

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

12-28-2020

State v. Dawkins Appellant's Brief Dckt. 48259

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Dawkins Appellant's Brief Dckt. 48259" (2020). *Not Reported*. 6810.
https://digitalcommons.law.uidaho.edu/not_reported/6810

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

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

JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
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,)	
)	
Plaintiff-Respondent,)	NO. 48259-2020
)	
v.)	ADA COUNTY NO. CR01-20-8116
)	
DEMARIEA LEVON DAWKINS,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Demariea Dawkins pled guilty to malicious injury to property, the district court sentenced him to five years, with two years fixed. Mr. Dawkins moved to reduce his sentence pursuant to Idaho Criminal Rule 35 (“Rule 35”). The district court denied his motion. Mr. Dawkins now appeals, and he argues the district court abused its discretion by imposing an excessive sentence. He also argues the district court abused its discretion by denying his Rule 35 motion.

Statement of Facts and Course of Proceedings

The State filed a criminal complaint alleging Mr. Dawkins committed the crimes of malicious injury to property, failing to notify upon striking a car, failing to notify upon striking a fixture, reckless driving, and possession of an open alcohol container. (R., pp.15–17.) According to the presentence investigation report (PSI), Mr. Dawkins hit eleven cars while driving in a parking garage in downtown Boise. (PSI,¹ p.216.) After leaving the garage, he struck a light pole and traffic sign and left the scene. (PSI, p.216.) The police found a bottle of whiskey in the car. (PSI, pp.15, 216.) Mr. Dawkins was later identified as the driver. (PSI, pp.216–17.)

Mr. Dawkins waived a preliminary hearing, and the magistrate judge bound him over to district court. (R., pp.38, 39–41.) The State charged Mr. Dawkins by information with malicious injury to property, failing to notify upon striking a car, failing to notify upon striking a fixture, reckless driving, and possession of an open alcohol container. (R., pp.42–44.)

Pursuant to a plea agreement, Mr. Dawkins entered *Alford*² pleas to malicious injury to property and possession of an open alcohol container. (Tr. Vol. II,³ p.11, Ls5–6, p.11, L.25–p.12, L.22; R., p.46.)

The district court held a sentencing hearing. (R., p.49; *see* Tr. Vol. I.) The State recommended a sentence of five years, with two years fixed. (Tr., p.11, Ls.21–23.) Mr. Dawkins requested the district court place him on probation or retain jurisdiction (“a rider”). (Tr., p.30, L.20–p.31, L.7.) The district court agreed with the State’s recommendation and sentenced Mr. Dawkins to five years, with two years fixed, for malicious injury to property. (Tr. Vol. I,

¹ Citations to the PSI refer to the 332-page electronic document with the confidential exhibits.

² *North Carolina v. Alford*, 400 U.S. 25 (1970).

³ There are two transcripts on appeal contained in one electronic document. The first transcript, cited as Volume I, contains the sentencing hearing. The second transcript, cited as Volume II, contains the entry of plea hearing. Each will be cited here with reference to their internal pagination.

p.41, Ls.5–10.) For possession of an open container, the district court sentenced him to 148 days in jail, with 148 days of credit for time served. (R., p.51.)

Mr. Dawkins filed a timely Rule 35 motion from the district court’s judgment of conviction. (R., pp.50–53, 55–61.) Mr. Dawkins requested the district court reduce his fixed time for malicious injury to property to one year, with four years indeterminate. (R., p.55.) The district court denied his motion. (R., pp.62–64.) Mr. Dawkins timely appealed. (R., pp.67–69.)

ISSUES

- I. Did the district court abuse its discretion by imposing an excessive sentence of five years, with two years fixed, upon Mr. Dawkins for malicious injury to property?
- II. Did the district court abuse its discretion by denying Mr. Dawkins’s Rule 35 motion for a reduction in his fixed time?

ARGUMENT

I.

