

7-19-2012

State v. Childers Appellant's Reply Brief Dckt.
39402

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Childers Appellant's Reply Brief Dckt. 39402" (2012). *Not Reported*. 690.
https://digitalcommons.law.uidaho.edu/not_reported/690

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NOS. 39402 & 39403
)
 v.)
)
 ANTHONY JOEL CHILDERS,) REPLY BRIEF
)
 Defendant-Appellant.)
 _____)

COPY

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CASSIA

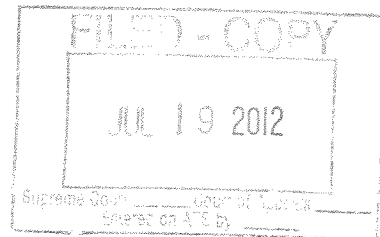
HONORABLE MICHAEL R. CRABTREE
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534



ATTORNEYS FOR
DEFENDANT-APPELLANT

ATTORNEY FOR
PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case.....	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL.....	3
ARGUMENT	4
The District Court Abused Its Discretion When It Failed To Order The Requested Psychiatric Evaluation.....	4
A. Introduction	4
B. Mr. Childers' Mental Conditions Were A Factor At Sentencing, Which The District Court Was Required To Consider	4
C. Because The District Court Was Statutorily Obligated To Consider Mr. Childers' Mental Condition, It Was Also Statutorily Obligated To Ensure The Record Contained Evidence Of The Treatment Options, Risks, And Benefits, Which It Failed To Do	7
CONCLUSION.....	12
CERTIFICATE OF MAILING	13

TABLE OF AUTHORITIES

Cases

<i>Dep't of Labor and Indus. Serv. v. East Idaho Mills, Inc.</i> , 111 Idaho 137, 138-39 (Ct. App. 1986).....	10
<i>Hollon v. State</i> , 132 Idaho 573 (1999)	4, 6
<i>Rife v. Long</i> , 127 Idaho 841 (1995)	10
<i>State v. Banbury</i> , 145 Idaho 265 (Ct. App. 2007)	7, 8, 10, 11
<i>State v. Jockumsen</i> , 148 Idaho 817 (Ct. App. 2010)	8, 9, 12
<i>State v. Hanson</i> , 150 Idaho 729 (Ct. App. 2011)	9
<i>State v. McFarland</i> , 125 Idaho 876 (Ct. App. 1994)	8, 9, 12
<i>Twin Falls County v. Idaho Comm'n on Redistricting</i> , 152 Idaho 346 (2012)	10

Statutes

I.C. § 19-2522	<i>passim</i>
I.C. § 19-2523	6, 7
I.C. § 19-5306	11

Rules

I.C.R. 32(b)(10).....	9
-----------------------	---

Additional Authorities

National Institute of Mental Health, U.S. Dept. of Health and Human Services, “Bipolar Disorder,” p.1 (2008), http://mentalhealth.gov/health/publications/bipolar-disorder/nimh-bipolar-adults.pdf	6
---	---

STATEMENT OF THE CASE

Nature of the Case

Anthony Childers contended that the district court erred when it denied his request for a psychiatric evaluation pursuant to I.C. § 19-2522. He demonstrated that, not only was his mental condition a significant issue at sentencing, but that the information in the record did not satisfy all the requirements set forth in the statute. Without that evidence, the district court's decision to forgo the psychiatric evaluation constituted an abuse of discretion by failing to meet its statutory obligation. The State's only responses are: first, the mental conditions were not an underlying factor in the crime and, thus, not an issue at sentencing (ignoring the evidence in the record that his mental conditions were part of the reason for his substance abuse, which was a direct underlying factor of his actions); second, regardless of the lack of evidence speaking to the availability of treatment options for Mr. Childers' conditions and the risks and benefits thereof, the record satisfied the statutory requirements; and third, the timing of the request should, for convenience's sake, trump the mandatory requirement established by the Legislature in the relevant statute.

The State's arguments are markedly unpersuasive, as they ignore the evidence in the record, as well as the requirements in the statute. As such, they do not undermine Mr. Childers's arguments, which reveal the error in the district court's decision. This Court should remedy that error.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Childers' Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court abused its discretion when it failed to order the requested psychiatric evaluation?

ARGUMENT

The District Court Abused Its Discretion When It Failed To Order The Requested Psychiatric Evaluation

A. Introduction

The district court's decision to deny Mr. Childers' request for an evaluation pursuant to I.C. § 19-2522 was erroneous for two reasons. First, as the evidence in the record demonstrates, Mr. Childers's mental conditions played a role in the underlying offenses and he made that factor an issue at sentencing. Therefore, I.C. § 19-2522 mandated a conforming evaluation. Second, the other evaluations included in the record contain incomplete discussions of the availability of treatment for Mr. Childers' conditions, and particularly, do not contain any discussion about the risks and benefits of treatment as opposed to nontreatment, both of which are required by the statute. Therefore, I.C. § 19-2522 obligated the district court to order a conforming evaluation prior to imposing a sentence on Mr. Childers. As such, regardless of the timing of the request, the district court was required by statute to order the conforming psychiatric evaluation and the failure to do so constituted an abuse of its discretion at sentencing.

B. Mr. Childers' Mental Conditions Were A Factor At Sentencing, Which The District Court Was Required To Consider

The Idaho Supreme Court has recognized that Idaho Code § 19-2523 not just suggests, but requires, the trial court to consider a defendant's mental illness as a sentencing factor when it was a significant factor in the offense. *Hollon v. State*, 132 Idaho 573, 581 (1999). The evidence in the record is clear that Mr. Childers' actions occurred while he was under the influence of alcohol. (Psychosexual Evaluation (*hereinafter*, PE), pp.2-3.) The record is also clear that one of the causes of

Mr. Childers' alcohol abuse is potentially his mental conditions, as he may use alcohol to self-medicate for his mental conditions.¹ (PE, p.18.)

Furthermore, Mr. Childers' attorney established that Mr. Childers' mental condition would be a factor to be considered at sentencing when Mr. Childers pled guilty: "I think as far as mental health, if the psychosexual should pick up anything, if there looks to be a need after that we'll ask at that point." (Tr., p.22, Ls.21-24.) The district court permitted this course of action, reserving its decision to order additional evaluations "depending on what shows up [in the psychosexual evaluation]." (Tr., p.22, L.21 - p.23, L.1.) The State did not object to this procedure. (See generally Tr., pp.22-23.) And when the psychosexual evaluation returned with a recommendation for a psychiatric evaluation in order to determine the availability and potential benefits of treatment that it could not address (required for the record by I.C. § 19-2522), defense counsel invoked the reserved request, reaffirming that Mr. Childers' mental condition would be a factor in the imposition of sentence: "[t]his is a case where [the prosecutor] is going to recommend that the Court impose sentence. The indication from Dr. Hatzenbuehler is that she believes there could be things that are not picked up by her evaluation. I think under those circumstances the Court is better taken to order such an evaluation at this time." (Tr., p.28, Ls.5-10.) Basically, defense counsel's

¹ As the psychosexual evaluator pointed out, she was not able to determine to what extent that was the case without the psychiatric evaluation. (See PE, p.18.) The State ignores this evidence in the record, which connects Mr. Childers' mental condition to his alcohol abuse, and argues that his alcohol abuse alone was the underlying factor to be considered. (Resp. Br., pp.6-7.) Additionally, this position would lead to an inappropriate and impractical rule for the courts to apply in future cases, as it would essentially allow for the artificial separation of a physical action from its motivational component.

request indicates that the mental health issues would be mitigating in nature, thus countering the prosecutor's request for imprisonment, and therefore, the mental health issues needed to be sufficiently considered by the district court before it imposed Mr. Childers' sentence. As such, Mr. Childers' mental condition was put before the district court as a significant sentencing issue, one which could potentially mean the difference between incarceration or another, more lenient alternative.

