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State v. Stadtmiller Appellant's Brief Dckt. 40513

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. LARRY LEE JAMES STADTMILLER, Defendant-Appellant.	NO. 40513 IDAHO COUNTY NO. CR-2011-51171 APPELLANT'S BRIEF

BRIEF OF APPELLANT

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Additional Authorities

STATEMENT OF THE CASE

Nature of the Case

Forty-one-year-old Larry Lee James Stadtmiller was charged with one count of felony sexual abuse of a minor child under sixteen years of age. Pursuant to an oral plea agreement, Mr. Stadtmiller attempted to enter a guilty plea to an amended charge of felony injury to a child, but the district court rejected that first attempted *Alford* plea.[1] He then attempted again to plead guilty to the amended charge as part of a written plea agreement, but the district court again refused to accept his *Alford* plea. After a jury trial, the jury found Mr. Stadtmiller guilty of the original charge of sexual abuse of a minor child. The district court imposed a unified sentence of nine years, with three years fixed.

On appeal, Mr. Stadtmiller asserts that the district court abused its discretion when it rejected his first attempted *Alford* plea. He also asserts that the district court abused its discretion when it imposed his sentence.

Statement of the Facts and Course of Proceedings

Lori Esquivel reported to the Grangeville Police Department that her ten-year-old daughter, K.E., has been sexually assaulted. (Presentence Investigation Report (*hereinafter,* PSI), p.1.) Ms. Esquivel stated that K.E. had been staying with Stacey Ruzicka. (PSI, p.1.) Mr. Ruzicka had helped raise K.E., although he was not her biological father. (PSI, p.1.) Ms. Esquivel reported that K.E. telephoned her and stated that Mr. Ruzicka's roommate, Mr. Stadtmiller, had touched her "privates" the night before. (PSI, p.1.)

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[1] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

Officer Andy Beene subsequently contacted Mr. Ruzicka and K.E. (PSI, p.2.) Mr. Ruzicka confirmed that Mr. Stadtmiller was his roommate. (PSI, p.2.) K.E. stated that, on the night of the incident, she had been asleep on the couch in Mr. Ruzicka's living room, with her sister asleep on a nearby reclining chair. (PSI, p.2.) According to K.E., Mr. Stadtmiller came into the house, covered K.E. and her sister with blankets, and then sat down on the couch next to her. (PSI, p.2.) K.E. reported that Mr. Stadtmiller placed her legs on top of his legs, and then touched her all over her body. (PSI, p.2.) Mr. Stadtmiller reportedly touched her breasts, and then rubbed her vaginal area. (PSI, p.2.) K.E. also stated that Mr. Stadtmiller tried to open her legs, and that she kept kicking at him. (PSI, p.2.) K.E. got up to use the bathroom, and then told Mr. Ruzicka what had just happened. (PSI, p.2.) When Mr. Ruzicka went to the living room, Mr. Stadtmiller was reportedly gone. (PSI, p.2.)

Officer Beene then contacted Mr. Stadtmiller, who was in the camper in front of Mr. Ruzicka's house. (PSI, p.2.) When asked what had happened the night before, Mr. Stadtmiller stated nothing had happened. (PSI, p.2.) Mr. Stadtmiller reported that he returned to the house from a bar soon after midnight, went into the house for a glass of water and some M&Ms, and then went outside to the camper to go to bed. (PSI, p.2.) After Officer Beene explained the accusation K.E. had made, Mr. Stadtmiller stated that K.E. had been asleep on the couch, and that he did not touch her or sit down next to her. (PSI, p.2.)

As a result of the investigation, Mr. Stadtmiller was arrested. (PSI, p.2.) He was initially charged with one count of sexual abuse of a minor child under sixteen years of age, felony, in violation of Idaho Code § 18-1506(b). (R., pp.6-7.) Mr. Stadtmiller entered a not guilty plea to the charge. (R., p.19.)

