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State v. McMurty Respondent's Brief Dckt. 48333

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. APRILLYN MICHELLE McMURTRY, Defendant-Appellant.	)	NO. 48333-2020 Ada County Case No. CR01-18-60249 RESPONDENT'S BRIEF

ISSUES

1. Has McMurtry failed to show that the district court abused its sentencing discretion when it imposed a sentence of ten years with three years fixed following her plea of guilty to felony driving under the influence?

2. Has McMurtry failed to show that the district court abused its discretion by denying her Rule 35 motion for reduction of her sentence?

STATEMENT OF THE CASE

Law enforcement responded to a collision after McMurtry's vehicle rear-ended a truck. (PSI, p.178.) Passengers in the truck told law enforcement that McMurtry's vehicle had struck a

sign near the interstate prior to the collision. (PSI, p.178.) McMurtry admitted she rear-ended the truck but claimed it stopped abruptly in her lane; she denied striking the sign. (PSI, p.178.) She had trouble retrieving her driver's license and maintaining balance. (PSI, p.178.) While speaking to an officer, McMurtry stumbled and the officer had to grab her to keep her from falling. (PSI, p.178.) McMurtry's driver's license showed as suspended out of California. (PSI, p.178.) She admitted she had been drinking and provided breath samples of .209/.214. (PSI, p.178.)

The state charged McMurtry with felony driving under the influence (DUI). (R., p.18.) McMurtry pleaded guilty. (R., p.26.) The district court sentenced McMurtry to ten years with three years fixed. (R., pp.41-43; Tr., p.31, Ls.17-23.) McMurtry filed a Rule 35 motion for reduction of her sentence. (R., pp.45-102.) The district court denied the motion. (R., pp.103-05.) Approximately nine months later, the district court granted McMurtry limited post-conviction relief and re-entered its order denying the Rule 35 motion "solely to reopen the respective appeal periods." (R., pp.107-09; Aug., p.1.) McMurtry timely filed a notice of appeal from the district court's re-entered order. (R., pp.113-14.)

ARGUMENT

I.
McMurtry Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

McMurtry asserts that the district court abused its discretion when it sentenced her to ten years with three years fixed. (Appellant's brief, pp.3-8.) McMurtry has shown no abuse of discretion. The sentence imposed is reasonable in light of her history of DUIs and the facts of the underlying case.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks "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." State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. The District Court Did Not Abuse Its Sentencing Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met this burden, the court considers the entire sentence but presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. "'In deference to the trial judge, this Court will not

substitute its view of a reasonable sentence where reasonable minds might differ.'" State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2018) (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

The sentence imposed is reasonable in light of McMurtry's criminal history. Her criminal history includes at least five prior misdemeanor DUIs and at least two prior felony DUIs. (PSI, pp.179-81.) In addition, McMurtry has two DUI convictions out of Montana that were not reflected on the PSI. (See Tr., p.6, L.9 – p.9, L.20.) As the PSI noted, all of McMurtry's criminal history is related to alcohol or driving. (PSI, p.181.)

The sentence is also reasonable in light of the facts underlying the case. McMurtry was driving while her license was suspended and while she was under the influence of alcohol. (PSI, p.178.) McMurtry struck a road sign before rear-ending another vehicle. (PSI, p.178.) She had trouble finding her identification and an officer had to grab McMurtry to prevent her from falling. (PSI, p.178.) Her BAC was over .2—roughly three times the legal limit. (PSI, p.178.)

The district court reasonably concluded the sentence was necessary to achieve the objectives of criminal sentencing. Incarceration was necessary to protect society in light of McMurtry's criminal history, her BAC in this case, and the fact that she had two collisions—striking a sign and later another vehicle. (Tr., p.29, Ls.12-17.) The district court concluded McMurtry "present[s] a danger to the community that I cannot have." (Tr., p.31, Ls.2-4.) McMurtry's history of DUIs, many of which undoubtedly occurred while she was on probation for a prior DUI, demonstrates that "the threat of incarceration has had no deterrent effect on [McMurtry's] behavior." (Tr., p.30, Ls.1-17.) The district court also noted that rehabilitation is a "great goal" and McMurtry "had many opportunities to access that" but it "has not worked." (Tr.,

p.31, Ls.4-7.) The district court determined that punishment was an important consideration after McMurtry's numerous DUIs. (Tr., p.31, Ls.7-9.) As the PSI opined:

> The sincerity of Ms. McMurtry is not in question. However, her history of continued drinking and driving cannot be minimized. She again made a poor decision to drive a vehicle while intoxicated, and once again placed herself and the community at risk. It appears that previously imposed sanctions have failed to satisfy the goals of deterrence and rehabilitation. This time Ms. McMurtry's actions have impacted others due to the vehicle accident she caused. It appears Ms. McMurtry would benefit from participation in rehabilitative programs during a period of penal incarceration.