Because Mr. Childers' mental conditions were necessarily a significant factor in the alleged acts and in the sentencing determination, the district court was statutorily obligated to consider Mr. Childers' mental conditions (meaning that it could not, within its discretion, refuse to consider Mr. Childers' mental conditions). I.C. § 19-2523; *Hollon*, 132 Idaho at 581. There is no exception in the statute for "minor," as opposed to "major" mental conditions, see generally I.C. §19-2523, as the district court seemed to believe. (See Tr., p.28, Ls.11-21.) Regardless, the district court's assertion that there was no indication of some major mental illness or some overriding psychiatric diagnosis in the record is clearly erroneous because the Presentence Investigation Report (*hereinafter*, PSI) also reveals that both Bipolar Disorder and Attention Deficit Hyperactivity Disorder (ADHD) both major mental illnesses,² were potentially affecting Mr. Childers. (PSI, p.11.) This also further demonstrates why the district court was

² Bipolar disorder is a mental disorder with severe, potentially-life-altering symptoms. See National Institute of Mental Health, U.S. Dept. of Health and Human Services, "Bipolar Disorder," p.1 (2008), <http://mentalhealth.gov/health/publications/bipolar-disorder/nimh-bipolar-adults.pdf>. ADHD, as one of the most common mental disorders, is also a major mental health condition, which has the potential to cause the patient lifelong challenges. See National Institute of Mental Health, U.S. Dept. of Health and Human Services, "Attention Deficit Hyperactivity Disorder (ADHD)," p.1 (2008), http://mentalhealth.gov/health/publications/attention-deficit-hyperactivity-disorder/adhd_booklet.pdf.

statutorily obligated to order a psychiatric evaluation prior to imposing sentence. See I.C. § 19-2522.

C. Because The District Court Was Statutorily Obligated To Consider Mr. Childers' Mental Condition, It Was Also Statutorily Obligated To Ensure The Record Contained Evidence Of The Treatment Options, Risks, And Benefits, Which It Failed To Do

While the district court does have some discretion over whether to order a psychiatric evaluation, once it is clear that the defendant's mental condition is a significant factor, that discretion is limited by the statutory obligations imposed by the Legislature in I.C. §§ 19-2522 and -2523.³ The district court was required to ensure that the record contained "[a] consideration of whether treatment is available for the defendant's mental condition; [and a]n analysis of the relative risks and benefits of treatment or nontreatment." I.C. § 19-2522(3)(d)-(e). In fact, the Court of Appeals has already held that "the statute requires that the evaluation be conducted *before* sentencing so that the trial court will have the benefit of the evaluator's insights in fashioning an appropriate sentence." *State v. Banbury*, 145 Idaho 265, 269 (Ct. App. 2007) (quoting *State v. Coonts*, 137 Idaho 150, 153 (Ct. App. 2002)).

The record actually contains a clear statement that there is insufficient evidence therein to satisfy the statute's requirements: "I would also recommend that he have a psychiatric evaluation *to determine if* psychotropic medications *would be of benefit* to him." (PE, p.18 (emphasis added).) Dr. Hatzenbuehler informed the district court that there was a potential treatment alternative, the benefits of which could not be sufficiently

³ I.C. § 19-2522 establishes the requirements for the necessary psychiatric evaluation itself. I.C. § 19-2523 sets forth the factors the district court must consider in regard to the defendant's specific condition.

considered (as required by I.C. § 19-2522(3)(e)) without a psychiatric evaluation. (See PE, p.18.)

