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State v. Golden Appellant's Brief Dckt. 46751

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 46751-2019**
Plaintiff-Respondent,	)	
	)	**SHOSHONE CO. NO. CR-2018-347**
v.	)	
	)	
BRIAN MATTHEW GOLDEN, SR.,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

HONORABLE SCOTT WAYMAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

After a jury trial, Mr. Golden was found guilty of two counts of possession of a controlled substance. The district court subsequently imposed two concurrent sentences of five years, with two years fixed. Mr. Golden filed an Idaho Criminal Rule 35 ("Rule 35") motion requesting leniency, but the district court denied the motion after a hearing. On appeal, he asserts the district court abused its discretion when it failed to redline incorrect information in the Presentence Report, imposed excessive sentences, and denied his Rule 35 motion.

Statement of the Facts and Course of Proceedings

In January of 2018, a Shoshone County Sheriff's Deputy assisted a probation officer and a health and welfare case worker to conduct a probation and welfare check on Crystal Baldwin. (Presentence Report (PSI), p.7.)[1] When the officers arrived, Ms. Baldwin said she was living in a bedroom with Mr. Golden. (PSI, p.7.) When the officers went to that bedroom, they discovered drug paraphernalia, baggies with methamphetamine residue, and a baggie in the toilet with methamphetamine inside it. (PSI, pp.7-8.) Subsequently, Mr. Golden was charged, by Information, with two counts of possession of a controlled substance. (R., pp.70-71.)[2] After a jury trial, Mr. Golden was found guilty of both counts. (Tr., p.190, Ls.5-19; R., p.208.)[3]

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[1] Citations to the PSI refer to the 54-page electronic document.

[2] The Clerk's Record for this case is split into two volumes. However, the pagination at the bottom of the pages is consistent from one volume to the next. For ease of reference, pages 1-200 are contained in Volume 1, and pages 201-248 are contained in Volume 2. The appellate record also contains a 48-page Clerk's Record for Case No. CR-2018-133; that case was consolidated with this case prior to the trial. (R., p.62.)

[3] Citations to the transcript refer to the 234-page electronic document, which includes the trial and the sentencing hearing. Citations to the transcript from the R35 hearing will begin with the date of that hearing as follows: "10/9/19 Tr."

At the sentencing hearing, the district court asked if there were any corrections to the PSI, and Mr. Golden's attorney pointed out that several corrections were necessary, and the district court said, "Just let me know which page so I can note the changes on the record." (Tr., p.202, Ls.21-25.) Mr. Golden's attorney identified several errors with the PSI; most importantly, he said there was a charge of attempted murder in the PSI, which was not accurate because Mr. Golden had never been charged with attempted murder. (Tr., p.203, L.1 – p.205, L.2.) After looking up the case, the prosecutor confirmed to the court that the charge should not have been listed on Mr. Golden's PSI as it was actually attributed to a "Brian Scott Golden." (Tr., p.205, Ls.12-19.) Nevertheless, the PSI contained in the appellate record contains no redlining of that charge, or the other corrections defense counsel requested.

The prosecutor then noted that Mr. Golden had persevered through a "difficult childhood" and "spent the better part of the last twenty years caring for his mother" but nevertheless recommended that the district court impose a sentence of seven years for each of the two counts "in light of his long criminal history." (Tr., p.205, L.22 – p.210, L.16.) Mr. Golden's attorney pointed out that Mr. Golden was interested in seeking substance abuse treatment and requested that the district court consider placing him on probation or retaining jurisdiction. (Tr., p.212, L.10 – p.213, L.16.) The district court ultimately imposed two concurrent sentences of five years, with two years fixed. (Tr., p.216, Ls.14-22; R., pp.207-12.) Mr. Golden filed a notice of appeal timely from the district court's judgment of conviction. (R., pp.227-29.)

On the same day, Mr. Golden filed an Idaho Criminal Rule 35 motion requesting leniency. (R., p.225.) Multiple letters in support of the motion were subsequently submitted to

the district court. (Augmentation, pp.1-7.)[4] Seven months later, the district court held a hearing on the motion but ultimately denied the motion. (*See* 10/9/19 Tr., generally; Augmentation, p.8.)

