5-28-2021

State v. Maritnez Respondent's Brief Dckt. 48373

Electronically Filed
5/28/2021 11:45 AM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Deputy Clerk

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

KALE D. GANS
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 48373-2020
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-FE-2012-733
	)	
PETER MARTINEZ,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
	)	

ISSUE

Has Martinez failed to show that the district court abused its discretion when it denied his Rule 35 motion for reduction of sentence?

ARGUMENT

Martinez Has Failed To Show That The District Court Abused Its Discretion By Denying His I.C.R. 35 Motion For Reduction of Sentence

A. Introduction

In January of 2012, Martinez battered Mary Schenck, inflicting "possibly life threatening injuries" on her. (PSI, p.123.) Garden City police officers were dispatched to St. Luke's hospital,

then Saint Alphonsus hospital, where Schenck was transferred "due to the seriousness of her injuries," including " fractured ribs, a collapsed lung and other possibly life threatening injuries," which required the surgical placement of a tube "in her left rib cage to inflate the lung." (Id.) Nurses told law enforcement Schenck "was battered by her boyfriend," Martinez. (Id.)

Officers spoke with Schenck. She stated that she and Martinez had been "staying together" in a house in Garden City. (Id.) On January 14 Martinez "showed up at the house" and "got angry" at Schenck. (Id.) He "chest bumped" her, "causing her to fall onto a futon," after which she kicked "Martinez in the chest or stomach to keep him from hurting her." (Id.) Martinez then "started hitting her with his fists and threw her across the room into a door." After that, Martinez left, and a roommate took "Schenk to … St. Luke's." (Id.) Schenck, who was visibly bruised, also told officers that several days prior, Martinez "got angry and pushed" her "off the bed" they were sharing; according to Schenck, "[w]hen she tried to get back into bed Mr. Martinez punched her an estimated" six or seven times. (PSI. pp.123, 166.)

Schenck additionally explained that Martinez had been her "boyfriend since June 2011." (PSI, p.123.) Around that same time, Martinez had gotten "angry one night, battered [Schenck], and destroyed [a] house" she stayed in. (PSI., p.123.) That incident led to Martinez's July 2011 convictions for misdemeanor domestic battery and destruction of a phone line, and a probation violation. (PSI, p.127.) Martinez was ordered to have no-contact with Schenck; nevertheless, "[s]ince his release from jail" in the 2011 case, he and Schenck "were in an off and on romantic relationship." (PSI, p.123.)

The state charged Martinez with aggravated battery and misdemeanor violation of a no contact order. (R., pp.36-37.) Pursuant to a plea agreement between the parties, Martinez pleaded guilty to both counts. (R., pp.42-50.) On the felony count, the district court sentenced Martinez

to ten years, with four years fixed, and retained jurisdiction. The court sentenced Martinez to 180 days concurrent jail time on the misdemeanor. (R, pp.60-61.)

In January 2013, following the period of retained jurisdiction, the district court placed Martinez on probation for a period of 10 years. (R., pp.69-75.) Among other things, the court ordered Martinez to "undergo 26 weeks of domestic violence classes or more if deemed appropriate by the probation officer." (R., p.73.)

In February 2018, the state filed a motion to revoke Martinez's probation, alleging he had violated the terms and conditions of probation in a variety of ways. (R., pp.85-97.) Thereafter, Martinez admitted he had violated probation by: 1) driving without a license; 2) consuming alcohol; 3) continuing to have contact with Mary Schenck despite the no-contact order between them; 4) failing "to attend and/or successfully complete" the requisite 26 weeks of "intensive domestic violence treatment"; 5) failing "to maintain full-time employment"; and, 6) being "in an unapproved romantic and/or sexual relationship." (R., pp.86-87, 98.) Following Martinez's admissions, the district court revoked probation, and placed Martinez on another rider. (R., pp.100-03.)

After the second period of retained jurisdiction concluded, the district court reinstated probation. (R., pp.106-11.) The court's October 2018 order placed Martinez on probation for another 5 years. (R., p.109.)

Thereafter, in May 2020, the state filed another motion to revoke probation, alleging Martinez had again violated the terms and conditions of probation in several different ways. (R., pp.126-28, 155-56.) Martinez admitted to violating probation by committing the crime of disturbing the peace (which had originally been charged as a misdemeanor domestic battery), and by consuming alcohol. (R., pp.127, 158.)

At the ensuing probation violation disposition hearing, Martinez "ideally" sought another "chance at probation." (10/5/20 Tr., p.10, L.18.) Alternatively, he moved for leniency, "ask[ing] the Court to cut the indeterminate time down." (10/5/20 Tr., p.10, Ls.19-21.) The district court denied both requests, revoking probation, and imposing Martinez's original underlying sentence. (10/5/20 Tr., p.17, L.24 – p.18, L.6.)

Martinez timely appealed, challenging only the denial of his request to reduce his sentence. (R., pp.167-68; Appellant's brief, p.3.)

B. Standard Of Review

"A motion for reduction of sentence under Rule 35 is essentially a plea for leniency addressed to the sound discretion of the court." State v. Golden, 167 Idaho 509, 514, 473 P.3d 377, 382 (Ct. App. 2020). 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. Martinez Has Failed To Show That The District Court Abused Its Discretion

"In 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 motion." State v. Yang, 167 Idaho 944, 949, 477 P.3d 998, 1003 (Ct. App. 2020) (citing State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)). Idaho appellate courts reviewing "the grant or denial of a Rule 35 motion … consider the entire record and apply the same criteria used

for determining the reasonableness of the original sentence." State v. Carter, 157 Idaho 900, 903, 341 P.3d 1269, 1272 (Ct. App. 2014). Martinez claims on appeal that the district court abused its discretion by denying his request to reduce his sentence, which, in effect, was an "oral Idaho Criminal Rule 35" motion. (Appellant's brief, p.5.) Application of the legal standards to the facts here shows no error.

