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State v. Jasper Appellant's Brief Dckt. 43145

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43145
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NO. CR 2014-16175
v.)	
)	
JODY JASPER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Jody Jasper pled guilty to trafficking in methamphetamine, the district court sentenced him to fifteen years, with three years fixed. Mr. Jasper now appeals to this Court, contending the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On November 29, 2014, law enforcement at the Bonneville County Jail found methamphetamine hidden in Mr. Jasper's bedding. (R., pp.13–22.) The State then filed a Criminal Complaint against Mr. Jasper, alleging that he committed trafficking in methamphetamine, a felony, in violation of Idaho Code § 37-2732B(a)(4)(A), and

possession of contraband within a correctional facility, a felony, in violation of Idaho Code § 18-2510(3). (R., pp.9–10.) Mr. Jasper waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.24–26.) The State filed an Information on December 16, 2014. (R., pp.32–33.)

On January 21, 2015, Mr. Jasper pled guilty to trafficking in methamphetamine pursuant to a plea agreement. (Tr., p.10, L.3–p.11, L.1; R., pp.39–40.) The State would dismiss the possession charge. (Tr., p.4, L.16–p.5, L.18; R., pp.27–30.) The State also agreed to recommend fifteen years, with three years fixed, and participation in the Therapeutic Community. (Tr., p.4, L.16–p.5, L.18; R., pp.27–30.) The district court accepted Mr. Jasper's guilty plea and entered an order dismissing the possession charge. (Tr., p.10, L.19–p.11, L.1; R., p.47.)

On March 16, 2015, the district court held a sentencing hearing. (R., pp.51–53.) Relevant here, the trafficking charge carries a mandatory minimum sentence of three years imprisonment and a mandatory minimum fine of \$10,000. See I.C. § 37-2732B(a)(4)(A). The State recommended fifteen years, with three years fixed, and Mr. Jasper argued for ten years, with three years fixed. (R., pp.51–52; Tr., p.16, Ls.12–16, p.16, L.20–p.17, L.2.) In line with the State's recommendation, the district court sentenced Mr. Jasper to fifteen years, with three years fixed. (R., p.52; Tr., p.26, Ls.9–13.) The district court also imposed the mandatory minimum fine. (R., p.52, Tr., p.26, Ls.14–15.) On March 19, 2015, the district court entered an Amended Judgment of Conviction. (R., pp.56–57.) In this judgment, the district court recommended that Mr. Jasper participate in the Therapeutic Community. (R., p.57.)

On March 26, 2015, Mr. Jasper filed a timely notice of appeal. (R., pp.58–60.) An amended notice of appeal was filed on June 9, 2015. (R., pp.65–67.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fifteen years, with three years fixed, upon Mr. Jasper, following his guilty plea to trafficking in methamphetamine?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fifteen Years, With Three Years Fixed, Upon Mr. Jasper, Following His Guilty Plea To Trafficking In Methamphetamine

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, the indeterminate portion of Mr. Jasper’s sentence does not exceed the statutory maximum. See I.C. § 37-2732B(a)(4)(D) (maximum sentence of life imprisonment). Accordingly, to show that the indeterminate sentence imposed was unreasonable, Mr. Jasper “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3)

possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Mr. Jasper asserts that the district court abused its discretion by imposing an excessive sentence of twelve indeterminate years under any reasonable view of the facts. Specifically, he contends that the district court should have sentenced him to a lesser indeterminate term in light of the mitigating factors, including his abusive childhood, substance abuse issues, and mental health issues.

Forty-one year old Mr. Jasper had a difficult and painful childhood. He explained, “Mother used drugs for a long time. Father beat me up all the time.” (Presentence Investigation Report (“PSI”),¹ p.12.) He dropped out of school in the ninth grade. (PSI, p.12.) The “beating” from his dad “got worse,” and Mr. Jasper ran away. (PSI, p.12.) He lost his job and a scholarship to attend a local college. (PSI, p.12.) He also reported that his family was “[a]lways poor.” (PSI, p.12.) Consistent with Mr. Jasper’s presentence investigation, the GAIN-I Recommendation and Referral Summary (GRRS) stated that Mr. Jasper “reported a history of being attacked with a weapon, being beaten, sexual abuse, [and] emotional abuse.” (PSI, p.58.) He scored “in the high range of the General Victimization Scale.” (PSI, p.58.)