[4] A motion to augment the record with the letters of support, and the district court's order denying Mr. Golden's Rule 35 motion, is filed contemporaneously with this brief.

ISSUES

I. Did the district court abuse its discretion by failing to redline the parts of the PSI that defense counsel pointed out were erroneous?

II. Did the district court abuse its discretion when it imposed two concurrent sentences of five years, with two years fixed, following Mr. Golden's convictions for two counts of possession of a controlled substance?

III. Did the district court abuse its discretion when it denied Mr. Golden's Rule 35 motion?

ARGUMENT

I.

The District Court Abused Its Discretion By Failing To Redline The Parts Of The PSI That Defense Counsel Pointed Out Were Erroneous

In noting various errors with the information in the PSI, defense counsel specifically referenced the fact that the PSI stated Mr. Golden was unemployed; there was an erroneous attempted murder charge listed under his prior record; the PSI had duplicate charges for the same offense because it listed the charges from the consolidated case also, and the investigator referenced that as a "pending felony charge"; the PSI inaccurately reported Mr. Golden's drinking habits; and it inaccurately reported that Mr. Golden did not think substance abuse treatment was necessary; and the PSI writer misunderstood his sense of humor. (Tr., p.203, L.1 – p.205, L.2.) With respect to the erroneous attempted murder charge, the prosecutor confirmed that it was wrong because it was attributed to a different Brian Golden. (Tr., p.205, Ls.12-19.) While the district court requested that Mr. Golden's attorney specify the page numbers of the PSI that contained the errors, so it could "note the changes on the record," it did not redline any section of the PSI contained in the record on appeal. (Tr., p.202, Ls.21-25; *see* PSI generally.)

"A district court's denial of a motion to strike or delete portions of a PSI is reviewed on appeal for an abuse of discretion." *State v. Molen*, 148 Idaho 950, 961 (Ct. App. 2010). A district court abuses its discretion when: (1) it fails to recognize the issue as one of discretion; (2) it acts beyond the outer bounds of its discretion; (3) it acts inconsistently with the applicable legal standards, or (4) it reaches its decision without exercising reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863-64 (2018). In *Molen*, the Court of Appeals addressed a similar situation to this one and held that, while the district court correctly refused to consider the unreliable information, it still committed reversible error by not striking that information from the PSI.

Molen, 148 Idaho at 961. Therefore, the court remanded the case so the district court could strike unreliable information from the PSI and "send a corrected copy to the Department of Correction." *Id.* at 962; *see also State v. Mauro*, 121 Idaho 178, 183 (1991). (remanding the case so that a corrected PSI could be obtained).

The reason that erroneous information needs to be stricken from the PSI is that "the use of a PSI does not end with the defendant's sentencing. The report goes to the Department of Correction[] and may be considered by the Commission of Pardons and Parole in evaluating the defendant's suitability for parole. In addition, if the defendant reoffends, any prior PSI is usually presented to the sentencing court with an updated report from the presentence investigator." *State v. Rodriguez*, 132 Idaho 261, 262 n.1 (Ct. App. 1998). Moreover, "the timeframe for alterations of the report is explicitly tied to the sentencing hearing; it is at the sentencing hearing—and not beyond—that the defendant is given the opportunity to object to its contents." *State v. Person*, 145 Idaho 293, 296 (Ct. App. 2007). That means "a district court's authority to change the contents of a PSI ceases once a judgment of conviction and sentence are issued." *Id.* Therefore, this one and only opportunity to correct the PSI needs to be employed, since "a PSI follows a defendant indefinitely, and information inappropriate included therein may prejudice the defendant even if the initial sentencing court disregarded such information." *Rodriguez*, 132 Idaho at 262 n.1.

This rule does not mean that the district court is required to redline every point which a defendant challenges. *See, e.g., State v. Carey*, 152 Idaho 720, 722 (Ct. App. 2012). It does, however, mean that, "where the trial court was rejecting information in the PSI as unfounded or unreliable, it is insufficient to simply disregard the information at sentencing and, instead, the

court should also redline it from the PSI so that this information could not prejudice the defendant in the future." *Id.*

In this case, it is clear the district court was aware of the problems as it confirmed it heard each of defense counsel's statements. (Tr., p.203, L.1 – p.205, L.5.) And since the prosecutor also confirmed at least one error that defense counsel discussed, the issue was clearly argued to the district court and thus it is preserved for appeal. *See State v. DuValt*, 131 Idaho 550, 553 (1998) (citation omitted) (noting that when an issue was "argued to or decided by the trial court," it may be raised for the first time on appeal). Despite this, however, for some reason the district court neglected to redline the PSI. As such, it did not act consistently with the applicable legal standards. Therefore, as in *Molen* and *Mauro*, this case should be remanded so that Mr. Golden's PSI can be corrected.

II.

The District Court Abused Its Discretion When It Imposed Two Concurrent Sentences Of Five Years, With Two Years Fixed, Following Mr. Golden's Convictions For Two Counts Of Possession Of A Controlled Substance

Given the facts of this case, Mr. Golden's concurrent sentences of five years, with two years fixed, are excessive because they are not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, this 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." *State v. McIntosh*, 160 Idaho 1, 8 (2016). In such a review, the Court "considers the entire length of the sentence under an abuse of discretion standard." *Id.* An appellate court conducts a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. It considers 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).

"When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *McIntosh*, 160 Idaho at 8 (quoting *State v. Hooper,* 119 Idaho 606, 608 (1991)). Unless it appears that the length of the sentence is "necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution," the sentence is unreasonable. *Id.* When a sentence is excessive "considering any view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Mr. Golden's sentences are excessive under any reasonable view of the facts. First, Mr. Golden endured a very difficult childhood. He reported that he was exposed to and started drinking alcohol when he was only nine years old. (PSI, pp.19, 23.) He also stated that his first interaction with law enforcement was also when he was just nine years when he was caught with chewing tobacco. (PSI, p.18.) Not long after that, he started using marijuana. (PSI, p.19.) He dropped out of school when he was 14 or 15—after completing eighth grade—and his parents divorced shortly thereafter. (PSI, pp.19.) He said that event changed his life forever, and he thought it was his fault. (PSI, p.19.) After the divorce, he acknowledged that he had a very hard time coping with "everyday life," and he ultimately was sent to a juvenile correctional center for seven months after his father, and a judge deemed him to be uncontrollable. (PSI, pp.18-19.) However, he managed to earn his GED during that time. (PSI, pp.21-22.) A defendant's difficult childhood is a long-recognized mitigating factor. *See State v. Gonzales*, 123 Idaho 92, 93 (Ct. App. 1993).

Despite these problems in his youth, Mr. Golden now enjoys the support of his family; he has very good relationships with both his mother and father, and is a single father to his own two children. (PSI, pp.20-21.) Prior to his sentencing hearing, Mr. Golden's mother wrote a letter in support of Mr. Golden in which she stated that she needed his help in her home and with taking care of his children. (R., p.215.) Both his son and daughter also wrote letters to the court; they explained that they had never had a mother figure in their lives, and while Mr. Golden was not perfect, they loved him very much and needed him in their lives. (R., pp.217-18.) A defendant's family support should also be considered as mitigating information. *State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing sentence of defendant who, *inter alia*, had the support of his family and his employer).

Another letter submitted to the district court showed that Mr. Golden also had the support of his employer. (R., p.213.) The owner of Silver Valley Residential Cleaning wrote a letter asking the district court consider the work release program for Mr. Golden because he "was a great asset to [her] business" and she had "not been able to find a replacement for him that is dependable, responsible and able to work with little supervision as Brian was." (R., p.213.) She went on to comment that one of the things she "greatly appreciated" about Mr. Golden was he always showed up to "work early to help us load up the equipment even though he wasn't on the clock yet." (R., p.213.) A defendant's positive employment history is yet another factor that supports a lesser sentence. *State v. Mitchell*, 77 Idaho 115, 118-19 (1955) (finding that it was error for the court to fail to consider, *inter alia*, a defendant's gainful employment in determining the appropriate sentence).

Mr. Golden asserts that the district court failed to adequately consider all of the mitigating information in this case, and that his sentence was not necessary to achieve the goals

of sentencing. If Mr. Golden was placed on probation or given a shorter sentence, there is no indication he would pose a danger to society. While the district court found there was "some merit" in his attorney's suggestion that he be allowed to engage in substance abuse treatment, it ultimately stated—based on his prior convictions apparently—that "society demands to be protected from somebody who keeps breaking the law." (Tr., p.216, Ls.6-10.) However, it did not specify how Mr. Golden posed any imminent danger to society. Probation or a shorter sentence would also ensure that there was significant deterrence and retribution in this case. As defense counsel pointed out, Mr. Golden had already served a significant period of time in the county jail by the time he was actually sentenced. (Tr., p.212, Ls.23-24.) Finally, if Mr. Golden had an opportunity for treatment sooner rather than later, he could pursue meaningful and effective rehabilitation to overcome his substance abuse issue. This should have been the main goal of sentencing in this case, particularly in light of Mr. Golden's willingness to engage in treatment. Indeed, given the facts of this case, the district court failed to reach its sentencing decision through an exercise of reason because Mr. Golden's extended sentences were not necessary and were thus unreasonable and an abuse of discretion.

III.

The District Court Abused Its Discretion When It Denied Mr. Golden's Rule 35 Motion

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* "If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of

new or additional information presented with the motion for reduction. *Id.* An appellate court conducts a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. It considers 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).

In this case, there was new information presented in the form of letters to the district court from Mr. Golden's aunt, his mother, his father, his son, and his daughter. (Augmentation, pp.1-7.) Mr. Golden's aunt wrote that she felt Mr. Golden had "changed his attitude" since being incarcerated, and she had noticed a "big change' in him. (Augmentation, p.1.) She also commented on the fact that, while Mr. Golden's mother was trying to raise his children, it was "way too much" for her "do it all" at almost [redacted] (Augmentation, p.1.)

Mr. Golden's mother actually submitted two letters to the district court—one in June of 2019, and one in September. (Augmentation, pp.3, 6.) In her letter dated September 10, 2019, she asked the court to have mercy on her as "raising two teenagers" on her own was proving to be very difficult. (Augmentation, p.6.) She also wrote that she had spoken with Mr. Golden many times since he was incarcerated, and she felt as though he sounded like a "complete different person" in part because he told her that he could not wait to get home to be with his kids, to work again, and to help her. (Augmentation, p.6.) She also said that she was on disability, and her finances were extremely tight. (Augmentation, p.6.) Finally, she wrote again that she and the children needed their father's support. (Augmentation, p.6.)

Mr. Golden's father also wrote a letter and stated that he spoke regularly with Mr. Golden, and he sounded "very sincere about changing his life for the better."

(Augmentation, p.7.) He also noted that Mr. Golden was working while incarcerated and had not had any disciplinary issues. (Augmentation, p.7.) At the hearing on the Rule 35 motion, defense counsel also explained to the district court that Mr. Golden had "no type of disciplinary issues since he's been in the IDOC." (10/9/19 Tr., p.5, Ls.13-14.)

All of this additional mitigating information supported a sentence reduction. *See State v. Barreto*, 122 Idaho 453, 455 (Ct. App. 1992) ("[I]n a Rule 35 hearing, the district court may consider facts presented at the original sentencing as well as any other information concerning the defendant's rehabilitative progress while in confinement."). Nevertheless, the district court said that it did not find any of the information rose "to the level of a reason to modify the sentence in this case." (10/9/19 Tr., p.6, Ls.15-22.) Mr. Golden asserts that, given the new information he presented, the district court abused its discretion when it denied his Rule 35 motion because it failed to reach its decision through an exercise of reason.

CONCLUSION

Mr. Golden respectfully requests that this Court remand this case so the erroneous information can be stricken from his PSI. He also requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that this Court reverse the district court's order denying his Rule 35 motion and remand this case for further proceedings.

DATED this 7th day of January, 2020.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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RPA/eas