army National Guard since September, 2016 and was still actively involved. (PSI, p.8.) Mr. Cruz Ortiz had been employed at a farm from 2014-2018 and worked there in high school and between his National Guard trainings. (PSI, p.9.) He had been employed at NCR Builders since June 2019 and worked between 40 and 50 hours a

week. (PSI, p.9.) The company was willing to work with his schedule related to his legal obligations. (PSI, p.9.) Thus, Mr. Cruz Ortiz would have income if placed on probation and could start contributing child support.

Counsel for Mr. Cruz Ortiz also noted that Mr. Cruz Ortiz's LSI score was 12, which placed him in the low risk to reoffend, and his GAIN score indicated that he did not meet substance abuse disorder criteria. (Tr., p.17, Ls.17-24.)

Considering that Mr. Cruz Ortiz did not intend to harm anyone, expressed his remorse and regret to the family and to the court repeatedly, had agreed to pay child support, would have employment if placed on probation, and was a low risk to reoffend, Mr. Cruz Ortiz respectfully submits that the district court abused its discretion by imposing excessive sentences in this case.

CONCLUSION

Mr. Cruz Ortiz respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 12th day of August, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of August, 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

JCS/eas