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State v. Nasker Appellant's Brief Dckt. 44027

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 44027 & 44028
Plaintiff-Respondent,)	
)	ADA COUNTY NOS.
)	CR 2015-13350 & CR 2015-14637
v.)	
)	
ERIC CHRISTOPHER NASKER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In these consolidated cases, Eric Nasker pled guilty to possession of methamphetamine and to grand theft by possession of stolen property. Mr. Nasker asserts that the district court abused its discretion by failing to place him on probation.

Statement of Facts and Course of Proceedings

On November 3, 2015, the State filed an Information charging Eric Nasker with possession of methamphetamine and possession of drug paraphernalia. (R., pp.25-26.) That same day, the State filed a separate Information charging Mr. Nasker with two

counts of grand theft by possession of stolen property, and with criminal possession of a financial transaction card. (R., pp.83-84.) During separate entry of plea hearings, Mr. Nasker pled guilty to possession of a methamphetamine and to one count of grand theft by possession of stolen property, and he was free to argue an appropriate sentence; in exchange, the State dismissed the remaining charges, dismissed a separate felony case, and agreed to recommend concurrent suspended unified terms of seven years, with two years fixed, and for Mr. Nasker to be placed on probation. (R., pp.30-37, 90-97; Tr. 11/20/15, p.5, L.13 – p.16, L.6; Tr. 12/3/15, p.5, L.17 – p.18, L.18.)

During the consolidated sentencing hearing, the State asked the court to impose concurrent unified terms of seven years, with two years fixed, and suggested that the court may wish to consider retaining jurisdiction,¹ rather than placing Mr. Nasker on probation. (Tr. 2/26/16, p.29, L.4 – p.31, L.9.) Defense counsel agreed with the State's recommendation for concurrent unified terms of seven years, with two years fixed, but requested that the court place Mr. Nasker on probation, rather than retaining jurisdiction. (Tr. 2/26/16, p.36, Ls.5-14.) The district sentenced Mr. Nasker to concurrent unified terms of six years, with two years fixed, and retained jurisdiction. (R., pp.42-52, 107-110; Tr. 2/26/16, p.40, L.18 – p.42, L.1.) Mr. Nasker filed timely notices of appeal from each of his judgments of conviction. (R., pp.55-57, 111-113.)

¹ After Mr. Nasker entered his guilty pleas but before he was sentenced, he picked up a new misdemeanor battery charge and the district court found that, because of this new charge, the State was no longer bound to recommend probation. (Tr. 2/26/16, p.24, L.15 – p.25, L.3.)

ISSUE

Did the district court abuse its discretion by failing to place Mr. Nasker on probation in light of the mitigating factors that exist in his case?

ARGUMENT

The District Court Abused Its Discretion By Failing To Place Mr. Nasker On Probation In Light Of The Mitigating Factors That Exist In His Case

Mr. Nasker asserts that the district court abused its discretion by failing to place him on probation. Except where limited by statute, the district court's sentencing decisions, including the decision on whether to place a defendant on probation, are left to the sound discretion of the district court and are reviewed on appeal under an abuse of discretion standard. 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.

Mr. Nasker's criminal actions in these cases are the direct result of his addiction to methamphetamine. (PSI, pp.4, 148.)² When asked to describe his family history, Mr. Nasker stated, "My childhood is very vague since I have been doing drugs since age 13," and he stated he dropped out of school when he was 16 because of his drug use. (PSI, p.13.) Mr. Nasker started drinking alcohol and using marijuana at age 13, he started using methamphetamine occasionally when he was 15, he started using meth more regularly when he turned 18, and he eventually became a daily user. (PSI, pp.13, 17.) At age 33, and while awaiting his sentencing in these cases, Mr. Nasker finally

² Citation to the Presentence Investigation Report and the attached materials will include the designation "PSI" and the page numbers associated with the electronic file containing those documents.

realized the toll meth has taken on his life and he actively sought treatment. (PSI, pp.1, 17-18, 145.)

Mr. Nasker's sister-in-law, Heather Nasker, wrote a letter in support. (PSI, pp.25-26.) In addition to noting that Mr. Nasker is a hard worker and is great with his nieces and nephews, Ms. Nasker stated that she has been in active recovery from her own substance abuse for seven years, and that she believed Mr. Nasker could be successful in community-based group treatment programs, as long as he started in an inpatient program, and was closely monitored while on probation. (PSI, pp.25-26.) Ms. Nasker noted that she and her husband would be willing to assist Mr. Nasker in making all of his required appointments, and they would provide him with groceries and clothing, but would not give him cash. (PSI, pp.25-26.)

Both in writing and orally during his sentencing hearing, Mr. Nasker expressed his sincere remorse for his actions and the damage he caused his victims, and he expressed his desire to continue to seek treatment so that he could beat his addiction. (Tr. 2/26/16, p.37, L.5 – p.38, L.4; PSI, pp.145, 148-157.) Idaho Courts recognize that substance abuse and the willingness to seek treatment, support from family, and remorse for one's actions, are all mitigating factors that should counsel the district court to impose a lesser sentence. See *State v. Nice*, 103 Idaho 89, 91 (1982); *State v. Shideler*, 103 Idaho 593 (1982); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). Mr. Nasker asserts that, in light of the mitigating factors that exist in his case, the district court abused its discretion by failing to place him on probation.

CONCLUSION

Mr. Nasker respectfully requests that this Court remand his case to the district court with instructions that he be placed on probation, or for whatever other relief this Court deems appropriate.

DATED this 14th day of September, 2016.

/s/ _____
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of September, 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/ _____
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