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## State v. Melena Appellant's Brief Dckt. 43665

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43665
Plaintiff-Respondent,	)	
	)	JEFFERSON COUNTY NO. CR 2015-265
v.	)	
	)	
EDER MELENA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, Eder Melena was found guilty of one count of eluding a peace officer and three misdemeanor offenses. On the eluding charge, the district court imposed a sentence of five years, with one year fixed, but retained jurisdiction so that Mr. Melena could participate in a Rider program. On appeal, Mr. Melena asserts that the district court abused its discretion when it imposed the sentence.

Statement of the Facts & Course of Proceedings

In January of 2015, Jerome Police officers responded to a report of a fight at a bar. (PSI, pp.3-4; 7/15/15 Tr., p.26, L.11 – p.27, L.12.) In route, Officer Novak, was told

that the suspects could be driving a Cadillac Escalade, and that there could have been weapons used during the fight. (7/15/15 Tr., p.27, Ls.14-17.) Officer Novak testified that when he arrived at the location of the establishment, he saw a Cadillac Escalade and pursued it. (7/15/15 Tr., p.31, L.22 – p.32, L.7.) Officer Lenker testified that he joined in the pursuit, and the vehicle eventually came to a stop in a parking lot, at which point he saw Mr. Melena get out of the driver's door, throw a gun, and run. (PSI, p.3; 7/16/15 Tr., p.185, L.23 – p.188, L.22.) The officers later used a taser to subdue Mr. Melena. (PSI, p.3.)

After Mr. Melena was arrested, Officer Lenker returned to the bar and spoke with the bouncer, Mr. Peterson. (PSI, p.4.) Mr. Peterson also testified at the trial and said that Mr. Melena and his younger brother were involved in a fight in the bar, and he escorted the younger brother outside. (7/16/15 Tr., p.118, Ls.12-17.) He said that Mr. Melena's brother then pulled out a knife and threatened to stab him. (PSI, p.4; 7/16/15, p.118, L.16 – p.119, L.7.) Mr. Peterson also said that Mr. Melena went to his vehicle and got out a gun, at which point he said he retreated back inside the building. (PSI, p.4, 7/16/15 Tr., p.119, L.18 – p.121, L.1.)

Mr. Melena was initially charged with one misdemeanor count of exhibition and/or use of a deadly weapon, one misdemeanor count of driving without privileges, one misdemeanor count of resisting and/or obstructing officers, one misdemeanor count of carrying a concealed weapon under the influence of alcohol, one felony count of destruction, alteration or concealment of evidence, and one felony count of eluding a

peace officer.<sup>1</sup> (R., pp.56-58.) After a trial, he was found guilty of the felony charge of eluding a peace officer and three misdemeanors. (R., pp.242-45.) On the eluding charge, the district court imposed a sentence of five years, with one year fixed, but retained jurisdiction so that Mr. Melena could participate in a Rider program. (R., p.246.) Mr. Melena filed a Notice of Appeal that was timely from the district court's judgment of conviction. (R., pp.253-56.)

### ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of five years, with one year fixed, following Mr. Melena's conviction for eluding a peace officer?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed A Sentence Of Five Years, With One Year Fixed, Following Mr. Melena's Conviction For Eluding A Peace Officer

Based on the facts of this case, Mr. Melena's sentence of five years, with one year fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, the appellate court will conduct an independent examination 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).

Independent appellate sentencing examinations are based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). When a sentence is unreasonable based on the facts of the case, it is an abuse of discretion.

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<sup>1</sup> After the trial, but prior to submitting the case to the jury, the district court dismissed the felony concealment of evidence charge and the misdemeanor concealed weapon charge. (7/17/15 Tr., p.258, L.20 – p.273, L.11.)

*State v. Nice*, 103 Idaho 89, 90 (1982). Unless it appears that confinement was necessary “to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case,” a sentence is unreasonable. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). Accordingly, if the sentence is excessive, “under any reasonable view of the facts,” because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Mr. Melena’s sentence is excessive under any reasonable view of the facts. First, this was Mr. Melena’s first felony conviction.<sup>2</sup> (PSI, pp.5-6.) This is a long-recognized mitigating factor. *State v. Owen*, 73 Idaho 394, 402 (1953).

Additionally, Mr. Melena has a good work history and no issues with illicit drugs. (PSI, pp.9, 10.) He has also been married for over 10 years and has a young daughter. (PSI, p.8.) Indeed, when asked what was important to him in life he said that his family and his job were most important. (PSI, p.11.) He also said that getting his own house and making his family happy were his current goals. (PSI, p.11.) A defendant’s positive work history and efforts to support his family are also well-established mitigating factors. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Nice*, 103 Idaho 89, 91 (1982).

Finally, Mr. Melena demonstrated remorse and regret over this incident. When asked how he felt about the offense, he said he felt dumb, selfish, and irresponsible.

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<sup>2</sup> The reference in the PSI to two felony convictions is erroneous as the felony concealment charge was dismissed. (PSI, pp.14, 6.) The district court noted this error at the sentencing hearing. (9/14/15 Tr., p.305, L.9 – p.306, L.1.)

(PSI, p.5.) Expressions of remorse should also be considered as mitigating information. *State v. Caudill*, 109 Idaho 222, 224 (1985).

Given the facts of this case, Mr. Melena's extended sentence was not necessary and was therefore unreasonable. He asserts the district court abused its discretion when it failed to adequately consider the mitigating information in this case.

#### CONCLUSION

Mr. Melena 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 12<sup>th</sup> day of July, 2016.

\_\_\_\_\_  
/s/  
REED P. ANDERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12<sup>th</sup> day of July, 2016, 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:

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

RPA/eas