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## State v. Remm Appellant's Brief Dckt. 43353

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43353
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR 2014-8029
v.	)	
	)	
MATTHEW JAMES REMM,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Matthew James Remm pled guilty to online enticement of a minor, the district court sentenced him to twelve years, with two years fixed, and retained jurisdiction. The district court later relinquished jurisdiction. Mr. Remm now appeals to this Court, contending the district court abused its discretion by imposing an excessive sentence and by relinquishing jurisdiction.

Statement of the Facts & Course of Proceedings

On July 1, 2014, the State charged Mr. Remm with online enticement of a minor, a felony, in violation of Idaho Code § 18-1509A. (R., pp.28–29.) These charges were based on Mr. Remm’s online communication with a detective posing as a

thirteen-year-old girl “Steph.” (Presentence Investigation Report (“PSI”),<sup>1</sup> pp.2–3.) Mr. Remm sent some sexually explicit messages and pictures to Steph, and he arranged to meet to have sexual intercourse. (PSI, pp.2–3.) When Mr. Remm arrived at their meeting place, he was arrested. (PSI, p.3.) He was twenty-four years old at the time of the offense. (PSI, p.2; Tr. Vol. I,<sup>2</sup> p.11, Ls.18–21.) On August 7, 2014, Mr. Remm pled guilty as charged. (R., p.38; Tr. Vol. I, p.9, Ls.22–23, p.11, L.22–p.12. L.2.)

On October 23, 2014, the district court held a sentencing hearing. (R., p.49.) The State recommended the district court impose a sentence of twelve years, with two years fixed, and Mr. Remm requested that the district court retain jurisdiction. (Tr. Vol. II, p.8, L.25–p.9, L.2, p.21, Ls.4–7.) The district court sentenced Mr. Remm to twelve years, with two years fixed, and retained jurisdiction (“a rider”). (Tr. Vol. II, p.22, Ls.20–25.) On October 24, 2014, the district court entered a Judgment of Conviction and Order of Retained Jurisdiction. (R., pp.51–53.)

On July 2, 2015, the district court held a hearing to review Mr. Remm’s rider. (R., p.60.) The State recommended that the district court relinquish jurisdiction. (Tr. Vol. I, p.16, L.24–p.17, L.5.) Mr. Remm noted the district court’s jurisdiction did not expire until October 23, 2015, and he requested that the district court allow him to continue with the rider programming. (Tr. Vol. I, p.20, Ls.10–20.) The district court relinquished jurisdiction and imposed the twelve-year sentence, with two years fixed. (Tr. Vol. I, p.23,

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<sup>1</sup> Citations to the PSI refer to the 268-page electronic document titled “Remm 43353 psi.”

<sup>2</sup> There are two transcripts on appeal. The transcript containing the entry of plea hearing and rider review hearing will be cited as Volume I. The transcript containing the sentencing hearing will be cited as Volume II.

Ls.13–14.) The district court entered an Order Relinquishing Jurisdiction on July 7, 2015. (R., p.66.).

Mr. Remm moved for reconsideration of his sentence pursuant to Idaho Criminal Rule 35 (“Rule 35”). (R., p.61.) His counsel stated in support of the motion that achieving the objectives of sentencing “may still be accomplished by reducing the sentence in this case and would create the possibility that Mr. Remm could enter in to [sic] a treatment program sooner.” (R., p.64.) The district court denied the motion without a hearing.<sup>3</sup> (R., pp.73–75.)

Mr. Remm timely appealed from the district court’s order relinquishing jurisdiction. (R., pp.68–69.)

### ISSUES

1. Did the district court abuse its discretion when it imposed a unified sentence of twelve years, with two years fixed, upon Mr. Remm, following his guilty plea to online enticement of a minor?
2. Did the district court abuse its discretion when it relinquished jurisdiction?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Twelve Years, With Two Years Fixed, Upon Mr. Remm, Following His Guilty Plea To Online Enticement Of A Minor

“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. Remm's sentence does not exceed the statutory maximum. See I.C. § 18-1509A(2). Accordingly, to show that the sentence imposed was unreasonable, Mr. Remm "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. Remm 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 in light of the mitigating factors, including his family support, acceptance of responsibility, and steady employment.

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<sup>3</sup> Mr. Remm does not challenge on appeal the district court's order denying his Rule 35 motion.

The support of Mr. Remm's grandfather is a mitigating factor in support of a lesser sentence. Mr. Remm was raised by his grandfather and grandmother. (PSI, p.6.) According to Mr. Remm's grandfather, Mr. Remm's mother had "no parenting skills," and his grandfather took custody of Mr. Remm when he was about one year old. (PSI, p.7.) In 2008, Mr. Remm's grandmother had stroke. (PSI, pp.6, 7.) Mr. Remm helped his grandfather take care of her until her death in 2010. (PSI, pp.6, 7.) At the time of the instant offense, Mr. Remm lived with his grandfather. (PSI, pp.8, 15–16.) His grandfather wrote a letter stating he would "never give up" on his grandson because he knew that he is "a caring and useful citizen." (PSI, p.7.) Mr. Remm submits that the support of his grandfather supports a lesser sentence.

In addition, Mr. Remm's acceptance of responsibility and commitment to treatment support a lesser sentence. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). Here, Mr. Remm stated in the presentence investigation that he felt "terrible" because he "made a big mistake." (PSI, p.4.) He also stated that he was going to change his life. (PSI, p.12.) Similarly, he told the district court at sentencing:

I'm sorry for what I did. And I would just like an opportunity in the future to be able to fix and move on with my life, and be able to get back out in the community and maintain a job, and just be able to show the Court and show my family and friends that I can change. And I would just like an opportunity to be able to show the Court. Thank you.

(Tr. Vol. II, p.21, L.22–p.11, L.4.) Also, the psychosexual evaluation reported that Mr. Remm was moderately amenable to treatment. (PSI, p.197.) Mr. Remm's amenability to treatment was further evidenced by his contact with SANE Solutions, a sex offender treatment program. (PSI, p.159; Tr. Vol. II, p.20, Ls.8–15.) As noted by his

counsel at sentencing, Mr. Remm reached out to SANE Solutions to learn about their treatment options. (Tr. Vol. II, p.20, Ls.8–15.) Mr. Remm’s acceptance of responsibility and focus on treatment stand in favor of mitigation.

Lastly, Mr. Remm’s positive employment history is a factor in favor of mitigation. Mr. Remm worked at Albertson’s Grocery Store for approximately four years prior to his arrest. (PSI, p.9.) His performance was not an issue, and he lost his job due to the arrest for the instant offense. (PSI, p.9; Tr. Vol. II, p.19, Ls.10–18.) During the presentence investigation, Mr. Remm stated that maintaining steady employment was important to him. (PSI, p.12.) At sentencing, he stated that he wanted “to get back out in the community and maintain a job.” (Tr. Vol. II, p.21, Ls.24–25.) Mr. Remm submits that his positive employment history and commitment to steady employment supports a lesser sentence. *See State v. Mitchell*, 77 Idaho 115, 118, 289 P.2d 315, 317 (1955) (recognizing gainful employment as a mitigating factor); *see also Shideler*, 103 Idaho at 594–95 (employment and desire to advance within company were mitigating circumstances).

In light of the mitigating factors discussed above, even when weighed against the aggravating circumstances, Mr. Remm submits that the district court abused its discretion by imposing an excessive underlying sentence of twelve years, with two years fixed.

## II.

### The District Court Abused Its Discretion When It Relinquished Jurisdiction

The district court’s decision whether to retain jurisdiction and place the defendant on probation or relinquish jurisdiction is reviewed for an abuse of discretion. *State v.*

*Brunet*, 155 Idaho 724, 729 (2013); see also I.C. § 19-2601(4). “A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate.” *State v. Hansen*, 154 Idaho 882, 889 (Ct. App. 2013).

In this case, Mr. Remm submits that the district court abused its discretion by relinquishing jurisdiction. He contends that the district court should have continued his rider program.

Here, the period of retained jurisdiction began on October 24, 2015, but Mr. Remm did not begin treatment with the Sex Offender Assessment Group (“SOAG rider”) until March 9, 2015.<sup>4</sup> (R., p.51; PSI, p.131.) The rider review hearing was held on July 2, 2015. (R., p.60.) Although Mr. Remm’s counsel was not trying to excuse his behavior, his counsel explained that this delay in treatment may have impacted Mr. Remm’s initial motivation. (Tr. Vol. I, p.17, L.16–p.18, L.8.) His counsel noted that the district court’s jurisdiction did not expire until October 23, 2015, and thus the district court could continue Mr. Remm’s rider. (Tr. Vol. I, p.20, Ls.7–20.) That additional time in treatment would allow Mr. Remm to learn from his mistakes and continue his rehabilitation.

In addition, Mr. Remm submits that he had shown enough improvement on the SOAG rider to demonstrate he would benefit from additional treatment in the program. He explained that he learned from his “learning experiences” after his two disciplinary sanctions. (PSI, p.133.) He expressed that he wanted “to stop doing the wrong thing and start doing the right thing from now on.” (PSI, p.133.) He recognized that he had to

work on being honest and thinking before he acts. (PSI, pp.133–34, 135.) Moreover, he stated during the rider review hearing: “I would like to apologize too for failing you and not completing my rider. I know I could have done better, and I’m sorry for failing it.” (Tr. Vol. I, p.20, L.24–p.21, L.1.) Based on Mr. Remm’s delayed entry into the SOAG rider, and his need for structured treatment, he submits that the district court abused its discretion by relinquishing jurisdiction. He requests that this Court continue his rider program.

### CONCLUSION

Mr. Remm respectfully requests that this Court reduce his sentence as it deems appropriate, or remand his case for a new sentencing hearing. Alternatively, he requests that this Court vacate the district court’s order relinquishing jurisdiction and remand to the district court for further proceedings.

DATED this 2<sup>nd</sup> day of November, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

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<sup>4</sup> Mr. Remm was initially housed in the Correctional Alternative Placement Program facility. (Tr. Vol. I, p.17, Ls.17–20.)

CERTIFICATE OF MAILING

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

MATTHEW JAMES REMM  
INMATE #112884  
ISCC  
PO BOX 70010  
BOISE ID 83707

LYNN G NORTON  
DISTRICT JUDGE  
E-MAILED BRIEF

BRIAN C MARX  
ADA 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