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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48574-2021
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-20-22541
v.)	
)	
AMY ROSE BONNING)	APPELLANT'S BRIEF
AKA INGRAM,)	
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Amy Bonning appeals from her judgment of conviction for possession of a controlled substance with intent to distribute. After Ms. Bonning pleaded guilty to that charge, the district court imposed a sentence of six years, with two years determinate. Ms. Bonning filed an Idaho Criminal Rule 35 motion, which the district court denied. Ms. Bonning now appeals. On appeal, she argues the district court abused its discretion twice: when it imposed an excessive sentence and when it denied her Rule 35 motion.

Statement of the Facts & Course of Proceedings

Ms. Bonning was on probation when officers came to her home in response to reports of vandalism. (Sent. Tr., p.13, Ls.2-10.) Officers conducted a search of her home and found a baggie containing methamphetamine and various drug paraphernalia. (Sent. Tr., p.13, L.22 – p.14, L.13.) Ms. Bonning was charged with felony possession of a controlled substance with intent to distribute and misdemeanor possession of drug paraphernalia. (R., pp.8, 19.)¹ Pursuant to a plea agreement, Ms. Bonning entered an *Alford*² plea to the felony (Plea Tr., p.15, Ls.9-11) and the State dismissed the misdemeanor. (R., p.32) At the sentencing hearing, the State recommended a sentence of ten years, with three years determinate, and retained jurisdiction. (Sent. Tr., p. 20, Ls.14-17.) Ms. Bonning requested a suspended sentence of five years, with two years determinate. (Sent. Tr., p 25, Ls.7-10.) The district court imposed a sentence of six years, with two years determinate, and did not retain jurisdiction. (Sent. Tr., p.31, Ls.7-12.)

Ms. Bonning filed a Rule 35 motion, requesting the court reconsider her sentence and reduce it to five years, with two years determinate and retain jurisdiction. (R., p.76; Aug. R.³, pp.1-14.) The district court denied Ms. Bonning's motion. (Aug. R., pp.15-16.) Ms. Bonning timely filed a notice of appeal from both the judgment of conviction and the order denying her Rule 35 motion. (R., pp.65-67, 71-72; Aug. R., pp.15-16.)

ISSUES

- I. Whether the district court abused its discretion by imposing a sentence of six years, with two years determinate, upon Ms. Bonning following her plea of guilty.

¹ An Amended Complaint was filed; however, the only change was the addition of her alias. (*Compare* R., p.8 *with* R. p.19.)

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

³ A Motion to Augment Record has been filed contemporaneously with this brief along with Ms. Bonning's "Supplement to Defendant's Motion for Reconsideration of Sentence" and the district court's "Order Denying Motion for Reconsideration of Sentence."

II. Whether the district court abused its discretion when it denied Ms. Bonning’s Idaho Criminal Rule 35 Motion for a reduction of sentence.

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed An Excessive Sentence Upon Ms. Bonning Following Her Plea Of Guilty To Felony Possession Of A Controlled Substance With Intent To Deliver

Ms. Bonning asserts that, given any view of the facts, her unified sentence of six years, with two years determinate, 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 and consider the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771, 772 (Ct. App. 1982).

“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)). In determining if an abuse of discretion occurred, appellate review centers on 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. Bodenbach*, 165 Idaho 577, 591 (2019).

Here, Ms. Bonning’s sentence does not exceed the statutory maximum. *See* I.C. § 37-2732(a)(1)(A) (maximum life sentence). Accordingly, to show the sentence imposed was unreasonable, Ms. Bonning “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).

“‘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).

Ms. Bonning asserts that, given any view of the facts, her unified sentence of six years, with two years determinate, is excessive. The district court did not exercise reason and therefore abused its discretion because the mitigating factors show that Ms. Bonning’s sentence was objectively unreasonable.

Ms. Bonning’s childhood was immersed in trauma. 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). Ms. Bonning grew up in the presence of substance abuse, witnessed physical and emotional abuse, often spending her summers homeless when the weather was conducive to outdoor camping because the family could not afford utilities. (Conf. Ex. R., pp.60-61, 84-86.) At a young age, she acted as the parent, raising her younger siblings and cousins. (Conf. Ex. R., pp.60-61.) Ms. Bonning—practically a child herself—had her first two children before she was [REDACTED] (Conf. Ex. R., p.87.)

Ms. Bonning suffered adult trauma as well. As an adult, Ms. Bonning was in a physically abusive relationship, resulting in head injuries (Conf. Ex. R., p.61) and scored very high on the generalized victimization scale. (Conf. Ex. R., p.29.) She also suffered further head trauma from an accident. (Conf. Ex. R., p.61.) In addition, she has had medical problems throughout her life, and has been hospitalized numerous times. (Conf. Ex. R., p.61.)

Ms. Bonning's mental health is also a significant mitigating factor. Idaho Code § 19-2523 requires the sentencing court to consider the defendant's mental health condition if it is a significant factor, and the record must show that the sentencing court adequately considered this factor when imposing a sentence. I.C. § 19-2523; *State v. Delling*, 152 Idaho 122, 132–33 (2011). While Ms. Bonning developed normally at first, her learning development began to slow at a young age. (Conf. Ex. R., p.60.) Ms. Bonning struggled in school, repeating the seventh-grade multiple times. (Conf. Doc. R., p.83.) She eventually dropped out when she became pregnant with her first child. (Conf. Ex. R., p.65.) Ms. Bonning's mental health assessment reveals that she suffers from severe bipolar II disorder⁴ with psychotic features, posttraumatic stress disorder (PTSD), and mild cognitive impairment. (Conf. Ex. R., pp.77, 83-84.) Ms. Bonning has had numerous psychological evaluations and has repeatedly requested assistance with her mental health issues from staff at the Ada County Jail. (Conf. Ex. R., p.61.) Ms. Bonning's cognitive impairment specifically affects her logical thinking, judgment, risk-taking, and mood regulation. (Conf. Ex. R., p.81.) Ms. Bonning has never addressed her mental health issues, but is now ready and recognizes she needs help. (Sent. Tr., p.25, Ls.22–26.)

⁴ The functional consequences of bipolar II disorder include: “poorer occupational performance, higher unemployment, difficulties in relationships and cognitive impairment,” and poor insight into one's behavior. (Conf. Doc. R., p.80.) “[T]he severity of the disorder ebbs and flows although the presence of pervasive depression is common.” (Conf. Doc. R., p.80.)

In addition to mental health issues, Ms. Bonning has substance abuse issues. Though not an excuse, Ms. Bonning had difficulty accepting her mental health condition and used drugs because they “make her feel normal.” (Conf. Ex. R., pp.75-76.) 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). Exposed to substance abuse as a young child, it is no wonder that Ms. Bonning began her own venture into illicit drug use in her teens. (Conf. Ex. R., p.16.) Due to emotional and mental abuse, Ms. Bonning often self-medicated with illegal substances. (Conf. Ex. R., p.62.) While her substance abuse may exacerbate her mental health issues (Conf. Ex. R., p.72), her mental health assessment indicates incarceration will further worsen her mental health issues. (Conf. Ex. R., p.72.) Ms. Bonning knows she needs help; however, incarceration may not provide the help she needs. Rather it will likely aggravate Ms. Bonning’s anxiety, PTSD symptoms, and thought disorganization, “and lead to worsening of her mental condition” (Conf. Ex. R., pp.72, 80.)

Ms. Bonning contends the combination of mitigating factors warranted a more lenient sentence. Therefore, she submits the district court did not exercise reason, and thus abused its discretion, by imposing an excessive sentence.

II.

The District Court Abused Its Discretion When It Denied Ms. Bonning’s Rule 35 Motion For A Reduction Of Sentence

If a sentence is within the statutory limits, then the request for a sentence reduction pursuant to Rule 35 is a plea for leniency and is reviewed for an abuse of discretion. *State v. Huffman*, 144 Idaho 201, 203 (2006). As noted above, in determining if an abuse of discretion occurred, appellate review centers on 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.” *Bodenbach*, 165 Idaho at 591. “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.” *Huffman*, 144 Idaho at 203.

In support of her Rule 35 motion, Ms. Bonning submitted documentation of her commitment to rehabilitation, including an email exchange regarding her programming (Aug. R., p.2), two letters from the Ada County Sherriff’s officer stating Ms. Bonning successfully completed programing (Aug. R., pp.5, 7), two certificates of program completion (Aug. R., pp.6, 8), transcripts of programming Ms. Bonning has completed since her incarceration (Aug. R., pp.9-14), and a flyer with notes regarding mental health services after completing an inpatient program. (Aug. R., p.4.) In addition, Ms. Bonning submitted her Initial Classification Score Sheet from Idaho Department of Corrections, which rated her offense as low severity requiring minimal supervision. (Aug. R., p.3.)

Ms. Bonning is dedicated to managing her mental health and taking an active role in her rehabilitation as evidenced by her performance while incarcerated. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008) (recognizing willingness to seek treatment as mitigating factor). Ms. Bonning argues this new and additional information warranted a more lenient sentence. This is particularly true when this information is viewed in combination with the abundance of mitigating evidence present at the initial sentencing.

Ms. Bonning submits that in light of the additional information provided to the court, the district court failed to exercise reason, and therefore abused its discretion, by denying her Rule 35 motion.

CONCLUSION

Ms. Bonning respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she requests that her case be remanded to the district court for a new sentencing hearing.

DATED this 1st day of July, 2021.

/s/ Emily M. Joyce
EMILY M. JOYCE
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 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/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

EMJ/eas