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State v. Irving Appellant's Brief Dckt. 43692

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43692
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2014-15654
v.)	
)	
PATRICK SEAN IRVING,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Patrick Irving appeals, contending the district court abused its discretion by imposing excessive sentences in this case, both as to the fixed portion and the aggregate term of those sentences. Rather, he contends an adequate consideration of the mitigating facts in this case reveals more lenient sentences would have better served the goals of sentencing in this case. Therefore, this Court should reduce Mr. Irving's sentences as it deems appropriate, or, alternatively, remand this case for a new sentencing hearing.

Statement of Facts and Course of Proceedings

When Mr. Irving was fifteen, he was diagnosed with “Major Depressive Disorder, single episode, suspect Intermittent Explosive Disorder; Oppositional Defiant Disorder; Chemical Abuse; and Mixed Personality Disorder.” (Presentence Investigation Report (*hereinafter*, PSI), p.348)¹ Despite his struggles with those conditions, Mr. Irving was able to complete his GED, take some college courses, and develop some employable skills. (PSI, pp.15-16, 341.) However, according to his father, Mr. Irving’s mental health deteriorated when his best friend died. (PSI, p.26.) His father indicated that this deterioration corresponded with an increase in drug use, which his father suspected was Mr. Irving’s attempt to cope with his loss and the symptoms of his mental health issues. (PSI, p.26.)

The deterioration continued, and, a few weeks prior to the instant offense, Mr. Irving began exhibiting severe mental health symptoms which resulted in two admissions to hospitals in Washington. (PSI, p.18.) However, he was released soon thereafter and returned to Idaho. (PSI, p.18.) Ultimately, he suffered a psychotic break. (PSI, p.9; see *also* PSI, p.411 (psychological evaluation explaining the recent symptoms described by Mr. Irving were consistent with a severe psychiatric disorder which may have been initially drug induced), p.23 (noting Mr. Irving’s admission that he had smoked marijuana and taken Norco pills that night).) During that episode, which lasted several days, Mr. Irving was arrested for trespassing, which resulted in paranoid thoughts that the people living near the place he was arrested were conspiring against

¹ PSI page numbers correspond with the page numbers of the electronic PDF file “Irving 43692 psi.”

him. (PSI, p.9.) His reaction to those paranoid thoughts was to set fire to the homes of those people over the next few days. (PSI, p.9.)

As a result, Mr. Irving was charged with arson. (R., pp.7-8.)² However, his symptoms continued to be so severe he was declared incompetent and was committed for treatment. (R., pp.43-44.) The treatment took two months to stabilize Mr. Irving. (See R., p.57 (order terminating Mr. Irving's commitment); see *also* Tr., p.19, Ls.9-11 (defense counsel highlighting the difference in Mr. Irving's behavior when he is properly medicated).)³ Once stabilized, Mr. Irving accepted responsibility for his actions and pled guilty to two counts of arson. (See Tr., p.1, Ls.11-12.) In fact, "he would have plead[ed] guilty on the first day, quite frankly," had defense counsel not needed additional time to finish investigating aspects of the case, such as the State's pending restitution claim. (Tr., p.18, L.24 - p.19, L.3; *cf.* R., p.92.) In exchange for Mr. Irving's plea, the State agreed to cap its sentencing recommendation at an aggregate term of thirty years and dismiss the remaining charges. (Tr., p.1, L.10-16.)

A psychological evaluation of Mr. Irving provided an updated diagnosis of his mental health issues: "Schizoaffective Disorder, bipolar type vs. Substance Induced Psychotic Disorder[;] Polysubstance Use Disorder[; and] Other Specified Personality Disorder with Passive Aggressive and Antisocial features." (PSI, p.411.) It also noted that, under his new medications regimen, Mr. Irving reported his "symptoms have been relieved and effectively managed." (PSI, p.411.) The Department of Health and

² The complaint was subsequently amended to include three counts of arson, alleging he had set fire to two homes on three different days, as well as misdemeanor charge for providing false information to police. (R., pp.74-75.)

³ All citations to "Tr." in this brief refer to the volume containing the transcript of the sentencing hearing held on October 5, 2015.

Welfare's mental health examination concluded Mr. Irving had moderate motivation for change, and so, recommended continuing treatment through medication and counselling. (PSI, p.70.) In regard to Mr. Irving's substance abuse issues, the GAIN-I evaluation recommended Mr. Irving participate in a residential treatment program. (PSI, p.60.)

