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State v. White Appellant's Brief Dckt. 38473

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 LARRY JASON WHITE,)
)
 Defendant-Appellant.)
 _____)

NO. 38473

APPELLANT'S BRIEF

COPY

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**

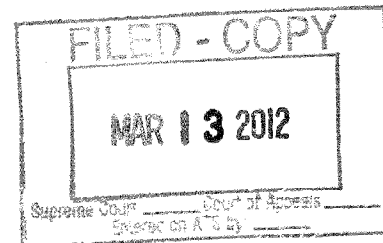
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STATEMENT OF THE CASE

Nature of the Case

Larry White appeals from the district court's Judgment and Sentence in which the court sentenced him to a unified term of five years, with one and one-half years fixed, following a jury verdict finding him guilty of burglary.¹ Prior to sentencing, the district court was provided information that Mr. White suffered mental health problems and had reason to believe that these conditions would be a significant factor at sentencing; however, no mental health evaluation was ordered. Mr. White asserts that the district court erred in failing to abide by the mandatory requirement of ordering a mental health evaluation pursuant to Idaho Code § 19-2522.

Statement of the Facts and Course of Proceedings

The State filed a complaint alleging that Larry White committed the crimes of burglary and petit theft. (R., pp.5-6.) Mr. White was alleged to have entered an antique store in Wallace, Idaho, with his girlfriend Dawn Humphrey, and while Ms. Humphrey distracted a clerk, Mr. White shoplifted a mink shawl. (R., pp.7-23.) A preliminary hearing was held, Mr. White was bound over into the district court, and an Information was filed charging him with the above crimes. (R., pp.36-43.) Mr. White and Ms. Humphrey's cases were consolidated for trial. (R., p.110.)

During trial, Mr. White testified that when he entered the antique store, he did not have any intent to steal anything; however, once he was in the shop, he decided to steal

¹ Mr. White was also found guilty of petit theft and sentenced to a concurrent term of 90 days in jail. (R., pp.202-205.) Mr. White does not challenge his conviction or sentence in the petit theft charge in this appeal.

the mink shawl and to give it to Ms. Humphrey as a gift.² (Tr. 10/20/10, p.279, L.21 – p.288, L.8.) Mr. White testified that he has suffered four strokes in the past and has been prescribed Klonopin due to suffering from post-traumatic stress disorder. (Tr. 10/20/10, p.284, L.22 – p.286, L.12.) The jury found Mr. White guilty of both charges. (R., p.152.)

Mr. White cooperated with the Presentence Investigation Report (*hereinafter*, PSI) Writer, and wrote the following,

I was involved in a lawsuit in Montana that led the Governor & Supreme Court along with several district court Judges were sued in their official capacity. As a direct result of the suit. The state of Mt put a contract hit on me. I spent the past five years of my life with repeated attempts on my life. After talking too the FBI and US Marshals office in Missoula, the FBI told me I should move when I had the oppurtonity. I did rent, paid for a rent a car. I was gonna move to Courdelan & make a fresh start. During the course of moving my stuff my mother died coupled with the events described above (sic).

(PSI, p.2.) In addition to admitting shame for what he had done, Mr. White recognized that he has “poor impulse control” and that he needs to enroll in mental health counseling to deal with his problems. (PSI, pp.2-3.) Mr. White continued, “Also being the victim of a capital crime. I never want to victimize anybody in any form (sic).” (PSI, p.3.)

Attached to the PSI was a letter written by Dr. Robert Shea, PhD., a Clinical and Forensic Psychologist who evaluated Mr. White's competency to proceed in a Montana

² The district court granted the State's motion to present evidence pursuant to Idaho Rule of Evidence 404(b) that Mr. White had stolen a tea pot from an antique store in Coeur d'Alene while Ms. Humphrey sold a plate to the owner, a few days prior to the incident in the case at hand, and that Ms. Humphrey tried to sell the same tea pot to a clerk while Mr. White stole the shawl in the case at bar. (Tr. 10/4/10, p.72, L.1 – p.110, L.4; Tr. 10/18/10, p.113, L.7 – p.114, L.11.) Mr. White testified that he entered the Coeur d'Alene antique store with no intent to steal, but decided to take the tea pot when the owner offered a very low price for the plate Ms. Humphrey offered for sale. (Tr. 10/20/10, p.270, L.23 – p.279, L.12.)

case in November of 2008. (PSI Attachment: Letter from Dr. Shea.) Notably, Dr. Shea indicated that he had reviewed extensive medical and psychiatric records (that were not attached to his letter or the PSI in this case), that Mr. White has been on disability since 1995, and that he has suffered “four significant strokes and residuals of the traumatic brain injury are in evidence today.” (PSI, Attachment: Letter from Dr. Shea, pp.1-2.) Dr. Shea noted a working diagnosis of PTSD as a result of “significant physical, sexual and emotional trauma as a child.” (*Id.* at p.2.) Dr. Shea also noted that “Mr. White has, on occasions, experienced a delusional system.” *Id.* at p.3. Mr. White was ultimately found to be improving at that time and Dr. Shea opined that he was fit to proceed. *Id.* The PSI writer observed, “Although the Defendant was given an evaluation in 2008 for his mental health competency, he may benefit from another evaluation to determine if he has cognitive issues that may affect his rehabilitation.” (PSI, p.12.)

