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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 47842-2020, 47843-2020,
)	& 47844-2020
v.)	
)	
BAILEE KAYE WILLIAMS-HARDING,)	ADA COUNTY NOS. CR01-17-12224,
)	CR01-18-17065, & CR01-19-46925
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Bailee Kaye Williams-Harding pled guilty to two counts of heroin possession in two separate cases, and, after being placed on probation in both cases, she was charged with unlawful possession of a firearm. Her probations were revoked after she pled guilty to the new crime. On appeal, Ms. Williams-Harding contends that the district court erred in revoking her probations and that her sentence of five years, with two years fixed, for possession of a firearm represents an abuse of the district court's discretion. She further contends that the district court abused its discretion in failing to reduce her sentences in light of the additional information submitted in conjunction with her subsequent Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motions.

Statement of the Facts & Course of Proceedings

Supreme Court Docket No. 47842 (Ada County No. CR01-17-12224) (*hereinafter*, the 2017 heroin possession case), Supreme Court Docket No. 47843 (Ada County No. CR01-18-17065) (*hereinafter*, the 2018 heroin possession case), and Supreme Court Docket No. 47844 (Ada County No. CR01-19-46925) (*hereinafter*, the firearm case) have been consolidated for appellate purposes.

In 2017, Ms. Williams-Harding pled guilty to possessing heroin. (R.47842, pp.27-36, 45.) She was sentenced to seven years, with two years fixed, but placed on probation for seven years. (R.47842, pp.39, 45-50.) In 2018, the State filed a motion for probation violation, which alleged that Ms. Williams-Harding violated the terms and conditions of her probation by being charged with new crimes,¹ failing to complete rehabilitation programs, failing to maintain full-time employment, failing to report to her probation officer as directed, failing to obtain permission to leave her assigned district, using heroin and methamphetamine, failing to submit to a urinalysis, and failing to pay restitution, fines, fees and costs. (R.47842, pp.52-62, 66-68.) Ms. Williams-Harding admitting to violating some of the terms and conditions of her probation. (R.47842, p.75.)

Ms. Williams-Harding pled guilty to the amended charge of possessing heroin. (R.47843, pp.28, 30-43.) Her probation was revoked in the 2017 heroin possession case, and she was sentenced to seven years, with three years fixed, in the 2018 heroin possession case. (R.47843, pp.46-51; R.47842, pp.75-79.) The district court retained jurisdiction in both cases. (R.47843, pp.28, 49; R.47842, pp.76-77.) The sentences were ordered to be served concurrently.

¹ Ms. Williams-Harding was charged with delivering heroin, possession of drug paraphernalia, and careless driving. (R.47842, pp.53, 67.)

(R.47843, p.53; R.47842, p.73.) After a period of retained jurisdiction, Ms. Williams-Harding was placed on probation in both cases for seven years. (R.47843, pp.53-58; R.47842, pp.79-83.)

In 2019, Ms. Williams-Harding was in a traffic accident and it was discovered that she was in possession of a firearm. (Presentence Investigation Report (*hereinafter*, PSI),² pp.106-08.) Ms. Williams-Harding was charged by information with one count of unlawful possession of a firearm. (R. 47844, pp.13-14.)

The State filed a motion alleging Ms. Williams-Harding violated her probation in both cases by committing a new crime, terminating her employment without the approval of her supervising probation officer, associating with a person she was prohibited from associating with by her probation officer, and failing to pay her fines, fees and costs. (R.47843, pp.59-69; R.47842, pp.87-114.) Ms. Williams-Harding admitted to violating her probations by committing a new crime. (R.47843, pp.87, 91; R.47842, pp.119, 123; 1/27/20 Tr., p.7, Ls.7-25.)

In the firearm case, Ms. Williams-Harding pled guilty pursuant to a plea agreement. (R. 47844, pp.17-27.) In exchange for her guilty plea, the State agreed to recommend a sentence of five years, with two years fixed, and that the sentence be concurrent to the sentences in Ms. Williams-Harding's probation violation cases. (R. 47844, p.20.) The State also agreed not to file a persistent violator sentencing enhancement. (R. 47844, p.26.) The case was ordered to be consolidated for sentencing with her probation cases. (R.47842, p.120.)

At the sentencing/disposition hearing, the State asked the district court to sentence Ms. Williams-Harding to a term of five years, with two years fixed, to impose the sentence, and to revoke Ms. Williams-Harding's probation in both cases. (2/24/20 Tr., p.6, L.13 – p.7, L.4.)

² Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

Ms. Williams-Harding's counsel asked the district court to sentence her to one year fixed on her new conviction, and to retain jurisdiction in all three cases. (2/24/20 Tr., p.11, Ls.19-24; p.12, L.14 – p.13, L.6.)

The district court revoked probation in both of Ms. Williams-Harding's probation violation cases. (2/24/20 Tr., p.18, Ls.19-24; R.47843, pp.91-93; R.47842, pp.123-25.) She was sentenced to five years, with two years fixed, for unlawfully possessing a firearm. (2/24/20 Tr., p.18, Ls.19-22; R. 47844, pp.34-36.) The sentence was ordered to be served concurrent with her other two cases. (2/24/20 Tr., p.19, Ls.20-22; R. 47844, pp.34-36.) In all three cases, Ms. Williams-Harding filed a motion for reconsideration pursuant to I.C.R. 35(b). (R. 47844, p.33; R.47843, p.90; R.47842, p.122.) Ms. Williams-Harding twice submitted additional information in support of her motion for reconsideration. (R. 47844, pp.43-45, 47-50; R.47843, pp.100-102; 104-07; R.47842, pp.132-34, 136-39.) The district court denied the motions without a hearing. (Aug., pp.1-3.)

Ms. Williams-Harding filed a Notice of Appeal timely from the order revoking her probation in both cases and the judgment and conviction on the new charge. (R. 47844, pp.37-39; R.47843, pp.94-96; R.47842, pp.126-28.)

ISSUES

- I. Did the district court abuse its discretion when it revoked Ms. Williams-Harding's probation and executed her aggregate underlying sentences of seven years, with three years fixed?
- II. Did the district court abuse its discretion when it imposed a unified sentence of five years, with two years fixed, upon Ms. Williams-Harding following her plea of guilty to one count of unlawful possession of a firearm?
- III. Did the district court abuse its discretion when it denied Ms. Williams-Harding's Idaho Criminal Rule 35 Motions?

ARGUMENT

I.

The District Court Abused Its Discretion When It Revoked Ms. Williams-Harding's Probation

Ms. Williams-Harding asserts that the district court abused its discretion when it revoked her probation and executed her original aggregate sentences of seven years, with three years fixed. She asserts that her probation violations did not justify revoking probation, especially in light of the goals of rehabilitation and the fact that the protection of society could be best served by her continued supervision under the probation department.

There are generally two questions that must be determined by the district court in addressing allegations of probation violations: first, the court must determine whether the defendant actually violated the terms and conditions of his probation; and second, if a violation of probation has been found, the trial court must then decide the appropriate remedy for the violation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). “The determination of whether a probation violation has been established is separate from the decision of what consequence, if any, to impose for the violation.” *Id.* (quoting *State v. Thompson*, 140 Idaho 796, 799 (2004)). Once a probation violation has been found, the district court must determine whether it is of such seriousness as to warrant revoking probation. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). The district court must decide whether probation is achieving the goal of rehabilitation and whether probation is consistent with the protection of society. *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). If a knowing and intentional probation violation has been proved, a district court’s decision to revoke probation will be reviewed for an abuse of discretion. I.C. § 20-222; *Leach*, 135 Idaho at 529.

Only if the trial court determines that alternatives to imprisonment are not adequate in a particular situation to meet the state's legitimate interest in punishment, deterrence, or the protection of society, may the court imprison a probationer who has made sufficient, genuine efforts to obey the terms of the probation order. *State v. Lafferty*, 125 Idaho 378, 382 (Ct. App. 1994). The final question to be answered in a probation revocation proceeding, is what prison sentence should be imposed? *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001).

Ms. Williams-Harding asserts that the district court abused its discretion in finding that her probation violations justified revocation. Ms. Williams-Harding had turned her life around; she was remaining sober after so many years of drug addiction. (2/24/20 Tr., p.8, L.14 – p.9, L.2; p.9, Ls.16-23; p.14, Ls.8-25.) She had reconnected with her family, her main source of support, because she was able to stay sober while on probation. (2/24/20 Tr., p.9, Ls.3-12; p.14, Ls.10-16; p.15, L.25 – p.16, L.2.)

Ms. Williams-Harding exhibited considerable remorse for her actions and truly desires to turn her life around. At her disposition hearing, she took full responsibility for her actions and asked the district court for another chance on probation. (2/24/20 Tr., p.10, Ls.20-21; p.15, Ls.14-16.) She told the court, “This is the first time being incarcerated that I feel like I have something to lose by going to prison, things in my life worth fighting for.” (2/24/20 Tr., p.14, Ls.19-23.) She expressed confidence in her abilities, telling the court, “I know that I’m more than capable of doing things right.” (2/24/20 Tr., p.15, Ls.18-19.)

In light of all of the mitigating evidence that was presented to the district court that demonstrates Ms. Williams-Harding’s significant rehabilitative potential, the district court abused its discretion when it revoked her probations.

II.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Two Years Fixed, Upon Ms. Williams-Harding Following Her Plea Of Guilty To Unlawfully Possessing A Firearm

Ms. Williams-Harding asserts that, given any view of the facts, her unified sentence of five years, with two years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

Ms. Williams-Harding does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by the exercise of reason, Ms. Williams-Harding must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997). 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.*

In light of the mitigating factors present in this case, Ms. Williams-Harding's sentence is excessive considering any view of the facts.

At her sentencing/disposition hearing, Ms. Williams-Harding told the court:

Even though it was only last year that you sentenced me to the Rider, I feel like I'm completely a different person now, and I've accomplished many things since then.

I know that if I wouldn't have gotten the opportunity to go on a Rider, I wouldn't have been able to stay sober. This is definitely a blessing for me. It gave me the chance to contemplate the direction of my life and reflect on how damaging my addiction actually was.

For the first time in a few years, I've been able to have hope and goals in a relationship with my family.

I went into and left the Rider with my main goal being to stay sober, and I'm really proud that I was able to do this. I've been tempted to relapse on alcohol many times at my job, but because I was able to be aware of triggers and how to cope with them, I was able to stay sober.

(2/24/20 Tr., p.14, Ls.1-23.)

One factor supporting Ms. Williams-Harding's rehabilitative potential is the fact that she has strong support from her family. Ms. Williams-Harding has a good relationship with her parents, her brother, and her step-parents. (PSI, p.44.) Ms. Williams-Harding's mother, father, grandmother, and grandfather were present in the courtroom to support her during her sentencing/disposition hearing. (2/24/20 Tr., p.9, Ls.3-10; p.15, L.25 – p.16, L.2.) *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts).

Further, Ms. Williams-Harding expressed considerable remorse and accepted responsibility for her actions. (R. 47844, pp.17-27; R.47843, pp.87, 91; R.47842, pp.119, 123; 1/27/20 Tr., p.7, Ls.7-25.) Ms. Williams-Harding expressed regret and remorse for the thinking errors that brought her before the court, stating "looking back now, I see that it was naïve of me to think that as long as I was sober, I would never end up back in jail." (2/24/20 Tr., p.14, L.25 – p.15, L.2.) Ms. Williams-Harding has shown remorse for her conduct and taken full

responsibility for violating the law. Regarding her actions in committing the crime, Ms. Williams-Harding stated, “It wasn’t even until I was sitting in jail on this new charge, confused and angry about how I even let this happen, that I realized what I never saw before. Not only is drug addiction fatal, but so are the many behaviors and thinking errors that many addicts pick up along the way.” (2/24/20 Tr., p.15, Ls.6-11.) At her sentencing/disposition hearing, Ms. Williams-Harding told the court:

I understand the seriousness of this charge and accept the consequences from it, however I feel that I need to ask for another chance because I’ve come so far, and I know that I’m more than capable of doing things right.