The State attempts to justify the district court's failure to comply with the statute by pointing to the recommendations from the substance abuse evaluation and the psychosexual evaluation. (Resp. Br., pp.9-10.) Neither evaluation, however, contains any discussion of the potential benefits Mr. Childers could receive from a psychotropic medication regimen; nor do they discuss the risks and benefits of not providing him such medication. (See *generally* PE, GAIN-I Recommendation and Referral Summary (*hereinafter*, GRRS).) Therefore, none of the evidence upon which the State relies can satisfy the statutory obligation placed on the district court in this regard. *Compare Banbury*, 145 Idaho at 269-70 (wherein the Court of Appeals, in a similar situation, found that the other evaluations in the record did not address the factors set forth for consideration in I.C. § 19-2522, and thus, the district court erred by not ordering the additional, necessary evaluation).

Furthermore, the Court of Appeals has held that the record "*must* satisfy the criteria set out in I.C. § 19-2522(3)." *State v. McFarland*, 125 Idaho 876, 879 (Ct. App. 1994) (emphasis in original). Furthermore, it has reaffirmed that stance, holding that, in this regard, "[a] district court's election not to order a psychological evaluation will be upheld on appeal if . . . the information already before the court adequately met the requirements of I.C. § 19-2522(3)." *State v. Jockumsen*, 148 Idaho 817, 822 (Ct. App. 2010). These holdings lead to only one conclusion: where the record fails to satisfy the requirements of I.C. § 19-2522(3), the district court's decision to not order the required

evaluation constitutes an abuse of its discretion.⁴ *See id.*; *McFarland*, 125 Idaho at 879. The need for such information is important because the presentence investigator is also obligated to make a “recommendation regarding a psychological examination *and a plan of rehabilitation.*” I.C.R. 32(b)(10) (emphasis added).⁵ Just as the district court in this case was unable to fulfill its obligation to ensure a satisfactory and complete record without the requested psychiatric evaluation, so too was the presentence investigator unable to fulfill her obligation under the Idaho Criminal Rules without that evaluation. Without information regarding a potentially-critical part of Mr. Childers’ prognosis, the presentence investigator could not provide an adequate plan of rehabilitation, or consequently, an adequate recommendation for sentencing.

Furthermore, the request was made as soon as possible, given when the psychosexual evaluation was provided to the district court and counsel. According to defense counsel, he had no opportunity to discuss the recommendation for a psychiatric evaluation with his client before the sentencing hearing. (Tr., p.26, L.16 - p.27, L.4.) As such, the motion was made as timely as possible, and the State’s contention that it was not timely is meritless, particularly since the State’s representative below did not object to the reservation by either defense counsel or the district court of their decisions in regard to a potential psychiatric evaluation until after receiving and reviewing the psychosexual evaluation. (See Resp. Br., p.12.) Regardless, “defense

⁴ This is particularly true since Mr. Childers actually requested the preparation of this necessary evaluation, pointing out the insufficiency in the record to the district court. *Compare Jockumsen*, 148 Idaho at 823; *State v. Hanson*, 150 Idaho 729, 731 (Ct. App. 2011).

⁵ The district court’s discretion regarding psychiatric evaluations is guided by both I.C. § 19-2522 and I.C.R. 32. *Jockumsen*, 148 Idaho at 822.

counsel's lack of diligence do not, however, excuse the trial court from compliance with § 19-2522.” *Coonts*, 127 Idaho at 153 (Ct. App. 2002). And, as in *Coonts*, the district court's failure to comply with its statutory obligation demands action by this Court. Compare *id.*; *Banbury*, 145 Idaho at 269-270.