During the sentencing hearing, counsel for Mr. White asked the district court if Dr. Shea’s report, as mentioned by the PSI writer, was attached to the PSI to which the court responded, “I don’t think so. No.” (Tr. 12/20/10, p.326, Ls.12-18.) Although the district court recognized that Mr. White’s mental health contributes to his criminal behavior, the court stated that “several years of being a thief. And that really simply needs to be dealt with at some point. And you’ve reached that point.” (Tr. 12/20/10, p.339, Ls.8-17.) The district court sentenced Mr. White to a unified term of five years, with one and one-half years fixed for the burglary charge, to run concurrently with a sentence imposed in an unrelated possession of a controlled substance case. (R., pp.202-205; Tr. 12/20/10, p.325, L.15 – p.326, L.6, p.340, L.3 – p.341, L.5.) Mr. White filed a timely Notice of Appeal. (R., pp.208-211.)

ISSUE

Did the district court err in failing to order a mental health evaluation pursuant to I.C. § 19-2522, as the court had reason to believe that Mr. White's mental health condition would be a significant factor at sentencing, and was the error harmless?

ARGUMENT

The District Court Erred By Failing To Order A Mental Health Evaluation Pursuant To I.C. § 19-2522, As The Court Had Reason To Believe That Mr. White's Mental Health Condition Would Be A Significant Factor At Sentencing, And The Error Was Not Harmless

A. Introduction

The district court had information that Mr. White had long suffered mental health issues, both physical by way of four strokes, and mental by way of past traumatic experiences, resulting in delusional thinking and impulse problems, and the court should have recognized that this condition would be a significant factor at sentencing. The court failed, however, to abide by the plain language of Idaho Code § 19-2522 by failing to appoint a licensed psychologist or psychiatrist to examine Mr. White and provide a report meeting the requirements of I.C. § 19-2522(3). Because the information provided to the district court did not otherwise meet the requirements of 19-2522(3), this Court should vacate Mr. White's sentence and remand his case for further proceedings.

B. The District Court Erred By Failing To Order A Mental Health Evaluation Pursuant To I.C. § 19-2522 As The Court Had Reason To Believe That Mr. White's Mental Condition Would Be A Significant Factor At Sentencing

Idaho Code § 19-2522(1) reads, in relevant part, as follows:

If there is reason to believe the mental condition of the defendant will be a significant factor at sentencing and for good cause shown, the court **shall appoint** at least one (1) psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant.

I.C. § 19-2522(1) (emphasis added). The Idaho Supreme Court has recognized that the decision to order an evaluation pursuant to I.C. § 19-2522 may be discretionary in some circumstances; however, where the defendant's mental health condition will be a significant sentencing factor, the statute mandates that the district court order a 19-2522 evaluation. *State v. Hanson*, ___ Idaho ___, 2012 Opinion No. 10, pp.4-5 (January 6,

2012) (citations omitted). By the plain language of the statute itself, the obligation to order an evaluation is upon the sentencing court and is not dependent upon a request from either the State or the defendant. I.C. § 19-2522(1).³ The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the defendant and others; (3) the possibility of the defendant's rehabilitation; and (4) punishment or retribution for wrongdoing. *State v. Strand*, 137 Idaho 457, 460-61 (2002) (citing *State v. Howard*, 135 Idaho 727 (2001).)

Ms. White asserts that the district court had reason to believe that his mental health issues would be a significant factor at sentencing; specifically, there was reason to believe that his mental condition played a significant role in the crime that he committed and would also have a direct impact on his rehabilitative potential. The court heard Mr. White's testimony that he stole the mink shawl on impulse. (Tr. 10/20/10, p.279, L.21 – p.288, L.8.) While the court was under no obligation to believe this testimony (as the jury clearly disbelieved it), the court was provided with additional information that would have made his testimony more believable. The court had information that Mr. White had suffered four prior strokes and suffers from PTSD, that he has demonstrated delusional thinking, and that he lacks impulse control. (PSI, pp.2-3; PSI Attachment: Letter from Dr. Shea.) Mr. White himself demonstrated what the

³ In contrast to the plain language of I.C. § 19-2522 placing the burden of the court, the plain language Idaho Code § 19-2523 requires the district court to receive evidence of the defendant's mental condition only "if offered," indicating that the duty in the first instance belongs to defense counsel to offer such evidence under that statute. I.C. § 19-2523. Despite the plain language of I.C. § 19-2522, the Idaho Court of Appeals has developed a jurisprudence requiring a defendant to demonstrate that the district court showed "manifest disregard" for Idaho Criminal Rule 32 in failing to *sua sponte* order a 19-2522 evaluation. See generally *State v. Rollins*, 152 Idaho 106 (Ct. App. 2011). Because this appeal is filed in the Idaho Supreme Court and because the Idaho Supreme Court has never adopted the "manifest disregard" of I.C.R. 32 jurisprudence, Mr. White will make no further reference to that standard in this brief.

district court should have deemed to be delusional behavior by claiming that he was on the run, at the encouragement of the FBI and US Marshall's service, from some unknown conspirators working for the State of Montana, who put out a contract on his life because of his involvement in a lawsuit. (PSI, p.2.)

The PSI writer noted that Mr. White may benefit from a new mental health evaluation "to determine if he has cognitive issues that may affect his rehabilitation" (PSI, p.12), which should always be a significant factor at sentencing where the crime is relatively minor. See *State v. Strand*, 137 Idaho 457, 460-61 (2002) (citing *State v. Howard*, 135 Idaho 727 (2001).) However, although the district court recognized that Mr. White had some mental health issues, it does not appear that the court considered Dr. Shea's report as, according to the court, that report was not attached to the PSI until the sentencing hearing, and there is no indication that the court went off the record to review Dr. Shea's findings. (Tr. 12/20/10, p.325, L.1 – p.341, L.12.) In sum, there was reason to believe that Mr. White's mental condition would be a significant factor at sentencing and the district court erred in failing to order a mental health evaluation pursuant to I.C. § 19-2522.

C. The Information Supplied To The District Court Did Not Adequately Substitute For The Information Required By I.C. § 19-2522 And The Error Was Not Harmless

Idaho Code § 19-2522(3) reads as follows:

The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis, evaluation or prognosis of the mental condition of the defendant;
- (c) An analysis of the degree of the defendant's illness or defect and level of functional impairment;

- (d) A consideration of whether treatment is available for the defendant's mental condition;
- (e) An analysis of the relative risks and benefits of treatment or nontreatment;
- (f) A consideration of the risk of danger which the defendant may create for the public if at large.

I.C. § 19-2522(3). If the information provided to the district court through other means satisfies the requirements of I.C. § 19-2522(3), the failure of the district court to order a new mental health evaluation, where the defendant's mental condition will be a significant factor at sentencing, will be considered harmless error. *Hanson*, ___ Idaho at ___, 2012 Opinion No. 10 at 12-13 (citing *State v. Harper*, 129 Idaho 86, 91 (1996)); see also *State v. Durham*, 146 Idaho 364 (Ct. App. 2008).

The letter from Dr. Shea was written over three years prior to sentencing and simply does not satisfy the requirements of I.C. § 19-2522(3). Dr. Shea's examination was conducted to determine Mr. White's "fitness to proceed" with the case at hand and did not provide a prognosis, a consideration of treatment options, an analysis of the risks and benefits of treatment, and a consideration of the risk to the public. (PSI Attachment: Letter from Dr. Shea.) In short, the district court's error in failing to order a 19-2522 evaluation was not harmless because the information the court did have did not satisfy the requirements of 19-2522(3).

CONCLUSION

Mr. White respectfully requests that this Court vacate his sentence and remand his case to the district court with instructions that the court order a mental health evaluation pursuant to I.C. § 19-2522.

DATED this 13th day of March, 2012.



JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

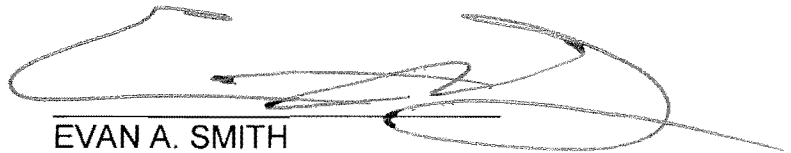
I HEREBY CERTIFY that on this 13th day of March, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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FRED GIBLER
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A handwritten signature in black ink, appearing to read 'EVAN A. SMITH', with a long horizontal flourish extending to the right.

EVAN A. SMITH
Administrative Assistant

JCP/eas