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## State v. Sublet Appellant's Brief Dckt. 43393

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43393
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR 2015-4012
v.	)	
	)	
PAUL ANTHONY SUBLET,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Paul Sublet pled guilty to one count of aiding and abetting burglary. He received a unified sentence of ten years, with two years fixed. On appeal, Mr. Sublet contends that this sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

On March 19, 2015, law enforcement was conducting surveillance related to a series of burglaries of vehicles parked at recreation parking areas. (Presentence

Investigation Report (*hereinafter*, PSI),<sup>1</sup> p.3.) One officer observed an individual break the passenger side window of a locked vehicle and remove property from within the vehicle. (PSI, p.3.) Although the individual breaking the window and entering the vehicle was Benjamin Hinote, Paul Sublet had driven Mr. Hinote to and from the parking lot where the vehicle was located. (PSI, p.4.)

Based on these facts, Mr. Sublet was charged by Amended Information with one count of aiding and abetting burglary. (R., pp.30-31.) Pursuant to a plea agreement, Mr. Sublet pled guilty to aiding and abetting burglary. (Tr., p.11, L.20 – p.12, L.1; R., pp.29-41.) In exchange, the State agreed to recommend a sentence of ten years, with two years fixed, and a retained jurisdiction provided Mr. Sublet had never been to prison. (R., pp.29, 32-36.) The State also agreed not to file a persistent violator sentencing enhancement, and Mr. Sublet would be required to pay restitution. (R., pp.34, 39-40.) The defense asked for a mental health evaluation pursuant to I.C. § 19-2524, a substance abuse evaluation, and that Mr. Sublet be screened for admission to drug court.<sup>2</sup> (R., p.34.)

At the sentencing hearing, the prosecutor asked the district court to sentence Mr. Sublet to a unified sentence of ten years, with two years fixed. (Tr., p.25, Ls.18-21.) Mr. Sublet's counsel asked the district court to sentence Mr. Sublet to probation. (Tr., p.27, Ls.16-19, p.28, Ls.7-12.) The district court sentenced Mr. Sublet to a unified sentence of ten years, with two years fixed. (Tr., p.33, Ls. 19-24; R., pp.46-49.)

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<sup>1</sup> Appellant's use of the designation "PSI" includes the packet of documents grouped with the PSI, including the Substance Abuse Evaluation and Mental Health Evaluation.

<sup>2</sup> Mr. Sublet was screened for the specialty court, but was ineligible due to his high LSI score. (R., p.42; Tr., p.23, Ls.2-7.)

Mr. Sublet filed a timely Rule 35 motion asking the district court for leniency and a brief in support of the motion. (R., pp.56-60.) The district court denied Mr. Sublet's Rule 35 motion without a hearing. (R., pp.61-62.) Mr. Sublet had filed a notice of appeal which was timely from the judgment of conviction and the order denying his Rule 35 motion.<sup>3</sup> (R., pp.51-53.)

### ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of ten years, with two years fixed, upon Mr. Sublet following his plea of guilty to aiding and abetting burglary?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Two Years Fixed, Upon Mr. Sublet Following His Plea Of Guilty To Aiding And Abetting Burglary

Mr. Sublet asserts that, given any view of the facts, his unified sentence of ten years, with two years fixed, is excessive. 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)

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<sup>3</sup> Mr. Sublet did not submit any new information in support of his Rule 35 motion. Therefore, Mr. Sublet does not challenge the denial of his Rule 35 motion on appeal. See *State v. Huffman*, 144 Idaho 201 (2007).

(quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Sublet does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Sublet must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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 light of the mitigating factors present in this case, Mr. Sublet's sentence is excessive considering any view of the facts.

An important fact that should have received the attention of the district court is that Mr. Sublet has strong support from his surviving family members. See *State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts). Mr. Sublet's aunt is a source of support for him. (PSI, pp.8-9.) Mr. Sublet also has adult children whom he is close to—he speaks to his two sons nearly every day. (PSI, pp.9-10.) However, Mr. Sublet had a very difficult childhood. He was raised by his mother after his father committed suicide when Mr. Sublet was only six years old. (PSI, p.8.) His mother was an alcoholic, and Mr. Sublet endured years of physical abuse from his mother as well as his seven step-fathers. (PSI, pp.8-9.) Mr. Sublet moved from motel to motel with his mother and did not have a stable place to live. (PSI, p.9.)

The Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). In *Nice*, the Idaho Supreme Court reduced a sentence

based on Nice's lack of prior record and the fact that "the trial court did not 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." *Id.* at 91. Additionally, the Idaho Supreme Court has ruled that ingestion of drugs and alcohol resulting in impaired capacity to appreciate the criminality of conduct, could be a mitigating circumstance. *State v. Osborn*, 102 Idaho 405, 414 (1981).

At the time of his offense, Mr. Sublet was using heroin, cocaine, and opiates. (Tr., p.27, L.25 – p.28, L.6; PSI, pp.12, 78.) Mr. Sublet was heavily addicted to heroin and was intravenously injecting himself three to four times daily at the time of his arrest. (PSI, p.12.) His most recent relapse occurred because he ran out of prescription pain medication for kidney stones and began medicating the pain with heroin, cocaine, and opiates. (Tr., p.27, L.25 – p.28, L.6; PSI, pp.12, 78.) However, Mr. Sublet wants treatment and his goal is to learn how to stay sober. (Tr., p.28, Ls.7-12; PSI, pp.80, 84, 91.)

The Idaho Supreme Court has recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Sublet reported a history of mental illness including Bipolar Disorder and manic depression. (PSI, pp.89-90; Tr., p.30, L.23 – p.31, L.1.) Mr. Sublet has a history of suicide attempts, and his father and sister both committed suicide. (PSI, pp.8, 11, 78, 90.) He reported his first suicide attempt was at age 12. (PSI, pp.11, 78.) Every morning Mr. Sublet wakes up and reminds himself of his children so he has "a reason not to die." (PSI, pp.11, 90.)

Further, Mr. Sublet expressed remorse and accepted responsibility for his actions. (PSI, p.13; Tr., p.11, L.20 – p.12, L.1; R., pp.29-41.) Regarding the circumstances surrounding his offense, Mr. Sublet expressed, “[n]ow that I’m sober I feel dumb, ashamed at what I did, and I feel like a pile of crap for stealing some ladies [sic] things.” (PSI, p.4.) Mr. Sublet also wanted the court to know that “I deserve to be locked up, but I know that I need more treatment, cause I feel shame, remorse guilt, now, something that I do not feel when I’m high. I kick myself in my teeth for all the dumb choices I’ve made that are so clear now. I’ve hurt a lot of people and I have ruined my life over drugs but yet I do the same drug and even knowing I’m going to steal, overdose, I came to jail. I hate what I’ve become.” (PSI, pp.13-14.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Mr. Sublet asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his remorse, desire for treatment for his severe drug addiction, and family support, it would have imposed a less severe sentence.

CONCLUSION

Mr. Sublet respectfully requests that this Court reduce his sentence as it sees fit or remand his case to the district court for a new sentencing hearing.

DATED this 21<sup>st</sup> day of January, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
SALLY J. COOLEY  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21<sup>st</sup> day of January, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

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ISCC  
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BOISE ID 83707

TIMOTHY HANSEN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

DANICA COMSTOCK  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

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

SJC/eas