In denying Martinez's motion to reduce his sentence, the district court recognized that it needed to consider "the entirety of the record presented," and was required to consider the "same kind of goals of sentencing" that factored into the originally imposed sentence. (10/5/20 Tr., p.16, L.4 – p.17, L.16.) First, the court correctly pointed out that "the history" of this case is "extremely concerning," with a "number of domestic violence occurrences over the years." (10/5/20 Tr., p.16, Ls,17-19.) The record supports this conclusion, as it shows that Martinez was convicted of domestic assault in 1999, domestic battery in 2006, and a misdemeanor domestic battery against Schenck in 2011. (PSI, pp.126-27.) In the underlying conviction here, Martinez battered Schenck again, this time inflicting "possibly life threatening injuries" on her, and requiring her to go to the hospital with a collapsed lung and fractured ribs. (PSI, p.123.) And Martinez's most recent probation violation, based on a disturbing the peace conviction, was originally charged as a misdemeanor domestic battery. (PSI, p.5; 7/20/20 Tr., p.16, L.7 – p.17, L.6.) The witnesses to that crime reported that Martinez was "attempting to pull" his victim "out of her vehicle and punched her several times in the face." (PSI, p.18.) After that incident Martinez "blew 0.213" on a "breath alcohol content" test. (PSI, p.6.)

The district court also noted these repeated offenses were punctuated with just as many attempts at rehabilitation; Martinez just kept offending, "notwithstanding interventions of law enforcement, notwithstanding the riders, notwithstanding probation," and "notwithstanding

treatment." (10/5/20 Tr., p.16, Ls.18-22.) Despite all that, the parties still found themselves "here with another" incident of "scary domestic violence." (10/5/20 Tr., p.16, Ls.22-23.) The district court was therefore well within its discretion to conclude that Martinez posed a threat to the community and was not entitled to a reduction of his sentence. (10/5/20 Tr., p.17, L.24 – p.18, L.6.)

On appeal, Martinez does not challenge the district court's conclusion that he "proved that he cannot be" successful on probation. (10/5/20 Tr., p.17, Ls.6-9.) Nevertheless, he maintains the "district court did not exercise reason and thus abused its discretion by denying his oral Idaho Criminal Rule 35 ('Rule 35') motion" to reduce his sentence. (Appellant's brief, p.5.) Citing his generally positive performance "during both periods of retained jurisdiction" and probation, Martinez argues he "demonstrated that he is able to maintain his sobriety and stay out of trouble when he stays focused on his treatment and is surrounded by positive individuals," and that this "new information" justifies a reduced sentence. (Appellant's brief, p.5-7.)

Martinez fails to show this information would justify reducing his sentence. No one would argue that making "a significant amount of progress" in programming, and Martinez's apparently "honest and sincere … desire[s] to want to make positive changes in his life" (Appellant's brief, pp.5-6), are all well and good. But what matters most, in terms of community protection, is whether that "successfully completed" programming (Appellant's brief, p.5), had any *lasting* effect on Martinez's criminal behavior. The district court, which considered "the entirety of the record" below, including all of the information Martinez highlights on appeal, correctly perceived that it had not:

> We often see back in this record going back to 2012 the intersection of alcohol and abuse. Domestic abuse, abuse on others. Mr.—that is a dangerous cocktail with somebody who is an alcoholic, who cannot stay away from alcohol, and then has violent tendencies while drunk. We can't protect society very well

> from somebody with that combination. We have given Mr. Martinez a number of opportunities to prove that he can be successful on probation, and he has proven that he cannot be.
>
> So given the entirety of the record presented, the original PSI materials, the rider reviews, the updated PSI, the final PSI that we obtained in this case, demonstrates a long-standing history of domestic abuse, violence upon others, and an inability to stay sober, including here even an allegation of meth use. That combination of factors just presents a level of danger to the public that cannot be mitigated at this point by an opportunity for rehabilitation which has to this date proved to be unsuccessful. A lesser sentence here would truly depreciate the seriousness of the offenses that Mr. Martinez has engaged in.

(10/5/20 Tr., p.16, L.24 – p.17, L.23.)

Thus, while commendable, Martinez's generally good performance while in custody does not show any durable effect on his behavior out of custody. This was the important distinction that the 2014 PSI addendum authors made: that Martinez's "chance[s] at being successful upon his release" hinged on whether "he works as hard on his recovery as he did on his programming" and whether "he uses the tools he has learned during his time" in custody. (PSI, p.208.) To that point, the district court correctly determined that, time and time again, the attempted interventions and rehabilitations had "proved to be unsuccessful." (10/5/20 Tr., p.16, L.18 – p.17, L.21.) Martinez accordingly fails to show his sentence should be reduced, much less that the district court abused its discretion.

Beyond that, Martinez's arguments here are ultimately self-defeating. All of the cited evidence of Martinez's good behavior stems from when he was "in prison" or, to a lesser extent, "on probation." (Appellant's brief, p.6.) And there is no doubt that Martinez generally did better when the Department provided him more structure, "treatment," and "positive individuals." (See Appellant's brief, p.7.) But that is no reason to reduce Martinez's sentence now, and prematurely cut him loose from that structure and supervision, which is the only relief he seeks on appeal. If we accept that Martinez has been mostly "able to maintain his sobriety and stay out of trouble"

(Appellant's brief, p.5-6), but only while under Department supervision, that is a good reason to leave Martinez's sentence in place, not shorten it.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Martinez's request to reduce his sentence.

DATED this 28th day of May, 2021.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th 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:

KILEY A. HEFFNER
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd