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State v. Morrissey Appellant's Brief Dckt. 38799

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 PATRICK ANTHONY)
 MORRISSEY,)
)
 Defendant-Appellant.)
 _____)

NO. 38799

APPELLANT'S BRIEF

COPY

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

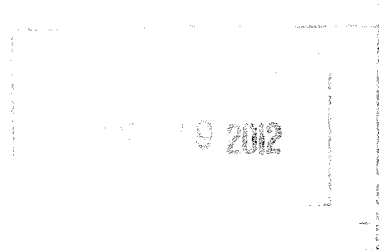
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STATEMENT OF THE CASE

Nature of the Case

Patrick Morrissey appeals from the district court's Amended Judgment of Conviction Upon a Plea of Guilty to Two Felony Counts, and Order of Commitment, stemming from a jury finding him guilty of arson and conspiracy to commit arson.¹ Prior to sentencing, the district court was provided with extensive evidence that Mr. Morrissey has suffered from mental illness since he was a child and the court had reason to believe that his condition would be a significant factor at sentencing. However, the district court failed to abide by the plain language of Idaho Code § 19-2522 by failing to order a mental health evaluation pursuant to that statute, despite the court itself expressing perplexity about Mr. Morrissey's mental condition. Furthermore, Mr. Morrissey asserts that the district court abused its discretion by imposing an excessive sentence in light of the mitigating factors that exist in this case.

Statement of the Facts and Course of Proceedings

Twenty-two year old Patrick Morrissey was alleged to have conspired with his friend, Spencer Maschek, to take Mr. Maschek's car from Twin Falls to Jerome County and to set the car on fire so that Mr. Maschek could collect insurance proceeds on the car; in exchange, Mr. Maschek would forgive a \$300.00 debt owed by Mr. Morrissey.

¹ Mr. Morrissey's appellate rights were restored through a post-conviction proceeding and his Notice of Appeal was filed from an order entered in CV-09-3921, the post-conviction case. (R., pp.236-239; see also Order to Remand to District Court and Suspend Appeal, dated September 13, 2011.) This Court suspended the appeal and remanded this case to the district court with instructions to re-enter a judgment in CR-08-2341, the criminal case. *Id.* The district court entered an order entitled Amended Judgment of Conviction Upon a Plea of Guilty to Two Felony Counts, and Order of Commitment, on September 16, 2011 (although the title is misleading as Mr. Morrissey did not enter a plea of guilty but was found guilty after a jury trial).

(Presentence Investigation Report (*hereinafter*, PSI), p.2-3.) A Criminal Complaint was filed charging Mr. Morrissey with one count of conspiracy to commit arson and one count of arson. (R., pp.7-9.) A preliminary hearing was held, Mr. Morrissey was bound over into the district court and an Information was filed charging Mr. Morrissey with the above crimes and with being a persistent violator of the law. (R., pp.35-43.) A jury found Mr. Morrissey guilty of both charges and with being a persistent violator. (R., pp.180, 182-183; *see also generally* Tr. Trial.)

The PSI included records showing that, beginning as a young child, Mr. Morrissey had stays in hospitals due to mental health problems and symptoms including self-destructive behaviors. (PSI, pp.11-12, 46-68.)² However, the most recent assessment provided to the district court was conducted in June of 2004, just before Mr. Morrissey's 18th birthday, and over four years prior to the sentencing hearing in this case. (PSI, pp.1, 46-48.) Mr. Morrissey himself expressed a desire for a mental health assessment and counseling and the PSI writer agreed that he may benefit from such an assessment. (PSI, p.15.) Prior to pronouncing sentence, the district court noted that Mr. Morrissey had a "kind of Jekyll and Hyde element going on in [his] life," stated that the court was aware that Mr. Morrissey had a history of mental issues and wondered if those problems are still present, and expressed a belief that Mr. Morrissey needed to be under the control of the parole board for a long time, "because I don't understand, at this juncture, what is driving Patrick Morrissey." (Tr. 8/5/08, p.544, L.4 – p.545, L.13, p.549, L.22 – p.550, L.16.)

The district court sentenced Mr. Morrissey to a unified term of fifteen years, with five years fixed, on each count, and it ordered those sentences to run concurrently with

each other, but consecutively to prior sentences that were executed as a result of probation violations stemming in part from this new conviction. (R., pp.199-204; Tr. 8/5/08, p.550, Ls.17-24.) This appeal follows. (R., pp.236-239)³

² Citations to the PSI in this brief correspond to the pages listed in the electronic file "Confidential Exhibits Supreme Court No. 38799-2011" created for this appeal.

³ See n.1, *supra*.

ISSUES

1. Did the district court err by failing to order a mental health evaluation pursuant to I.C. § 19-2522, as the court had reason to believe that Mr. Morrissey's mental condition would be a significant factor at sentencing, and was the error harmless?
2. Did the district court abuse its discretion by imposing an excessive sentence?

ARGUMENT

I.

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. Morrissey's Mental Condition Would Be A Significant Factor At Sentencing, And The Error Was Not Harmless

A. Introduction

The district court acknowledged that Mr. Morrissey had a history of mental illness and expressed puzzlement at the role his mental illness plays in his life. Mr. Morrissey asserts that the court erred in failing to order a mental health evaluation pursuant to I.C. § 19-2522, as the court had reason to believe his mental condition would be a significant factor at sentence. Furthermore, the information about Mr. Morrissey's mental condition that the court did have was insufficient to comply with the requirements of I.C. § 19-2522(3) and, therefore, the error was not harmless.

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. Morrissey's Mental Condition Would Be A Significant Factor At Sentencing

Patrick Morrissey was born a "blue baby" as he was deprived of oxygen at birth due to the umbilical cord being wrapped around his neck. (PSI, p.11.) He has suffered from a seizure disorder, including grand mal seizures, since the age of four. (PSI, pp.50, 55, 57, 62.) His parents separated when he was six or seven years old due to his father being physically violent towards his mother. (PSI, p.6.) Mr. Morrissey struggled in school, was involved in special education classes, and was diagnosed as dyslexic. (PSI, p.9.) At one point in his childhood, Mr. Morrissey lived with his father who turned his violence toward him, striking young Patrick in the head with a frying pan

and/or a golf club, which may have been the cause of the temporal lobe brain damage that he suffers. (PSI, pp.7, 50.)

Mr. Morrissey had three separate placements in mental health facilities in the State of Texas as a pre-teen, prior to moving to Idaho. (PSI, pp.53-54, 57, 62.) In October of 1999, then 13-year-old Patrick Morrissey was brought into the emergency department of the Kootenai Medical Center for "rather bizarre behavior," as he attempted to harm his younger sister and threatened to kill himself. (PSI, p.49.) He was admitted for "bipolar disorder with suicidal ideation and seizure disorder." (R., p.50.) Mr. Morrissey reported at that time that he had been suicidal in the past. (PSI, p.53.) About a week into his three-week stay at the Kootenai Medical Center, Mr. Morrissey had an episode where he vomited several times and became more irritable and aggressive, requiring mechanical restraint and seclusion. (PSI, pp.57-58.)

Two weeks after he was discharged, Mr. Morrissey was again admitted into the Kootenai County Medical Center due to "severe noncompliance and disruption, that escalated into physical aggression, including requiring several restraints and p.r.n.'s." (R., p.60.) Mr. Morrissey spent one week at the hospital and,

initially, was extremely irritable and noncompliant, as well as being very aggressive. Throughout the course of this hospitalization this gradually improved. He was still having difficulty, even up to the time of discharge, for example (sic) had five quiet times the evening prior to discharge.

(PSI, p.60.) Three months later, Mr. Morrissey was again admitted into the Kootenai Medical Center, this time for a five-day period, "following [an] episode of severe disruption and out-of-control behavior including aggression and deliberately trying to harm himself. (PSI, p.66.) He tried to bang his broken leg against a wall and had to be restrained. (PSI, p.68.) During the course of his three stays at the Kootenai Medical Center, 13 year-old Patrick Morrissey was diagnosed with Bipolar disorder, by history,

secondary to central nervous system damage; ADHD; disruptive behavior disorder, secondary to neurological difficulties; affective disorder, secondary to neurological difficulties; and, other specified family circumstances.” (PSI, pp.55-56, 58, 61, 63 and 66.)