Based on those evaluations, defense counsel recommended the district court impose an aggregate sentence of twenty years, with five years fixed, as that would allow Mr. Irving to get stabilized on his new medication regimen, and then, the parole board would have the ability to decide whether he needed to remain incarcerated. (Tr., p.22, Ls.11-19.) The district court rejected both the defense and prosecution's recommendations as to the term of the sentence. Instead, it imposed an aggregate sentence of forty years, consisting of one twenty-year sentence, with fifteen years fixed, and one twenty-year sentence, with zero years fixed, ordered to be served consecutively. (Tr., p.29, L.16 - p.30, L.20; R., pp.109-12.) Mr. Irving filed a notice of appeal timely from the judgment of conviction. (R., pp.118-19.)

ISSUE

Whether the district court abused its discretion by imposing excessive sentences in this case.

ARGUMENT

The District Court Abused Its Discretion By Imposing Excessive Sentences In This Case

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, 772 (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) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Irving does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, he must show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *Id.*

The facts in this case reveal that Mr. Irving is capable of rehabilitating. As the Idaho Supreme Court has explained, while the primary goal of sentencing is protection of society, the initial consideration in reaching that goal should usually be rehabilitation. *State v. McCoy*, 94 Idaho 236, 240 (1971) (holding rehabilitation “should usually be the initial consideration in the imposition of the criminal sanction”), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015); see also *State v. Charboneau*, 124 Idaho 497, 500 (1993) (explaining that protection of society is the primary goal of sentencing, and is influenced by each of the other objectives).

Most notably, Mr. Irving’s actions in this case were the product of a new, severe development in his mental health situation. (See, e.g., PSI, p.26 (Mr. Irving’s father explaining the deterioration in Mr. Irving’s mental health situation following his best friend’s death).) In fact, that development rendered Mr. Irving incompetent to participate in the initial proceedings in this case. (R., pp.43-44.) However, once a medication regimen was set in place, those issues began to recede. (PSI, p.411.) The effect was

pronounced, as defense counsel pointed out at the sentencing hearing. (Tr., p.19, Ls.9-11.)

Furthermore, the presentence evaluations concluded that further rehabilitation in this regard was possible, noting Mr. Irving's amenability and moderate motivation to rehabilitate. (PSI, pp.23, 70.) As such, the recommendation was for Mr. Irving to continue his rehabilitative efforts through medication and counselling for his mental health issues, and a residential treatment program for his related substance abuse issues. (PSI, pp.60, 70.) To fulfill those recommendations, defense counsel urged the district court to impose a sentence which would allow Mr. Irving's medication regimen to be stabilized and a residential treatment program potentially pursued during a five-year period of incarceration, followed by a fifteen-year period during which the parole board would be able to determine the best placement for Mr. Irving and his continued rehabilitation. (Tr., p.22, Ls.9-19.)

Defense counsel also explained how that sentence better served the sentencing objectives, as compared to a sentence with a longer fixed period: the longer fixed sentence did not incentivize timely rehabilitative efforts. (Tr., p.22, Ls.20-24.) Both the Idaho Supreme Court and the Idaho Court of Appeals have recognized that the timing of rehabilitative programming is an important consideration at sentencing. See, e.g., *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971); *State v. Nice*, 103 Idaho 89, 91 (1982); *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App. 2008). As such, the aggregate sentence imposed by the district court, with its fifteen-year fixed term, fails to adequately serve this goal of sentencing.

This is particularly problematic given the fact that Mr. Irving had already taken the first steps toward rehabilitation. Once competent to do so, he took responsibility for his actions. (See Tr., p.18, L.24 - p.19, L.3.) He expressed his genuine remorse for his actions. (Tr., p.24, Ls.8-13; Tr., p.27, Ls.16-17.) Furthermore, he has a support network of family and friends who are willing to continue helping Mr. Irving in his rehabilitation efforts. (See PSI, p.27.) Therefore, an adequate consideration of the sentencing objectives reveals the sentences the district court imposed, which exceeded the prosecutor's recommendation in the aggregate term by ten years, were excessive, both in the fixed term, and the aggregate term.

CONCLUSION

Mr. Irving 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 24th day of March, 2016.

/s/ _____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of March, 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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INMATE #82431
ISCC
PO BOX 70010
BOISE ID 83707

STEVEN J HIPPLER
DISTRICT COURT JUDGE
EMAILED BRIEF

TERI JONES
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/s/ _____
MAGALI CEJA
Administrative Assistant

BRD/mc