Additionally, since the obligation imposed on the district court is mandated by I.C. § 19-2522, the district court's discretion to regulate its calendar is irrelevant. (See Resp. Br., p.15 (citing *Dep't of Labor and Indus. Serv. v. East Idaho Mills, Inc.*, 111 Idaho 137, 138-39 (Ct. App. 1986).) This is because the statute uses the mandatory (as opposed to the permissive) instruction of “shall.”⁶ For example, “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. . . . The report of the examination *shall* include the following:” I.C. § 19-2522(1) and (3) (emphasis added). As such, whatever discretion the district court may have with regard to the control of its calendar,⁷ that discretion is limited by the statutory mandate with regard to the necessary psychiatric evaluation. See I.C. § 19-2522. The

⁶ “[The Idaho Supreme Court] has interpreted the meaning of the word ‘may’ appearing in legislation, as having the meaning or expressing the right to exercise discretion. When used in a statute, the word ‘may’ is permissive rather than the imperative or mandatory meaning of ‘must’ or ‘shall.’” *Rife v. Long*, 127 Idaho 841, 848 (1995) (citations omitted); see also *Twin Falls County v. Idaho Comm’n on Redistricting*, 152 Idaho 346, 350 (2012).

⁷ The authority to which the State cites for this assertion arose under Idaho Rule of *Civil Procedure* 16 governing pre-trial activities. *East Idaho Mills*, 111 Idaho at 136-37. Even if a parallel could be drawn between the district court's discretion regarding its calendar in criminal, as opposed to civil, matters (for example, the defendant's constitutional right to a speedy trial could impact the district court's unfettered ability to control its calendar or do substantial justice in the case), the critical fact in Mr. Childers' case is that it deals with a *post-conviction* issue, not a pre-trial issue.

district court was required to order a psychiatric evaluation before it imposed Mr. Childers' sentence. *Banbury*, 145 Idaho at 269-70. And in regard to the presence of the victim and her family, while their presence is noteworthy, their presence does not create an exception to the district court's statutory obligation.⁸ See generally I.C. § 19-2522.

Therefore, since the record does not address the treatment alternative, in particular, the potential for a psychotropic medication regimen (which could help resolve the major issue underlying Mr. Childers' actions), nor does it provide information on the risks and benefits of treatment as opposed to continued nontreatment, the record does not satisfy the requirements of I.C. § 19-2522(3). By not ensuring that those requirements are addressed in the record by ordering a psychiatric evaluation, the district court has failed to meet its statutory obligation in that regard. Compare *Coonts*, 127 Idaho at 153; *Banbury*, 145 Idaho at 269-270. There is no valid reason for the district court to forgo that evaluation since Mr. Childers' mental condition was put squarely at issue in sentencing by his attorney before the sentencing hearing and it did play a role in the actions underlying the charges in this case. As such, the district court's denial of Mr. Childers' request for a psychiatric evaluation constituted an abuse of its discretion and a failure to meet its statutory obligation in this regard.

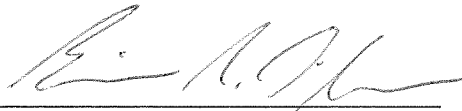
⁸ Mr. Childers recognizes that victims are afforded certain rights in criminal proceedings. See, e.g., I.C. § 19-5306. As such, it may have been appropriate for the district court to hear the victims' statements at that time, but Mr. Childers contends that in order for the district court to still satisfy its statutory obligation under I.C. §19-2522, it would have then had to continue the hearing until that report could be prepared and submitted. He also asserts that none of the victim's rights should be allowed to trump or otherwise retard his constitutional or statutory rights or circumvent statutory obligations imposed on the district court, particularly if the only justification for doing so is convenience.

See *Jockumsen*, 148 Idaho at 822; *McFarland*, 125 Idaho at 879. This Court should remedy that error.

CONCLUSION

Mr. Childers respectfully requests that this Court vacate his sentence and remand his case for resentencing after the necessary evaluation has been performed.

DATED this 19th day of July, 2012.

A handwritten signature in black ink, appearing to read "B. R. Dickson", written over a horizontal line.

BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of July, 2012, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ANTHONY JOEL CHILDERS
INMATE #101353
ISCI
PO BOX 14
BOISE ID 83707

MICHAEL R CRABTREE
DISTRICT COURT JUDGE
E-MAILED BRIEF

TIM J SCHNEIDER
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. BOX 83720
BOISE, ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

BRD/eas