

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

2-11-2021

State v. Ford Appellant's Brief Dckt. 48420

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

Recommended Citation

"State v. Ford Appellant's Brief Dckt. 48420" (2021). *Not Reported*. 7135.
https://digitalcommons.law.uidaho.edu/not_reported/7135

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

KILEY A. HEFFNER
Deputy State Appellate Public Defender
I.S.B. #10999
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. 48420-2020
)	
v.)	ADA COUNTY NO. CR01-19-41056
)	
CODY EUGENE FORD,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Cody Ford pled guilty to battery on a correctional officer. The district court imposed a sentence of five years, with one and a half years fixed, to run consecutively to any other sentences he is currently serving. On appeal, Mr. Ford argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

At the time of the instant offense, Mr. Ford was serving time at the Idaho State Correctional Center for a previous conviction. (PSI, pp.56, 63.) Mr. Ford approached one of the

correctional officers and asked if he was going to write him a Disciplinary Offense Report (“DOR”) for the prohibited items found during a search of Mr. Ford’s cell. (PSI, pp.56, 63.) The officer replied that he would have to write him a DOR, and then Mr. Ford punched the officer in the face. (PSI, pp.56, 63.)

The State filed a complaint against Mr. Ford for battery on a correctional officer in September 2019. (R., pp.8-9.) After Mr. Ford waived his preliminary hearing, the magistrate judge bound him over to district court, and he was charged by information with battery on a correctional officer. (R., pp.38, 42-43.) Mr. Ford entered into a plea agreement with the State and pled guilty in exchange for the State’s sentencing recommendation of five years, with two years fixed. (9/8/20 Tr.,¹ p.4, Ls.26-22; R., pp.64-74.) At the sentencing hearing in October 2020, the State recommended that the district court impose a sentence of five years, with two years fixed, to run consecutive to any other sentences. (10/21/20 Tr., p.10, Ls.7-14.) Defense counsel requested that the district court impose one year fixed. (10/21/20 Tr., p.11, Ls.23-25.) The district court sentenced Mr. Ford to five years, with one and a half years fixed, to run consecutive to any other sentences that he is currently serving. (10/21/20 Tr., p.23, L.21 – p.24, L.9; R., pp.77-80.) Mr. Ford timely appealed from the district court’s judgment of conviction. (R., pp.82-84.)

ISSUE

Did the district court abuse its discretion by imposing upon Mr. Ford an excessive sentence?

¹ The Reporter’s Transcript consists of two separately-paginated transcripts in one electronic document. Each will be cited with reference to its internal pagination. The first transcript, cited as “9/8/20 Tr.,” contains the change of plea hearing, held on September 8, 2020 (pages one to eight of the overall document). The second transcript, cited as “10/21/20 Tr.,” contains the sentencing hearing held on October 21, 2020 (pages nine to nineteen of the overall document).

ARGUMENT

The District Court Abused Its Discretion By Imposing Upon Mr. Ford An Excessive Sentence

Mr. Ford asserts that, given any view of the facts, his sentence of five years, with one and a half 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 giving consideration to 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).

The Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Ford does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, he must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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.*

Appellate courts use a four-part test for determining whether a district court abused its discretion: 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).

Here, Mr. Ford 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, in light of the mitigating factors, including his troubled childhood, substance abuse issues and their longstanding impact on his life, amenability to treatment, and family support.

Mr. Ford's troubled childhood stands in favor of mitigation. The Court of Appeals has recognized that a defendant's "extremely troubled childhood is a factor that bears consideration at sentencing." *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). In this case, Mr. Ford's mother had him when she was [REDACTED] and he was primarily raised by his grandparents. (PSI, p.16.) His parents split up before he was born, and he has had little contact with his father throughout his life. (PSI, p.16.) Mr. Ford reported in his presentence investigation report ("PSI") that his mother was always out partying when he was growing up, and she was likely smoking methamphetamine and drinking alcohol during her pregnancy with him. (PSI, p.16.) He stated his mother was "more like a friend than a parent," and would buy him and his friends alcohol, and showed him how to use methamphetamine. (PSI, pp.16-17.) When contacted by the presentence investigator, Mr. Ford's father acknowledged his own addiction problems, and stated that he is now clean, and he got away from "meth" and "so-called friends" about fifteen years ago. (PSI, p.5.) Mr. Ford explained that he never got in trouble with his grandparents and was allowed to do whatever he wanted. (PSI, pp.16-17.) He said that even when he skipped and then dropped out of school, the worst his grandparents did was express their disappointment in him. (PSI, p.17.) His mother would even reward him for bad behavior – buying him ice cream or material items when he would get into trouble at school or with the law. (PSI, p.17.)

[REDACTED] Mr. Ford had his first run-in with the law at [REDACTED]. (PSI, p.14.) He began regularly using drugs and alcohol at [REDACTED]. (PSI, p.21.) The impact of substance 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). Mr. Ford reported that his mother first showed him how to use methamphetamine when he was [REDACTED] (PSI, pp.16-17, 21.) He eventually dropped out of school after the eighth grade because he “got into drugs.” (PSI, p.19.)

Despite being in prison, Mr. Ford reported that he still used drugs and alcohol on a regular basis. (PSI, pp.4, 21, 36-37, 39-40.) He has acknowledged that his involvement with drugs has caused problems in his life and stated: “Problems with cops, and cause my family hurt/pain.” (PSI, p.21.) He further acknowledged that he has difficulty maintaining full time or steady employment because his drug use has gotten in the way. (PSI, p.20.) Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). Mr. Ford indicated he wants to stop using drugs because “it has started [taking] over,” and he feels like inpatient treatment would help him remain drug free. (PSI, p.21.) He also stated that he thinks he would benefit from a mental health evaluation and/or counseling to assist him with “bottled up” emotions, and due to losing his mother and grandfather. (PSI, p.21.)

Mr. Ford has owned up to his behavior and taken responsibility for his actions. After being charged in this case, Mr. Ford went to the Parole Board and stated that for the first time, he really cared about what happened. (10/21/20 Tr., p.13, Ls.11-20.). He noted that he put significant effort and time into completing the presentence investigation packet, and tried to be more open and honest than he has been in the past. (10/21/20 Tr., p.13, Ls.11-20; PSI, p.4.) When asked by the Parole Board if he deserved to be released, he said, “Well jeez, you know, based upon the conduct, the things that I have just done recently, maybe I don’t.” (10/21/20 Tr., p.14, Ls.2-12.). His trial counsel noted that he took responsibility for everything and

expressed that he felt bad about what he did. (10/21/20 Tr., p.16, Ls.11-21.) Even the officer that Mr. Ford punched stated that he had no previous behavior issues from Mr. Ford, and their interactions had always been cordial and positive. (PSI, p.2.) In his most recent PSI, the presentence investigator noted that Mr. Ford was respectful and articulate. (PSI, p.6.) He spoke about people outside of prison that he cares about, and his desire to change. (PSI, p.6.) In an effort to change his ways, Mr. Ford has distanced himself from the Aryan Knights, stating that his moment of clarity came when he was ordered to beat up someone he had known all his life and cared about, and he decided he could no longer follow orders. (PSI, p.4.) Upon his release, he stated that he plans to start going to narcotics anonymous meetings and begin treatment at Tamarack in Sandpoint. (PSI, p.5.)

Notwithstanding his severe drug addiction, Mr. Ford continues to have the support of his family. The Idaho Supreme Court noted in *State v. Shideler*, 103 Idaho 593, 594 (1982), that family and friend support were factors that should be considered in the court's decision as to what is an appropriate sentence. *Id.* He stated that he is close to his grandmother and calls her on a weekly basis. (PSI, p.5.) Upon his release, he plans to live with his grandmother and aunt, and help take care of his grandmother. (PSI, p.5.) Although he has had no contact with Mr. Ford, his father told the presentence investigator that he hopes to one day know his oldest son, and he is open to Mr. Ford calling him. (PSI, p.5.)

Despite Mr. Ford's troubled childhood and significant drug addiction, he has demonstrated a willingness to try to change his behavior. Mr. Ford has acknowledged that his drug addiction has caused problems in his life, and he has taken responsibility for his actions. He indicated that he wants to remain sober and get treatment for his addiction. In an effort to

change, Mr. Ford decided to distance himself from his affiliation with the Aryan Knights. He also has a place to live upon release, and still maintains a positive relationship with his family.

Proper consideration of these mitigating factors supported a more lenient sentence. In light of these facts, Mr. Ford submits that the district court did not exercise reason, and thus abused its discretion, by sentencing him to five years, with one and a half years fixed, to run consecutively to any other sentences he is currently serving.

CONCLUSION

Mr. Ford respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 11th day of February, 2021.

/s/ Kiley A. Heffner
KILEY A. HEFFNER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2021, 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/ Kylie M. Fourtner
KYLIE M. FOURTNER
Administrative Assistant

KAH/kmf