Mr. Jasper’s drug use likely served as an escape from these negative experiences as a child. As Mr. Jasper explained during the presentence investigation, “I

was smoking pot at age 6.” (PSI, p.12.) He first used methamphetamine in ninth grade, but he quit around eleventh grade. (PSI, p.12.) Sometime thereafter he began using methamphetamine again one to two times a day intravenously. (PSI, p.15.) At age thirty, Mr. Jasper began using heroin one to two times a week as well. (PSI, p.15.) The Substance Abuse Report found that Mr. Jasper was a “drug addict.” (PSI, p.44.) The GRRS determined that his symptoms met the criteria for “amphetamine dependence with physiological symptoms” and recommended Level III Residential Treatment. (PSI, p.50, 60.) His current offense highlights the severity of his drug addiction—he had forty-nine grams of methamphetamine in jail, which he claimed at one point was for his personal use. (R., p.14; Tr., p.22, Ls.18–25.) He also acknowledged, however, that he sold methamphetamine to support his addiction. (PSI, p.14.)

Even though Mr. Jasper reportedly struggled to appreciate the severity of his addiction, (See PSI, p.45), Mr. Jasper was amenable to treatment. He stated during the presentence investigation, “I’m tired of this lifestyle and I’ll do whatever it takes.” (PSI, p.15.) At sentencing he explained, “I know what I did was wrong . . . I don’t want to make myself look any worse, but I’m an addict, and . . . that to me is a personal amount based on my usage.” (Tr., p.22, Ls.20–24.) Additionally, he stated, “I need help, and I understand that.” (Tr., p.23, Ls.21–22.) He also explained that he had asked for help in the past, but he has never gotten it, although this lack of treatment might have been due to factors outside his control, such as California’s prison system.² (Tr., p.23, Ls.13–22; PSI, p.15.) He most recently participated in a Therapeutic Community-type program in

¹ Citations to the PSI refer to the sixty-page electronic document titled “PSI.”

2000. (PSI, p.15.) He reported during the GRRS evaluation that he was “about 100% ready to remain abstinent” from substances. (PSI, p.54.) He showed “moderate motivation for treatment.” (PSI, p.54.)

Based on the above information, Mr. Jasper’s substance abuse issues, the impact of his substance abuse on his behavior, and his need for treatment are strong factors in mitigation. A sentencing court should give “proper consideration of the defendant’s [substance abuse] problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho 89, 91 (1982). The impact of substance abuse on the defendant’s criminal conduct is “a proper consideration in mitigation of punishment upon sentencing.” *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Mr. Jasper submits that the district court abused its discretion at sentencing by failing to adequately consider his drug addiction, the effect of his addiction on his conduct, and his desire for treatment.

Further, Mr. Jasper’s mental health issues stand in favor of a lesser indeterminate sentence. The PSI noted that Mr. Jasper “expressed the desire to speak with a counselor” and reported “having some paranoia.” (PSI, p.14.) The Mental Health Review of the GRRS found that Mr. Jasper “reported experiencing symptoms and scored in the moderate range of the Internal Mental Distress and Behavior Complexity Scale.” (PSI, p.21.) The Mental Health Review also recognized Mr. Jasper’s “history of physical, sexual, and emotional abuse.” (PSI, p.21.) The Mental Health Review did not recommend an additional mental health evaluation, but it did recommend counseling “to

² Mr. Jasper was released from the California prison system in August of 2014. (PSI, pp.11, 12.) He is from California. (PSI, p.12.) The instant offenses occurred after Mr. Jasper was arrested while driving through Idaho on his way to Montana. (PSI, p.12.)

treat his reported symptoms and address history of abuse, gain knowledge on appropriate coping mechanisms, and receive help with identifying triggers or areas that agitate mental health problems” and treatment, including “a component to address any correlation between [his] symptoms and substance use.” (PSI, p.21.) In light of his mental health issues, as well as the other mitigating circumstances, Mr. Jasper contends that the district abused its discretion by imposing an indeterminate sentence of twelve years.

CONCLUSION

Mr. Jasper respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 27th day of October, 2015.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of October, 2015, 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:

JODY JASPER
INMATE #114569
BONNEVILLE COUNTY JAIL
605 N CAPITAL
IDAHO FALLS ID 83402

JON J SHINDURLING
DISTRICT COURT JUDGE
E-MAILED BRIEF

SCOTT J DAVIS
BONNEVILLE COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas