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### State v. Clarke Appellant's Brief Dckt. 48163

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 48163-2020
	)	
v.	)	ELMORE COUNTY NO. CR20-19-3526
	)	
VICTORIA RACHEL CLARKE,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Victoria Clarke pleaded guilty to forgery and the district court sentenced her to a suspended unified term of three years, with one year fixed, and placed her on probation for a period of three years. Mindful that the district court imposed the sentence she requested, Ms. Clarke asserts the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

After her rent money went missing, and facing eviction for her and her three children, Ms. Clarke signed a letter purportedly from an entity called “Elmore county Rent Assistants programs,” which suggested that the non-existent entity would send Ms. Clarke’s landlord a

\$1,500.00 check to cover her rent within the next 7-10 business days. (PSI, pp.5-6, 90.)<sup>1</sup> Ms. Clarke eventually submitted the fake letter to the magistrate court during an eviction proceeding. (PSI, pp.73-74.) The State filed a criminal complaint charging Ms. Clarke with forgery, perjury, and preparing false evidence. (R., pp.8-10.) She was arrested the next day, and Ms. Clarke admitted to committing the crimes and “apologized several times,” during a post-arrest interview after being advised of her *Miranda* rights. (PSI, pp.84-85.) Ms. Clarke waived her right to a preliminary hearing, and the State filed an information charging her with the above crimes. (R., pp.22-26.)

In exchange for Ms. Clarke’s guilty plea to the forgery charge, the State dismissed the remaining charges, and the parties were free to argue for whatever sentence they believed to be appropriate. (R., pp.32-43; Tr. 3/2/20.) During the sentencing hearing, the State asked the court to impose a suspended unified sentence of five years, with two and one-half years fixed, and to place Ms. Clarke on probation for a period of five years. (Tr. 5/28/20, p.8, Ls.5-10.) Ms. Clarke asked the court to impose a suspended sentence of three years, with one year fixed, and to place her on probation for a period of three years. (Tr. 5/28/20, p.9, Ls.20-23.) The district court agreed to Ms. Clarke’s recommendation and imposed upon her a suspended unified term of three years, with one year fixed, and placed her on probation for three years. (R., pp.48-56; Tr. 5/28/20, p.12, Ls.5-11.) Ms. Clarke filed a timely Notice of Appeal. (R., pp.57-60.)

## ISSUE

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<sup>1</sup> Citations to the Presentence Investigation report and its attached documents include the page number associated with the 120-page electronic file containing those documents.

Did the district court abuse its discretion by imposing an excessive sentence upon Ms. Clarke, following her guilty plea to forgery?

### ARGUMENT

#### The District Court Abused Its Discretion By Imposing An Excessive Sentence Upon Ms. Clarke

Mindful that the district court imposed the sentence she requested,<sup>2</sup> Ms. Clarke asserts that, given any view of the facts, her suspended unified sentence of three years, with one year fixed, with three years of probation, 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. 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.

After a family member she thought she could trust took her rent money, Ms. Clarke made what was described as a “stupid” decision to forge a letter from a non-existent rent assistance entity, that would purportedly provide Ms. Clarke’s landlord with a check to cover her rent. (PSI, pp.5-6.) Ms. Clarke has three children, ages 16, 13, and 8, who live with her, and she feared that they would all become homeless. (*Id.*) Ms. Clarke just wanted to buy herself some time, so that she could either come up with the rent money or find a less-expensive place to live. (*Id.*) She told the PSI writer, “[I] cannot forgive myself. Cry everyday wishing I could take it back and make a [different] choice.” (PSI, p.6.) During her sentencing hearing, Ms. Clarke told the court, “I just would like to say that I am remorseful. I am sorry. And thank you.” (Tr. 5/28/20, p.10, Ls.12-13.)

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<sup>2</sup> See *State v. Griffith*, 110 Idaho 613 (Ct. App. 1986) (holding the invited error doctrine applies to sentencing decisions).

Idaho courts recognize that remorse for one's criminal conduct is a mitigating factor, justifying a less-severe sentence. *See State v. Alberts*, 121 Idaho 204, (Ct. App. 1991). Mindful that the district court imposed the sentence she requested, Ms. Clarke asserts the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Ms. Clarke respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 8<sup>th</sup> day of February, 2021.

/s/ Jason C. Pintler  
JASON C. PINTLER  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8<sup>th</sup> day of February, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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