(PSI, pp.190-91.) The district court did not abuse its discretion when it followed the PSI's recommendation and imposed a sentence of ten years with three years fixed.

McMurtry argues that the sentence is excessive in light of the mitigating factors, such as her family circumstances, employment, and genuine efforts to address her alcohol abuse. However the district court recognized and praised McMurtry's efforts. (See Tr., p.29, Ls.1-4, 17-25.) The PSI noted that McMurtry performed well on pretrial supervision, maintained communication with pretrial services, had all negative UAs, maintained full-time employment, participated in outpatient treatment, and attended AA meetings. (PSI, p.181.) It also documented the details of McMurtry's life, her remorse, and the numerous letters of support on her behalf. (See PSI, pp.182-88, 205-13.) At sentencing, the state, McMurtry's counsel, and McMurtry herself reiterated the mitigating circumstances. (See Tr., p.13, Ls.12-23; p.17, L.13 – p.24, L.24; p.26, L.10 – p.28, L.13.) The district court reasonably concluded that the sentence imposed would provide McMurtry with rehabilitative options while also protecting society, in light of the mitigating and aggravating circumstances. McMurtry has failed to show that the district court abused its discretion.

II.
McMurtry Has Failed To Show That The District Court Abused Its Discretion When It Denied Her Rule 35 Motion For Reduction Of Sentence

A. Introduction

McMurtry asserts that the district court abused its discretion when it denied her Rule 35 motion for reduction of sentence. (Appellant's brief, pp.3-8.) McMurtry has shown no abuse of discretion. McMurtry's motion was based on information presented to the district court before sentencing and her progress during incarceration. The district court did not abuse its discretion when it considered that information and determined that it did not render the otherwise-reasonable sentence excessive.

B. Standard Of Review

"A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court." State v. Anderson, 163 Idaho 513, 517, 415 P.3d 381, 385 (Ct. App. 2015). Where a sentence is neither illegal nor excessive when pronounced, "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 motion." State v. Burggraf, 160 Idaho 177, 180, 369 P.3d 955, 958 (Ct. App. 2016) (citing Huffman, 144 Idaho at 203, 159 P.3d at 840). "An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information." Huffman, 144 Idaho at 203, 159 P.3d at 840.

C. McMurtry Failed To Show Her Sentence Was Excessive In Light Of New Information

McMurtry filed a lengthy Rule 35 motion in which she requested the district court reduce her sentence based on her criminal history, her past unhealthy marriage, that she was sober for five

months prior to this DUI, she relapsed after a call from her estranged father, she sought treatment after her arrest, she performed well on pretrial release, she is dedicated to sobriety, has completed treatment since being incarcerated, and has put together a parole plan. (See R., pp.45-102.) Most of this information was presented to the district court prior to sentencing, and therefore does not constitute new information. (See PSI, pp.179-88, 205-13, 339-41, 361-79.) The remaining information relates to McMurtry's positive performance and progress in prison. The district court is not required to grant leniency based on good behavior in prison, which is, after all, the expectation. See State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010); State v. Copenhaver, 129 Idaho 494, 496, 927 P.2d 884, 886 (1996) ("The district court further did not abuse its discretion in refusing to view Copenhaver's good behavior in prison between his sentencing and the Rule 35 hearing as a mitigating factor."). Although the district court was "encouraged by any progress and positive conduct [McMurtry] has made or shown through her actions while incarcerated," the district court concluded that progress "does not diminish the impact of [McMurtry]'s actions, or the Court's reasoning for imposing the original sentence." (R., pp.104-05.) McMurtry has failed to show any abuse of the district court's discretion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 25th day of May, 2021.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of May, 2021, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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KLJ/dd