Later, the State informed the district court that the parties had reached an oral plea agreement, whereby Mr. Stadtmiller would plead guilty to an amended charge of one count of felony injury to a child. (R., p.30.) The district court granted the motion to amend the charge to injury to a child. (R., p.30.) After Mr. Stadtmiller entered a guilty plea to the amended charge, the district court examined him regarding the charge. (R., p.31.) The district court then rejected this first attempted *Alford* plea, stating that it could not accept the plea as an *Alford* plea because Mr. Stadtmiller had not been under the influence of drugs or alcohol to the point where he could not remember his actions, and because he did not admit any guilt. (Tr., Apr. 25, 2012, p.18, L.4 – p.30, L.24.)

The following day, the parties submitted a written Idaho Criminal Rule 11(f)(1)(C), (f)(4) plea agreement. (R., p.32.) Pursuant to the written plea agreement, Mr. Stadtmiller would plead guilty to an amended charge of injury to a child, felony, in violation of I.C. § 18-1501. (R., p.34.) The parties agreed to recommend that the district court place Mr. Stadtmiller on a period of supervised probation. (R., pp.34-35.) Mr. Stadtmiller then entered a plea of guilty to the amended charge of injury to a child. (R., p.32.) The district court ordered a PSI, substance abuse evaluation, and psychosexual evaluation. (R., p.32.) The district court indicated that it would decide whether to accept the written plea agreement after it received the PSI and evaluations. (*See* Tr., July 19, 2012, p.36, Ls.17-22.)

The district court subsequently rejected the written plea agreement. (R., p.46.) The district court rejected this second plea agreement because it determined that Mr. Stadtmiller still did not believe that he had done anything wrong. (Tr., July 19, 2012, p.37, Ls.2-16.) Additionally, the district court rejected the written plea agreement because it called for supervised probation, which would involve some form of

counseling. (Tr., July 19, 2012, p.37, Ls.17-20.) The district court determined that because counseling would require Mr. Stadtmiller to admit to wrongdoing, and Mr. Stadtmiller did not think he had done anything wrong, it would be impossible for him to complete counseling. (Tr., July 19, 2012, p.37, L.19 – p.38, L.2.) Thus, the district court also rejected the second plea agreement because it determined that probation would not be viable. (Tr., July 19, 2012, p.38, L.2.) The district court gave the State time to decide whether it wanted to proceed on the injury to a child charge, or instead request that the charge be amended back to sexual abuse of a minor child. (Tr., July 19, 2012, p.38, L.4 – p.39, L.23.) In either event, the district court would withdraw Mr. Stadtmiller's guilty plea and enter a not guilty plea to the charge. (Tr., July 19, 2012, p.39, Ls.15-18.)

The State then filed a motion to amend the charge to reflect the original charge of one count of sexual abuse of a minor child. (R., pp.50-51.) The district court granted the motion to amend the charge to sexual abuse of a minor child. (R., pp.52-54.)

The district court subsequently held a jury trial. (R., pp.64-69.) The jury found Mr. Stadtmiller guilty of sexual abuse of a minor child. (R., p.63.) The district court imposed a unified sentence of nine years, with three years fixed. (R., pp.72, 75-77.)

Mr. Stadtmiller then filed a timely Notice of Appeal. (R., pp.79-81.)

ISSUES

1. Did the district court abuse its discretion when it rejected Mr. Stadtmiller's first attempted *Alford* plea?

2. Did the district court abuse its discretion when it imposed a unified sentence of nine years, with three years fixed, upon Mr. Stadtmiller following his conviction for sexual abuse of a minor child?

ARGUMENT

I.

The District Court Abused Its Discretion When It Rejected Mr. Stadtmiller's First Attempted *Alford* Plea

A. Introduction

Mr. Stadtmiller asserts that the district court abused its discretion when it rejected his first attempted *Alford* plea, because the district court did not act consistently with the legal standards applicable to whether to accept an *Alford* plea. The district court rejected Mr. Stadtmiller's first attempted *Alford* plea because he did not admit any guilt and because he had not been under the influence of drugs or alcohol to the point where he did not remember the incident. The district court determined that it categorically could not accept an *Alford* plea where the defendant does not admit any guilt, or where the defendant was not under the influence of drugs or alcohol to the point where he or she did not remember the incident at issue.

However, the law states that a district court is within its discretion to accept an *Alford* plea where the defendant does not admit any guilt, if there is a strong factual basis for the plea and the defendant understands the nature of the charges. Thus, the district court here would have been within its discretion to accept Mr. Stadtmiller's *Alford* plea, because a strong factual basis for the plea existed, and Mr. Stadtmiller's statements during the plea colloquy showed that he understood the nature of the charge. The district court, by determining that it categorically could not accept an *Alford* plea where the defendant does not admit any guilt or was not too intoxicated to remember the incident at issue, did not act consistently with the legal standards applicable to accepting an *Alford* plea. Because the district court did not act

consistently with the applicable legal standards, it abused its discretion when it rejected Mr. Stadtmiller's first attempted *Alford* plea.

B. Standard Of Review

The Idaho Supreme Court has recently held "that a district court's refusal to accept an *Alford* guilty plea is reviewable for abuse of discretion." *Schoger v. State*, 148 Idaho 622, 627 (2010). Determining whether a district court abused its discretion involves a three-part inquiry into (1) "whether the trial court correctly perceived the issue as one of discretion," (2) "whether the trial court acted within the boundaries of its discretion and consistent with the legal standards applicable to the specific choices available to it," and (3) "whether the trial court reached its discretion by an exercise of reason." *Id.*

C. The District Court Abused Its Discretion Because It Did Not Act Consistently With The Legal Standards Applicable To Accepting An *Alford* Plea

In *North Carolina v. Alford*, the United States Supreme Court held that "[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime." *North Carolina v. Alford*, 400 U.S. 25, 37 (1970). The Idaho Supreme Court has long recognized the validity of an *Alford* plea, holding that "as long as there is a strong factual basis for the plea, and the defendant understands the charges against him, a voluntary plea of guilty may be accepted by the court despite a continuing claim by the defendant that he is innocent." *Sparrow v. State*, 102 Idaho 60, 61 (1981) (citing *Alford*, 400 U.S. 25).

In *Schoger*, the Idaho Supreme Court reiterated "that there is a substantial body of Idaho case law demonstrating that *Alford* pleas may rightfully be accepted in

situations where the defendant asserts factual innocence." *Schoger*, 148 Idaho at 629 n.4 (citing *Rhoades v. State*, 148 Idaho 247 (2009), *McKeeth v. State*, 140 Idaho 847 (2004), *State v. Jakoski*, 139 Idaho 352 (2003), *State v. Leon*, 142 Idaho 705 (Ct. App. 2006), *State v. Barrett*, 138 Idaho 290 (Ct. App. 2003), *State v. Wilson*, 136 Idaho 771 (Ct. App. 2001)). However, the district court here rejected Mr. Stadtmiller's first attempted *Alford* plea because it determined that it categorically could not accept an *Alford* plea where the defendant does not admit any guilt or was not too intoxicated to remember the incident at issue.

During the plea colloquy for the first attempted *Alford* plea, Mr. Stadtmiller told the district court that, on the night of the incident, he had consumed about eight beers at a bar, returned to Mr. Ruzicka's house with a friend's dog following him, and entered the house to make a meal and place the dog in a kennel. (Tr., Apr. 25, 2012, p.21, L.8 – p.24, L.22.) While Mr. Stadtmiller was in the house, he saw K.E. sleeping on the couch and her sister sleeping on the recliner. (Tr., Apr. 25, 2012, p.23, L.9 – p.25, L.2.) He did not speak with either K.E. or her sister at that time. (Tr., Apr. 25, 2012, p.24, Ls.2-4.) He then went outside. (Tr., Apr. 25, 2012, p.22, L.25.) When the dog's owner came by the house, Mr. Stadtmiller let him in the house to get the dog. (Tr., Apr. 25, 2012, p.23, Ls.2-8, p.25, Ls.3-8.) He told the district court that, by that point, the children were gone. (Tr., Apr. 25, 2012, p.23, Ls.4-8, p.25, Ls.7-8.) When the district court asked Mr. Stadtmiller what had happened between him and K.E., he stated that he only put a blanket and pillows on her or on the couch. (Tr., Apr. 25, 2012, p.26, Ls.4-16.)

The district court subsequently asked Mr. Stadtmiller, "So why are you thinking about pleading guilty?" (Tr., Apr. 25, 2012, p.26, Ls.17-18.) Mr. Stadtmiller replied, "Due to the fact I was told that in a jury trial that it would probably go either way."

(Tr., Apr. 25, 2012, p.26, Ls.19-20.) Mr. Stadtmiller did not want a sexual offense (such as sexual abuse of a minor child, as opposed to an offense such as injury to a child that would not require sex offender registration)[2] on his record, and he recognized that a trial might not go his way. (*See* Tr., Apr. 25, 2012, p.26, L.22 – p.27, L.8.)

Then, the district court initially explained its rejection of Mr. Stadtmiller's first attempted *Alford* plea:

> Well, based on what you've said, Mr. Stadtmiller, I cannot accept your plea. It doesn't qualify as an *Alford* plea. You weren't so drunk you didn't remember what you did, and you haven't admitted any guilt as far as the offense goes. We're still set for trial on Monday morning at 9:00, and the motion to amend the complaint will be denied or withdrawn – or the motion won't be granted, I'll put it that way. But I can only accept the plea, number one, if you admit guilt, or number two, under certain circumstances where you're under the influence of drugs or alcohol to the point where you don't remember what happened. But you've examined the evidence and you think that a jury might find you guilty anyway. But clearly you remember everything that happened: Making a meal, doing lots of things, and you haven't admitted any guilt, and under the law I can't accept a plea of guilty if you aren't guilty . . . .

(Tr., Apr. 25, 2012, p.27, L.10 – p.28, L.1.)

Mr. Stadtmiller then commented that "they [the State] said that I did, I guess, harm the child in a way." (Tr., Apr. 25, 2012, p.28, L.4.) When the district court asked Mr. Stadtmiller to elaborate, he explained that he "bothered [K.E.] while she was sleeping" through "placing the blanket and pillow on her." (Tr., Apr. 25, 2012, p.28, Ls.6-7, 9-10.) However, after further elaboration, the district court told Mr. Stadtmiller that, "If everything happened the way you say it [did] there isn't any crime," and

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[2] *See, e.g., Doe I v. Doe II*, 148 Idaho 713, 714 (2010) ("[The defendant] was arrested and charged with Internet Enticement of Children, a felony. The State later amended the charge to felony Injury to a Child, which avoided him having to register as a sex offender.").

Mr. Stadtmiller replied, "That's what I had thought." (Tr., Apr. 25, 2012, p.28, L.11 – p.29, L.16.)

The district court stated that, "under those circumstances, like I say, you haven't admitted guilt as far as I can tell, and it isn't an *Alford* situation." (Tr., Apr. 25, 2012, p.29, Ls.17-19.) The following exchange then occurred:

> [THE COURT:] There are elements that the State has to prove and that you would have to admit in order for me to accept your plea of guilty and –
>
> THE DEFENDANT: Right.
>
> THE COURT: I haven't heard anything so far that covers those elements and this, like I say, this isn't an *Alford* situation. You weren't drunk beyond the point where you can't remember or under the influence of drugs which you can't remember, which is what an *Alford* Plea is, or head injury or something like that. But based on everything you've said you haven't indicated that you have committed any crime. So, under those circumstances, like I say, I can't accept your plea of guilty.