This is the first time being incarcerated that I feel like I have something to lose by going to prison, things in my life worth fighting for. I’m just asking that you take all the good I’ve done in consideration.

And lastly, I would just like to thank my family for being here and always loving me unconditionally.

(2/24/20 Tr., p.15, L.15 – p.16, L.2.) Idaho recognizes that some leniency is required when a defendant expresses remorse for her conduct and accepts responsibility for his acts. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Ms. Williams-Harding asserts that the district court abused its discretion by imposing an excessive sentence upon her. She asserts that had the district court properly considered her considerable remorse and her family and community support, it would have imposed a less severe sentence.

III.

The District Court Abused Its Discretion When It Denied Ms. Williams-Harding's Rule 35 Motions For Sentence Reductions In Light Of The New Information Offered In Support Of Her Rule 35 Motions

Although Ms. Williams-Harding contends that her sentence is excessive in light of the information in front of the district court at the time of her February 24, 2020 sentencing/disposition hearing (*see* Part II, *supra*), she asserts that the excessiveness of her sentence is even more apparent in light of the new information submitted in conjunction with her Rule 35 motions. Ms. Williams-Harding asserts that the district court's denial of her motions for sentence modifications represents an abuse of discretion.

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). "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.*

Ms. Williams-Harding asked the court to reduce her aggregate sentence from seven years, with three years fixed, to seven years, with two years, fixed. (R. 47844, p.45; R.47843, p.102; R.47842, p.134.) She told the court that she wanted her fixed time reduced so that she could be eligible for the work center earlier and could thus make money to pay off her fines and save towards her future. (R. 47844, p.45; R.47843, p.102; R.47842, p.134.) Ms. Williams-Harding also submitted a parole plan to the district court. (R. 47844, p.45; R.47843, p.102; R.47842, p.134.) She has a residence, treatment, transport, support, work, and even leisure time plans.

(R. 47844, p.45; R.47843, p.102; R.47842, p.134.) Ms. Williams-Harding also wrote to the court and advised it that she intended to enroll in classes and to take advantage of the opportunities prison provided. (R. 47844, p.45; R.47843, p.102; R.47842, p.134.) The information Ms. Williams-Harding submitted in support of her Rule 35 motion was new and additional information that was not before the district court at sentencing.

Ms. Williams-Harding's mother, Ann Herman, wrote to the court on her daughter's behalf. (R. 47844, pp.49-50; R.47843, pp.106-07; R.47842, pp.138-39.) Ms. Herman told the court that she has seen changes in her daughter and believed that Ms. Williams-Harding had shown growth and maturity. (R. 47844, pp.49-50; R.47843, pp.106-07; R.47842, pp.138-39.) She discussed Ms. Williams-Harding's parole plan, and her daughter's pride in maintaining her sobriety. (R. 47844, pp.49-50; R.47843, pp.106-07; R.47842, pp.138-39.) Ms. Herman also supported her daughter's request for a lesser sentence in order to begin working to pay off the large amount of court costs and fines Ms. Williams-Harding had accumulated. (R. 47844, pp.49-50; R.47843, pp.106-07; R.47842, pp.138-39.)

In light of Ms. Williams-Harding's support, her parole plan, and her intent to enroll in classes and programming to better herself, the district court should have reduced her sentences. Based on the foregoing, in addition to the mitigating evidence before the district court at the time of sentencing, it is clear the district court abused its discretion by failing to reduce Ms. Williams-Harding's sentences in response to her Rule 35 motions.

CONCLUSION

Ms. Williams-Harding respectfully requests that this Court remand her cases to the district court with an order that she be placed on probation. Alternatively, she requests that her sentences be reduced as this Court deems appropriate.

DATED this 8th day of October, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 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

SJC/eas