

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 13-0988
)
 DONALD B.E. REED,)
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
HONORABLE TODD A. GEER, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 17th day of July, 2014, the undersigned certifies that a true copy of the foregoing instrument was served upon the Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Donald Reed, No. 6890001, Anamosa State Prison, 406 North High Street, P.O. Box 10, Anamosa, IA 52205-1199.

APPELLATE DEFENDER'S OFFICE



PATRICIA REYNOLDS
Assistant Appellate Defender

PR/lr/7/14

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

WAS THE DEFENDANT'S SENTENCE OF UP TO 100 YEARS FOR THE ENHANCED COCAINE OFFENSE CRUEL AND UNUSUAL PUNISHMENT BECAUSE IT WAS BASED ON A PRIOR CONVICTION THAT OCCURRED WHEN REED WAS AGE 17?

Authorities

Iowa Code section 124.411

State v. Bruegger, 773 N.W.2d 862, 884 (Iowa 2009)

State v. Thomas, ___ N.W.2d ___, ___, 2014 WL 2434595, 12-1491, May 30, 2014

STATEMENT OF THE CASE

COMES NOW the defendant-appellant, pursuant to Iowa R. App. 6.903(4), and hereby submits the following argument in reply to the plaintiff-appellee's brief.

ARGUMENT

THE DEFENDANT'S SENTENCE OF UP TO 100 YEARS FOR THE ENHANCED COCAINE OFFENSE WAS CRUEL AND UNUSUAL PUNISHMENT BECAUSE IT WAS BASED ON A PRIOR CONVICTION THAT OCCURRED WHEN REED WAS AGE 17.

Mr. Reed was denied the opportunity to present evidence that his enhanced sentence, based on a prior offense, which occurred when he was age 17, was cruel and unusual under the Iowa Constitution in that it was grossly disproportional to his alleged crime.

Because of his prior juvenile drug offense adjudication, the Court, the State, and defendant's lawyer all presumed that Reed was eligible for a tripling of his sentence, pursuant to Iowa Code section 124.411. (Trial Info.; Sent. Tr. P.1, L.1-P.16, L.10) (App. pp. 1-4, 171-190). Thus, Mr. Reed was sentenced without an evidentiary hearing as to whether a long sentence was grossly disproportional to his alleged crime.

But in State v. Bruegger, this Court held that defendants receiving an enhanced sentence, based on a juvenile adjudication, are entitled “to make an individualized showing that the sentence is cruel and unusual as applied to [them].” State v. Bruegger, 773 N.W.2d 862, 884 (Iowa 2009). Because Mr. Reed was denied the opportunity to make such an individualized showing, this Court should vacate his sentence and remand this case for resentencing.

The State has attempted to distinguish the situation of Mr. Reed, as compared to the facts of Bruegger. In fact, the State attempts to argue that the 100 year sentence imposed on Reed fails the threshold test for disproportionality. State’s Brief, PP.23-27. Thusly the State is improperly requesting that this court take over the function of the district court and decide on appeal that the sentence imposed is not illegally disproportionate.

The State also suggests that the district court did engage in an individualized assessment of the appropriate sentence for Reed at the sentencing hearing. State’s Brief, P.27-28.

At a separate hearing, Mr. Reed admitted that he had a prior felony drug offense from Wisconsin, manufacture or delivery of cocaine, with a conviction date of on or about May 8, 2003. Neither attorney, nor the judge mentioned the significance of the fact that Reed was age 17, when the prior crime occurred. (5/3/13 Tr. P.1, L.1-P.11, L.13) (App. pp. 146-158).

The court never held an evidentiary hearing to determine if doubling the sentence was cruel and unusual as applied to Mr. Reed. The court did not initiate one and neither the State nor the defendant's lawyer requested one. Reed never had the opportunity to challenge his enhanced sentence as cruel and unusual under Iowa's Constitution, as interpreted in Bruegger. Mr. Reed is entitled to challenge his enhanced sentence as cruel and unusual, as applied to him, under Iowa's Constitution. State v. Bruegger, 773 N.W.2d 862, 884 (Iowa 2009).

In reviewing the sentence in Bruegger, the Iowa Supreme Court held that a defendant receiving a sentencing enhancement is entitled to present evidence as to the

constitutionality of the enhancing statute as applied to the defendant, an individualized assessment of the punishment imposed should be permitted. State v. Bruegger, 773 N.W.2d 862, 884, 886 (Iowa 2009). A review by this court, as suggested by the State, would not be proper.

A recent decision by the Supreme Court of Iowa sheds light on this situation. In State v. Thomas, decided on May 30, 2014, a constructive possession of drugs case, the dissent by Justice Hecht notes that as of mid-year 2013, there were approximately 1,860 individuals incarcerated in Iowa for drug offenses as their most serious offense, citing a Division of Criminal and Juvenile Justice Planning document. The dissent also cites to the same document which describes that Iowa has had a historically high rate of African-American imprisonment and drug commitments, and quotes the document thusly: “The over-representation of African-Americans in the prison population has been an ongoing issue for Iowa.” State v. Thomas, ___ N.W.2d ___, ___, 2014 WL 2434595, 12-1491, May 30, 2014.

These principals should be considered in this court's decision to reject the State's suggestion that the sentence of up to 100 years was not cruel and unusual, when imposed on Mr. Reed, an African-American man who was age 27, when the instant offense was alleged to have been committed. (Trial Information, PSI, P.1) (App. pp. 1-4, 159).

The sentencing court in this case should have heard evidence of the underlying facts and circumstances of the prior offense. Evaluating Reed's cruel-and-unusual-punishment claim cannot be done without a proper record. Thus, the sentence of up to 100 years, effectively a life sentence hearing, at which the defendant will be allowed to present evidence as to the constitutionality of the enhancement statute, Iowa Code Section 124.411, as applied to Mr. Reed.

CONCLUSION

Defendant-Appellant Donald Reed respectfully requests that this court reverse all of his convictions and sentences, based on insufficiency of the evidence. In the alternative, Mr. Reed respectfully requests that trial counsel be found ineffective, and that he be granted a new trial on that basis.

Mr. Reed also respectfully requests that the sentence of up to 100 years be vacated and that the matter be remanded for a new sentencing hearing to evaluate his cruel and unusual claim in the light of the enhanced sentence based on a prior offense which occurred when Mr. Reed was age seventeen.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Reply Brief and Argument was \$ 1.18, and that amount has been paid in full by the Office of the Appellate Defender.

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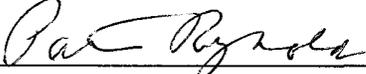
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