(Tr., Apr. 25, 2012, p.30, Ls.11-24.) In short, the district court determined that it categorically could not accept an *Alford* plea where the defendant does not admit any guilt or was not too intoxicated to remember the incident at issue, and thereby rejected Mr. Stadtmiller's first attempted *Alford* plea.

By determining that it categorically could not accept an *Alford* plea where the defendant does not admit any guilt or was not too intoxicated to remember the incident at issue, the district court did not act consistently with the applicable legal standards when it rejected Mr. Stadtmiller's first attempted *Alford* plea. As discussed above, the United States Supreme Court has held that "[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime." *Alford*, 400 U.S. at 37. Following *Alford*, the Idaho Supreme

Court has held that "as long as there is a strong factual basis for the plea, and the defendant understands the charges against him, a voluntary plea of guilty may be accepted by the court despite a continuing claim by the defendant that he is innocent." *Sparrow*, 102 Idaho at 61 (citing *Alford*, 400 U.S. 25).

A district court may also accept an *Alford* plea where the defendant was not too intoxicated to remember the incident at issue. District courts have the discretion to accept *Alford* pleas in cases where the defendant was under the influence of drugs or alcohol to the point where the defendant did not remember the incident at issue. *See, e.g.*, *Steele v. State*, 153 Idaho 783, 785 (Ct. App. 2012) ("Steele asserted that he was unable to remember any of the alleged incidents as a result of heavy intoxication. . . . Steele agreed to plead guilty without admitting a factual basis for his guilty pursuant to [*Alford*]. The district court accepted Steele's *Alford* plea upon the State's recitation of the facts . . . .") However, a district court may also accept an *Alford* plea where the defendant was *not* too intoxicated to remember the incident at issue, even if the defendant claims to be innocent, so long as there is a strong factual basis for the plea and the defendant understands the charges against him or her. *See Alford*, 400 U.S. at 37; *Sparrow*, 102 Idaho at 61.

Thus, a district court is within its discretion to accept an *Alford* plea in a case, such as the instant case, where the defendant does not admit any guilt. *See Schoger*, 148 Idaho at 629 n.4. The district court in this case would have been within its discretion to accept Mr. Stadtmiller's first attempted *Alford* plea, because there was a strong factual basis for the plea and Mr. Stadtmiller understood the charge against him.

There was a strong factual basis for Mr. Stadtmiller's plea. Evidence presented by the State may provide the factual basis for an *Alford* plea. *See Alford*, 400 U.S. at 36-38.

Here, the following exchange occurred between the district court and the State regarding the factual basis for the plea:

> THE COURT: . . . with respect to the amended charge, that is the injury to a child, in general, what would the State's evidence be at trial?
>
> [THE PROSECUTOR]: Your Honor, it would [be] that the victim was sleeping on a couch at her father's home. Was awoken late at night. She alleges that Mr. Stadtmiller sat down next to her. Put her legs on top of his legs and then began to basically rub her with his hands, at one point attempting to touch her breasts outside her clothing, and then moved down to the vaginal area. She alleges he rubbed her in the vaginal area outside the clothing for about seven or eight seconds, and then she asked him to stop and he did. And she then reported that to her father who was in another room nearby, and she, State alleges, she is suffering mentally from that and did from the point that it happened, which would be the unjustifiable mental suffering. But that would be the State's evidence, Your Honor.

(Tr., Apr. 25, 2012, p.12, L.20 – p.13, L.13.) Thus, the State's evidence provided a strong factual basis for the first attempted *Alford* plea. *See Alford*, 400 U.S. at 36-38.

Additionally, Mr. Stadtmiller understood the charge against him. Defendants may be said to have understood the charges against them where they testified that they read the information and understood the charges in it, and there is no evidence that they had any serious deficiencies in their ability to speak English, intelligence, or education. *See Sparrow*, 102 Idaho at 61-62.

