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## State v. Ballard Appellant's Brief Dckt. 43232

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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                                |
|-----------------------|---|--------------------------------|
| STATE OF IDAHO,       | ) |                                |
|                       | ) | NO. 43232                      |
| Plaintiff-Respondent, | ) |                                |
|                       | ) | BINGHAM COUNTY NO. CR 2015-574 |
| v.                    | ) |                                |
|                       | ) |                                |
| WESTON LLOYD BALLARD, | ) | APPELLANT'S BRIEF              |
|                       | ) |                                |
| Defendant-Appellant.  | ) |                                |
| _____                 | ) |                                |

STATEMENT OF THE CASE

Nature of the Case

After Weston Lloyd Ballard pled guilty to eluding a peace officer, the district court sentenced him to five years, with two and one-half years fixed. Mr. Ballard 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 January 28, 2015, Bingham County deputies located a reportedly stolen vehicle traveling on Highway 91. (Presentence Investigation Report (“PSI”),<sup>1</sup> p.4.) The deputies tried to initiate a traffic stop, but the vehicle continued to drive, swerving and

<sup>1</sup> Citations to the PSI refer to the eight-seven-page electronic document titled “PSI.”

turning onto different roads. (PSI, p.4.) The vehicle eventually crashed and rolled onto its roof. (PSI, p.4.) The driver, later identified as Mr. Ballard, exited the vehicle and began running through a field. (PSI, p.4.) The deputies pursued Mr. Ballard and arrested him. (PSI, p.4.) After Mr. Ballard was medically cleared at a hospital, he was transported to jail. (PSI, p.4.) Two breath tests provided that his blood alcohol content was 0.122 and 0.116. (PSI, p.4.)

On January 29, 2015, the State filed a Criminal Complaint alleging that Mr. Ballard committed the crimes of: (1) eluding a peace officer, a felony, in violation of Idaho Code § 49-1404(2); (2) felony driving under the influence, Idaho Code §§ 18-8004(1)(a), -8005(9); and (3) grand theft for possession of stolen property, a felony, in violation of Idaho Code §§ 18-2403(4)(a), -2407(1). (R., pp.8–10.) Mr. Ballard waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.41, 44–46.) The State then filed a two-part Information charging Mr. Ballard with eluding a peace officer, felony driving under the influence, and grand theft, plus a persistent violator sentencing enhancement, Idaho Code § 19-2514. (R., pp.47–48, 49–51.)

On March 2, 2015, Mr. Ballard pled guilty pursuant to a plea agreement with the State. (R., pp.65–67; Tr. Vol. I,<sup>2</sup> p.19, Ls.4–7.) In exchange for Mr. Ballard's guilty plea to eluding a peace officer, the State agreed to dismiss the remaining charges, including the sentencing enhancement. (R., p.66; Tr. Vol. I, p.7, L.5–p.8, L.5.) The district court accepted Mr. Ballard's guilty plea. (R., p.66; Tr. Vol. I, p.21, L.19–p.22, L.1.)

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<sup>2</sup> There are two transcripts on appeal. The first, cited as Volume I, is a transcript of the entry of plea hearing. The second, cited at Volume II, is a transcript of the sentencing hearing.

On April 20, 2015, the district court sentenced Mr. Ballard to five years, with two and one-half years fixed.<sup>3</sup> (R., pp.75–76; Tr. Vol. II, p.19, L.20–p.20, L.1.) The district court entered a Judgment of Conviction and Order of Commitment on April 23, 2015. (R., pp.78–80.) Mr. Ballard timely appealed. (R., pp.82–83.)

### ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of five years, with two and one-half years fixed, upon Mr. Ballard, following his guilty plea to eluding a peace officer?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Two And One-Half Years Fixed, Upon Mr. Ballard, Following His Guilty Plea To Eluding A Peace Officer

“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, Mr. Ballard’s sentence does not exceed the statutory maximum. See I.C. § 18-112. Accordingly, to show that the sentence imposed was unreasonable, Mr. Ballard “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).

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<sup>3</sup> As part of the plea agreement, the State agreed to recommend a sentence consistent with the recommendation of the presentence investigator. (R., p.66; Tr. Vol. I, p.7, L.5–p.8, L.5.) The presentence investigator recommended incarceration. (PSI, p.22.) At sentencing, the State recommended a sentence of five years fixed. (Tr. Vol. II, p.10, Ls.12–13.)

“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).

In this case, Mr. Ballard asserts that the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends that the district court should have sentenced him to a lesser term of imprisonment or retained jurisdiction<sup>4</sup> in light of the mitigating factors, including his substance abuse issues, mental health issues, and family support.

Mr. Ballard’s alcohol abuse, the impact of his alcohol 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 alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem.”

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<sup>4</sup> Mr. Ballard previously participated in two riders in 2001 and 2008. (PSI, p.13.) The first rider was revoked, but he completed the second rider and was placed on probation. (PSI, p.13.) As Mr. Ballard’s counsel explained at sentencing, these were traditional riders. (Tr. Vol. II, p.8, Ls.1–7.) His counsel argued that Mr. Ballard would greatly benefit from the Correctional Alternative Placement Program or the therapeutic community rider due to the treatment aspect of these programs. (Tr. Vol. II, p.8, Ls.17–23.)

*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). Here, thirty-two year old Mr. Ballard grew up in "a culture of alcohol use."<sup>5</sup> (PSI, pp.3, 61.) His father was an alcoholic, and several members of his extended family had issues with alcohol or substance abuse. (PSI, pp.14, 60, 61.) Mr. Ballard reported that his father would give him candy if he would "hustle for money for alcohol" for his father. (PSI, p.60.) Due to this culture of alcohol abuse, Mr. Ballard began drinking alcohol at age thirteen. (PSI, p.17.) He reported that he would drink between two and three forty-ounce malt liquors a day. (PSI, p.17.) In an earlier Mental Health Assessment from 2011, Mr. Ballard reported that he would drink between six and seven forty-ounce malt liquors or a pint to a fifth of whiskey every night. (PSI, p.61.)

In addition, Mr. Ballard stated in the presentence investigation that he began smoking marijuana at age fourteen and smoking methamphetamine at age twenty-three. (PSI, p.17.) He reported that he stopped using marijuana and methamphetamine in 2008.<sup>6</sup> (PSI, p.17.) The GAIN-I Referral and Recommendation Summary (GRRS) found that Mr. Ballard met the criteria for alcohol dependence with physiological symptoms and recommended Level III.1 Residential Treatment. (PSI, pp.40–41, 53.) Similarly, the Substance Abuse Report found that Mr. Ballard was an alcoholic. (PSI,

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<sup>5</sup> Mr. Ballard is Native American and has lived his entire life in Blackfoot, Idaho, or the Fort Hall reservation. (PSI, pp.3, 14, 39)

<sup>6</sup> Mr. Ballard also reported that he used marijuana and methamphetamine around Christmastime. (PSI, p.17.)

p.38.) Mr. Ballard's alcohol abuse appears to have had a significant impact on his prior criminal conduct. (PSI, pp.5–13, 64.)

Although Mr. Ballard has struggled with alcohol abuse for most of his life, he showed a "high motivation for treatment" in the GRRS. (PSI, p.47.) Likewise, in the presentence investigation, Mr. Ballard acknowledged that he had a problem with alcohol abuse and was "100% ready" to learn about his addiction. (PSI, pp.5, 17.) Mr. Ballard explained that he wanted to stop using alcohol so he could have a better life. (PSI, p.17.) To change his criminal behavior, Mr. Ballard stated that he would rely on the support of his sober family and friends, attend Alcoholics and Narcotics Anonymous, find a sponsor, and stay away from "old hang outs." (PSI, p.18.) Mr. Ballard made similar statements at sentencing regarding his commitment to recovery. He recognized that his alcohol abuse endangered others and his own life, and he wanted to learn how to be successful. (Tr. Vol. II, p.12, L.6–p.13, L.2.) He understood that he had two options—he could continue this lifestyle in and out of prison and "die" or he could learn about alcohol abuse, get an education, and lead a successful life. (Tr. Vol. II, p.12, Ls.11–18.) He asked the district court to see "a man that wants to change," not "a lost cause." (PSI, p.18.) Mr. Ballard submits that his issues with alcohol abuse, its effect on his behavior, and his commitment to treatment support a lesser sentence.

In addition to his alcohol addiction, Mr. Ballard's mental health issues are relevant factors for mitigation. He has a family history of mental illness. (PSI, p.17.) His mother was hospitalized several times and eventually had to live in foster care due to her mental illness. (PSI, pp.60, 61.) He reported that his sister and brother are suicidal. (PSI, p.60.) Mr. Ballard was diagnosed with ADHD and prescribed Ritalin as a child.

(PSI, pp.17, 56, 58, 59, 60.) Since the age of fourteen, he attended Family Counseling Services in Fort Hall once every week or two. (PSI, p.17.) Further, Mr. Ballard believed that he had fetal alcohol spectrum disorder, although he was never formally diagnosed, because his mother drank alcohol and used drugs when she was pregnant with him. (PSI, p.17; Tr. Vol. II, p.11, L.24–p.12, L.2.) The Mental Health Review of the GRRS found that Mr. Ballard reported symptoms consistent with a mood disorder. (PSI, p.56.) A 2011 Mental Health Assessment determined that Mr. Ballard had symptoms of depression. (PSI, pp.63–64.) Mr. Ballard recognized that he used alcohol to relieve stress and depression, but drinking only made his depression worse over time. (PSI, p.60.) In light of this information of Mr. Ballard’s mental health, he submits that the district court should have imposed a lesser term of imprisonment or retained jurisdiction.

Finally, Mr. Ballard submits that the support of his girlfriend and the need to provide for his family are factors in favor of mitigation. Prior to his arrest, Mr. Ballard lived with his girlfriend and her three children on the Fort Hall reservation. (PSI, pp.14, 15.) Mr. Ballard refers to her three children as his step-children. (PSI, p.22.) His girlfriend wrote in a letter of support:

I know he is so remorseful for what his actions caused. I know in my heart that wasn't my husband at all. That was the addiction he badly wants help for. Weston is a good man, a great provider for his family. When he's sober he is such a fun person to be around and all the pride he has when he had a job, because he was able to provide for us. Which is myself[,] his wife, and his 3 children. I realize how much he tried to overcome his addiction, but his problem brought him to where he is today.

(PSI, pp.15, 66.) She asked for leniency because Mr. Ballard provides for their family and helps raise their three children. (PSI, pp.15, 66.) Mr. Ballard also stated that he wanted to “work hard to support his family.” (PSI, p.18.) Due to his family support



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of December, 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:

WESTON LLOYD BALLARD  
INMATE # 63723  
BONNEVILLE COUNTY JAIL  
605 N CAPITAL  
IDAHO FALLS ID 83402

DARREN B SIMPSON  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

MANUEL MURDOCH  
ATTORNEY AT LAW  
E-MAILED BRIEF

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

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCS/eas