In June of 2004, now living in Twin Falls, an almost 18-year-old Mr. Morrissey got drunk with a friend, and then started “hitting his head on the curb” and had to be taken to the Magic Valley Regional Medical Center. (PSI, pp.46-48.) At that time, Mr. Morrissey had been prescribed Prozac, Tegretol, and Zyprexa, but was apparently non-compliant in taking his medications. (PSI, p.46.) During his three-day stay, Mr. Morrissey made suicidal statements, and initially refused to engage in counseling because it involved family sessions. (PSI, p.46.) After the psychiatrist convinced Mr. Morrissey to agree to follow his family’s rules, he was discharged. (PSI, pp.47-48.) Although it does not appear that the evaluator was aware of the full extent of Mr. Morrissey’s mental illness history, the evaluator recommended that Mr. Morrissey be “sent to a penal institution rather than a mental institution” should he “engage in recurrent illegal activity.” (PSI, pp.46-48.)

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).⁴

The district court had a mountain of evidence showing that Patrick Morrissey has long-suffered from both physical and mental illness. Doctors had prescribed or forced Mr. Morrissey to take a cornucopia of medications including: Phenobarbital, Carbatrol, Niacinamide, Thorazine, Ritalin, Prozac, Depakote, Clonidine (possibly), Synthroid, Neurontin, Tegretol, Ativan, Lamictal and Droperidol - all before the age of fourteen. (PSI, pp.49-50, 53, 60, 62, 66.) There was ample reason to believe that Mr. Morrissey's mental condition would be a significant factor at sentencing.

In fact, the district court recognized that Mr. Morrissey had mental health problems, but had no idea what roll his mental illness played in the nature of the crime, let alone the character of Mr. Morrissey. "A district court's decisions or comments at sentencing may also demonstrate that the defendant's mental condition was a significant factor in determining the sentence." *Hanson*, ___ Idaho at ___, 2012 Opinion No. 10 at 6. During the sentencing hearing, the district court stated the following:

Your life has been a difficult one. I have very carefully read this presentence investigation. I have gone back and I've looked at the history of these other cases **and I'm not sure what it is that causes your conduct, but it's clear that it's been there for years. There is an**

⁴ 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 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. Morrissey will make no further reference to that standard in this brief.

element of kind of a Jekyll and Hyde element going on in your life. If I listen to the people that know you like your mother, the mother of your child and your friends and so forth, they think that Patrick Morrissey is just a fine, young man and has had a tough life and deserves a break and so forth and so forth. If I look at the history of this case in terms of your conduct with the legal system, you're the Hyde because you've had nothing but problems in schooling, problems in the juvenile system.

...

I've looked at this case from the standpoint of **is there something in Patrick Morrissey's life that would be cause him to do these things? In other words, are there mental problems? I'm aware that you have a history in that area.** I've looked very carefully at the evaluations of Dr. Heidenreich that was done a couple of years ago and the Canyon View reports and so forth. Frankly, I was astounded to see in Dr. Heidenreich's report the statement that he prosecutor quoted, that if you have further problems in life you need to go to a penal institution. I don't know that I've ever seen that out of a psychiatrist. **It tells me something about your character that I think really does influence my decision.**

(Tr. 8/5/08, p.544, L.4 – p.545, L.13 (emphasis added).) The Court continued,

I do think that you need to be under the control of a parole board for a long period of time because **I don't understand, at this juncture, what is driving Patrick Morrissey.** If, in fact, what is going on in your life and in your mind is a young man who has just not felt the impact, if you will, of punishment and thinks that you can get away with anything and that after a period of incarceration your eyes are going to get opened and you're going to decide that's not the way to live, then imposing a long fixed period in the penitentiary would not be appropriate.

On the other hand, if what I read in these reports is true, that you are a person with an antisocial personality disorder⁵ who basically is not going to pay attention to anything anybody says, including the parole board, this court, or anybody else, then any (sic) lengthy period to protect society is in order. It's between those two things that I've wrestled with this case since I heard this jury's verdict as to what to do with you.

(Tr. 8/5/08, p.549, L.22 – p.550, L.16.) There is no question that Mr. Morrissey's mental condition would be a significant factor at sentencing. The district court

⁵ Mr. Morrissey has never been diagnosed with an antisocial personality disorder. (PSI, pp.46-68.)

acknowledged as much and yet the court failed to abide by the plain language of Idaho Code § 19-2522 by ordering a mental health evaluation pursuant to that statute.

C. The Information Supplied To The District Court Did Not Adequately Substitute For The Information Required By I.C. § 19-2522 And The District Court's Error Is 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).

Although the district court had an abundance of mental health evaluations, most had been prepared approximately nine years earlier, when Mr. Morrissey was 13, and the most recent evaluation was prepared more than four years prior, when

Mr. Morrissey was just shy of his 18th birthday. (PSI, pp.1, 46-68.) All of the reports dealt with the immediate needs of young Patrick, including dealing with his suicidal attempts and ideations, and his erratic and bizarre behaviors apparently set-off by rather benign occurrences. *Id.* The mere fact that there are at least fourteen documented medications that Patrick Morrissey had been prescribed (or forced to take) suggests strongly that Mr. Morrissey may be in need of an evaluation to determine what medications he should now be taking. (PSI, pp.46, 49-50, 53, 60, 62, 66.) The opinion of Dr. Heidenreich that the district court found so compelling was apparently based upon a lack of a full understanding of Mr. Morrissey's history on the part of that doctor, who acknowledged only that he has a history of conduct disorders, medications, suicide attempts, and arrests. (PSI, pp.46-48.)

In short, the information contained in the mental health related documents included with the PSI, though showing a long history of mental illness, was stale at best and did not provide an updated analysis of a description of the nature of the examination, the prognosis of his mental condition of the defendant, the degree of his illness and functional impairment, consideration of treatment options or analysis of the risks and benefits of treatment or non-treatment, or a consideration of Mr. Morrissey's risk to the public at large, as required by 19-2522(3). (*Compare R.*, pp.46-68 *with I.C. § 19-2522(3).*) Thus, the district court's error in failing to order a 19-2522 evaluation was not harmless.

The district court erred by failing to order a 19-2522 evaluation of Mr. Morrissey and the error is not harmless. Therefore, this Court should remand this case back to the district court for a new sentencing hearing.

II.

The District Court Abused Its Discretion By Imposing An Excessive Sentence

A. Introduction

Mr. Morrissey asserts that, in light of the mitigating evidence, the district court abused its discretion by imposing an excessive sentence.

B. The District Court Abused Its Discretion By Imposing An Excessive Sentence

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 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).

In addition to the extensive mental health issues that Mr. Morrissey suffers from, described in section I above and incorporated herein by reference thereto, which should be considered as a mitigating factor, *see Hollon v. State*, 132 Idaho 573, 581 (1999), Mr. Morrissey asserts that additional mitigating evidence should have counseled the district court to impose a less-severe sentence. As mentioned before, Mr. Morrissey was just 22-years-old at the time of sentencing, but he had a long history of being under the influence of controlled substances, prescribed or otherwise. (PSI, pp.1, 12-13, 23-26.) It was recommended that Mr. Morrissey participate in relapse prevention and attend AA and NA meetings. (R., p.26.) Mr. Morrissey enjoys the support of his family

as his fiance, Amanda Fomichev, and his mother, Mary Jones, wrote letters in support of him. (PSI, pp.17-20.) Idaho courts recognize that a defendant's young age, substance abuse problem, and family support are all mitigating factors that the district court should consider in imposing sentence. See *State v. Dunnagan*, 101 Idaho 125, 126 (1980); *State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593, 594-595 (1982). In light of all of the mitigating factors present in his case, Mr. Morrissey asserts that the district court imposed an excessive sentence.

CONCLUSION

Mr. Morrissey respectfully requests that this Court remand his case to the district court for a new sentencing hearing with instructions that the district court order the required evaluation pursuant to Idaho Code § 19-2522. Alternatively, Mr. Morrissey requests that this Court reduce his sentence as this Court deems appropriate.

DATED this 29th day of February, 2012.



JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of February, 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:

PATRICK ANTHONY MORRISSEY
INMATE # 77990
ICC
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RANDY J STOKER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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