During the plea colloquy in this case, the district court examined Mr. Stadtmiller as to his understanding of the felony injury to a child charge. (Tr, Apr. 25, 2012, p.15, L.6 – p.18, L.8.) The district court read the injury to a child charge before starting the examination. (Tr., Apr. 25, 2012, p.7, L.18 – p.8, L.16.) The district court later asked if

Mr. Stadtmiller understood the nature of the charge, if he had enough time to talk to his trial counsel, and if his trial counsel advised him to his satisfaction of his rights, possible defenses, and possible consequences if he were to plead guilty. (Tr., Apr. 25, 2012, p.15, L.6 – p.17, L.18.) Mr. Stadtmiller answered in the affirmative to those questions. (Tr., Apr. 25, 2012, p.15, L.8, p.17, Ls.7-18.) Further, Mr. Stadtmiller told the district court that he had never had a prescription for any psychotropic medication, and that he did not take any prescription drugs. (Tr., Apr. 25, 2012, p.17, Ls.1-6.) Mr. Stadtmiller did not evince any serious deficiencies with his ability to speak English, his intelligence, or his education. Thus, Mr. Stadtmiller's answers during the plea colloquy established that he understood the charge against him. *Sparrow*, 102 Idaho at 61-62.

Because a strong factual basis existed for the plea, and Mr. Stadtmiller understood the charge against him, the district court would have been within its discretion to accept Mr. Stadtmiller's first attempted *Alford* plea. However, the district court rejected the first *Alford* plea because it determined that it categorically could not accept an *Alford* plea where the defendant did not admit any guilt or was not too intoxicated to remember the incident at issue. (*See* Tr., Apr. 25, 2012, p.30, Ls.11-24.) Thus, the district court did not act consistently with the legal standards applicable to accepting an *Alford* plea.[3]

[3] Mr. Stadtmiller would note that the applicable legal standards do not *require* a district court to accept an *Alford* plea where the defendant does not admit any guilt. In *Schoger*, the Idaho Supreme Court held that "no provision of Idaho law . . . requires a court to accept a guilty plea." *Schoger*, 148 Idaho at 630. *Schoger* is distinguishable from the present case because the district court in *Schoger* determined that it *would not* accept the defendant's *Alford* plea after applying the applicable legal standards to the particular circumstances in that case, *see id.* at 628-30, while the district court here determined that it categorically *could not* accept Mr. Stadtmiller's *Alford* plea.

Because the district court did not act consistently with the applicable legal standards, it abused its discretion when it rejected Mr. Stadtmiller's first attempted *Alford* plea. *See Schoger*, 148 Idaho at 627. Thus, Mr. Stadtmiller's judgment of conviction should be vacated and his case should be remanded for the district court to reconsider his *Alford* plea.

II.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Nine Years, With Three Years Fixed, Upon Mr. Stadtmiller Following His Conviction For Sexual Abuse Of A Minor Child

A. Introduction

Mr. Stadtmiller asserts that the district court abused its discretion when it imposed a unified sentence of nine years, with three years fixed, because the sentence, considering any view of the facts, is excessive.

B. Standard Of Review

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 Idaho Supreme Court has held that, "[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence." *State v. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Mr. Stadtmiller does not allege that his sentence exceeds the statutory maximum. *See* I.C. § 18-1506(5). Accordingly, in order to show an abuse of discretion, Mr. Stadtmiller must show that in light of the governing criteria, the sentence

is excessive considering any view of the facts. *Jackson*, 130 Idaho at 294. The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* "In determining whether the sentencing court abused its discretion," the appellate court "review[s] all of the facts and circumstances of the case." *Id.*

C. The District Court Abused Its Discretion Because The Sentence Imposed Is Excessive Considering Any View Of The Facts

Mr. Stadtmiller submits that the district court abused its discretion because the sentence imposed is excessive considering any view of the facts. The sentence imposed by the district court is excessive considering any view of the facts because the district court did not give adequate consideration to mitigating factors.

Specifically, the district court did not adequately consider Mr. Stadtmiller's substance abuse problems. The Idaho Supreme Court has recognized substance abuse as a mitigating factor in cases where it found a sentence to be excessive. *See, e.g.*, *State v. Nice*, 103 Idaho 89, 91 (1982). The GAIN-I Recommendation and Referral Summary (*hereinafter,* GRRS) attached to the PSI diagnosed Mr. Stadtmiller with "Alcohol Abuse." (GRRS, p.1; PSI, p.12.) Mr. Stadtmiller "self-reported symptoms sufficient to meet criteria for alcohol abuse." (GRRS, p.2.) He also reported "low to moderate substance use problems" in the ninety days prior to his GAIN-I evaluation. (GRRS, p.7.) In a letter to the district court, Mr. Stadtmiller's sister, Lisa Bond, wrote that Mr. Stadtmiller had struggled with alcoholism since he was in high school. (Sentencing Hearing Def. Ex. C, p.1.)

Unfortunately, many of Mr. Stadtmiller's issues with the law have stemmed from his substance abuse problems. The GRRS reported, "He stated that when he drinks, he tends to get in trouble with the law." (GRRS, p.12.) His prior criminal record includes an open container violation and a misdemeanor DUI. (PSI, pp.4-7). Additionally, while Mr. Stadtmiller was on release from jail for the instant offense, he was charged with criminal contempt and furnishing alcohol to a minor.[4] (PSI, p.7.) He had reportedly been consuming alcohol and in contact with a minor, in violation of the conditions of his release. (PSI, p.7.) The minor reported that Mr. Stadtmiller had made sexual comments to her and furnished her with alcohol after a barbeque. (PSI, pp.7-8.) Mr. Stadtmiller was then charged and incarcerated. (PSI, p.8.) During the presentence interview for the instant case, Mr. Stadtmiller stated that he drank beer at the barbeque, but maintained that he did not provide alcohol to the minor or make any sexual comments to her. (PSI, p.8.)

Mr. Stadtmiller's substance abuse also prompted many of the other offenses on his prior record. Ms. Bond wrote in her letter, "I watched Larry's alcoholism escalate to an unbelievable height and Larry was always in and out of jail for something stupid but most always involving alcohol." (Sentencing Hearing Def. Ex. C, p.1.) Similarly, at the sentencing hearing Mr. Stadtmiller told the district court "at least 80 percent of my misdemeanor convictions were due to alcohol." (Tr., Nov. 1, 2012, p.185, Ls.15-17.)

[4] According to the Idaho Supreme Court Data Repository entries for Idaho County Nos. CR 2012-52160 and CR 2012-52096, those charges were later dismissed on the motion of the prosecutor. *See* Idaho State Judiciary, *Idaho Repository – Search by Party*, https://www.idcourts.us/repository/partySearch.do (last viewed Aug. 5, 2013) (enter "Stadtmiller" under "Last Name" and select "Idaho County" under "County"; then, use the "Search" button, type the CAPTCHA characters as requested, and select the "Case History with ROAs").

Mr. Stadtmiller now recognizes that he needs treatment for his substance abuse problems. Although Mr. Stadtmiller represented during the presentence investigation that he did not feel that he had a drinking problem (PSI, p.12), the GRRS reported that he "acknowledged problems related to alcohol or other drug use." (GRRS, p.6.) At the sentencing hearing, Mr. Stadtmiller told the district court, "I have had a lot of problems with alcohol." (Tr., Nov. 1, 2012, p.185, L.15.) He also stated, "since I've been incarcerated I've called many things about the alcohol treatment . . . I would like to seek alcohol treatment in any manner."[5] (Tr., Nov. 1, 2012, p.186, Ls.15-19.) Mr. Stadtmiller explained that his arrest while he was on release from jail "just proves that I do have an alcohol problem." (Tr., Nov. 1, 2012, p.186, L.24 – p.187, L.1.) He had been sober for about four months at the time of sentencing, and told the district court that he was "asking for a chance to prove myself and get some sort of treatment, and hopefully this is, you know – I see myself in a different light being sober than I do, even just having a small amount of alcohol, and that's basically what it comes down to." (Tr., Nov. 1, 2012, p.188, Ls.2-8.) Adequate consideration of Mr. Stadtmiller's substance abuse problems should have resulted in a lesser sentence.