The District Court Abused Its Discretion By Imposing An Excessive Sentence Of Five Years, With Two Years Fixed, Upon Mr. Dawkins For Malicious Injury To Property

“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. Dawkins’s sentence does not exceed the statutory maximum. See I.C. § 18-7001(2) (one-year minimum, five year maximum). Accordingly, to show the sentence imposed was unreasonable, Mr. Dawkins “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). The district court’s decisions to retain jurisdiction or place a

defendant on probation are also reviewed for an abuse of discretion. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005); *State v. Landreth*, 118 Idaho 613, 615 (Ct. App. 1990).

“‘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).

Here, Mr. Dawkins asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment, a rider, or probation in light of the mitigating factors.

For example, Mr. Dawkins’s alcohol abuse issues, the impact of his alcohol use on his behavior, and his need for treatment are strong factors in mitigation. A sentencing court should give “proper consideration of the defendant’s alcoholic problem, the part it played in causing [the] defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho 89, 91 (1982). The impact of substance or alcohol abuse on the defendant’s criminal conduct is “a proper consideration in mitigation of punishment upon sentencing.” *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Here, Mr. Dawkins was [REDACTED] when he committed the instant offense, (PSI, p.214), but he had abused

alcohol since he was [REDACTED]. (PSI, p.236.) His mother was an alcoholic, and he grew up very poor. (PSI, p.232.) He never met or knew his father. (PSI, p.232.) At the sentencing hearing, he explained to the district court, “I do realize I really could use treatment.” (Tr., p.32, Ls.16–17.) He hoped to attend Recovery for Life’s program. (Tr., p.32, Ls.18–20.) Mr. Dawkins’s alcohol problem and need for treatment stand in favor of mitigation.

In addition, Mr. Dawkins was remorseful and had a supportive adult role model. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). Although he did not remember the incident that led to the charged offense, he was “remorseful and sorry for the victims that were involved.” (Tr., p.32, Ls.12–15.) Further, an older man that took on a father-figure role in Mr. Dawkins’s life remained supportive of him. (PSI, pp.232–33. 330–31.) He wrote that Mr. Dawkins was “a young man of decent character” who had done “some rather stupid things.” (PSI, p.331.) He believed that Mr. Dawkins could learn from his mistakes. (PSI, pp.331.) Mr. Dawkins’s goals were to be happy and have a normal life. (PSI, p.237.) This mitigating information also supports a more lenient sentence.

In sum, Mr. Dawkins maintains the district court did not exercise reason and thus abused its discretion by imposing an excessive sentence of five years, with two years fixed, for malicious injury to property. He contends proper consideration of the mitigating factors in his case warranted a lesser sentence, a rider, or probation.

II.

The District Court Abused Its Discretion By Denying Mr. Dawkins's Rule 35 Motion For A Reduction In His Fixed Time

“A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

Here, Mr. Dawkins provided new and additional information to support his request for a reduction in his fixed time to one year. (R., p.56.) In a letter to the district court, Mr. Dawkins explained that he took accountability and accepted responsibility for his actions and harm to the victims. (R., p.59.) He also recognized that his difficult childhood had an impact on his behavior, and he had to come to terms with that and learn how to change. (R., p.59.) He realized “drinking is an issue for me.” (R., p.59.) He hoped to become a productive member of society and work to pay restitution to the victims. (R., p.60.) In addition, due to the covid-19 pandemic, he asked to

have a reduction in his fixed time so he could be with his family instead of a “lockdown facility” with an increasing infection rate. (R., p.60.)

This new and additional information in Mr. Dawkins’s letter showed that his initial sentence of five years, with two years fixed, was excessive. Proper consideration of this information supported a reduction in his sentence to one year fixed, with four years indeterminate. Therefore, Mr. Dawkins submits the district court did not exercise reason and thus abused its discretion when it denied his Rule 35 motion.

CONCLUSION

Mr. Dawkins respectfully requests this Court reduce his sentence as it deems appropriate. In the alternative, he respectfully requests this Court vacate his judgment of conviction and remand this case to the district court for a new sentencing hearing. Alternatively, he respectfully requests this Court reverse or vacate the district court’s order denying his Rule 35 motions and remand this case to the district court for a new Rule 35 motion hearing.

DATED this 28th day of December, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 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