The district court also did not adequately consider Mr. Stadtmiller's own support of his family. Ms. Bond wrote in her letter that Mr. Stadtmiller had lived with her for a period of eleven years. (Sentencing Hearing Def. Ex. C, p.2.) During that time, Mr. Stadtmiller cut down on his drinking and helped watch Ms. Bond's children.

[5] While Mr. Stadtmiller wrote a letter (intercepted by the Idaho County Jail) to Will and Dorinda Hearn stating, "Me my self am just adding in the whole alcohol treatment thing Sunshine up the judges skirt," (Letter from Renee Behrens, Section Supervisor, Idaho Department of Correction, to the Honorable MJ Griffin, District Judge, Nov. 1, 2012), Mr. Stadtmiller told the district court that statement was in reference to an inside joke (Tr., Nov. 1, 2012, p.186, Ls.8-12).

(Sentencing Hearing Def. Ex. C., p.2.) At the sentencing hearing, Mr. Stadtmiller told the district court, "I've spent my life basically raising kids," an apparent reference to both Ms. Bond's children and his own three daughters. (*See* Tr., Nov. 1, 2012, p.187, L.25.)

In her letter, Ms. Bond also stated that, "In 2011, I personally was diagnosed with an inoperable brain tumor after having a stroke and was given a life expectancy of 5 to 7 years." (Sentencing Hearing Def. Ex. C., p.3.) She further stated that "[o]ur mother is 82 years old now and also in failing health and I believe is too sick to travel in order to visit Larry." (Sentencing Hearing Def. Ex. C., p.3.) Ms. Bond asked the district court to "please send Larry to a rehab center and not to prison because I know that either he or I will not live long enough to see a life outside of prison and that my family including Larry does not deserve our lives to end that way." (Sentencing Hearing Def. Ex. C, p.3.) Adequate consideration of Mr. Stadtmiller's support for his family should have resulted in a lesser sentence.

Because the district court did not adequately consider the above mitigating factors, Mr. Stadtmiller's sentence is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed the sentence. Mr. Stadtmiller's sentence should be reduced. Alternatively, his case should be remanded to the district court for a new sentencing hearing.

CONCLUSION

For the above reasons, Mr. Stadtmiller respectfully requests that this Court vacate his judgment of conviction and remand his case for the district court to reconsider his *Alford* plea. Alternatively, Mr. Stadtmiller respectfully requests that this Court reduce his sentence as it deems appropriate, or remand his case to the district court for a new sentencing hearing.

DATED this 19th day of August, 2013.

BEN PATRICK MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of August, 2013, 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:

LARRY LEE JAMES STADTMILLER
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MICHAEL J GRIFFIN
DISTRICT COURT JUDGE
E-MAILED BRIEF

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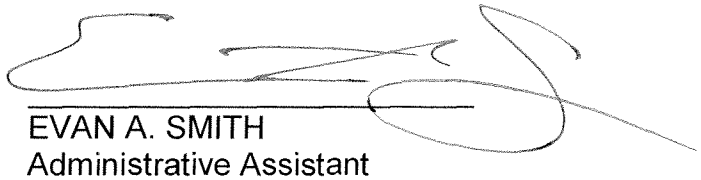

EVAN A. SMITH
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BPM/eas