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State v. Christiansen Appellant's Brief Dckt. 44097

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44097
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2015-11438
v.)	
)	
JON LEE CHRISTIANSEN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, Jon Lee Christiansen was convicted of trafficking in methamphetamine and delivery of a controlled substance. The district court sentenced him to an aggregate sentence of ten years, with three years fixed. Mr. Christiansen appeals to this Court. He contends the district court abused its discretion by imposing an excessive indeterminate sentence.

Statement of Facts and Course of Proceedings

The State filed a Criminal Complaint alleging Mr. Christiansen committed the crimes of trafficking in methamphetamine, in violation of I.C. § 37-2732B(a)(4), and delivery of a controlled substance, methamphetamine, in violation of I.C. § 37-2732(a).

(R., pp.7–8.) According to the presentence investigation report (“PSI”), an undercover police officer purchased methamphetamine from Mr. Christiansen on two separate occasions. (PSI,¹ pp.3–4.) The officer bought 14.98 grams during the first controlled buy and 41.82 grams during the second controlled buy. (PSI, pp.3–4.)

Mr. Christiansen waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.20–22.) The State filed an Information charging Mr. Christiansen with trafficking in methamphetamine and delivery of a controlled substance. (R., pp.23–24.) Mr. Christiansen entered a not guilty plea. (R., p.29; see *generally* Tr. Vol. I.²) Thereafter, the State filed an Information Part II charging Mr. Christiansen as a persistent violator pursuant to I.C. § 19-2514. (R., pp.43–44.)

The district court held a two-day jury trial. (R., pp.67–73; see *generally* Tr. Vol. II–III.) The jury returned a guilty verdict for trafficking in methamphetamine and delivery of a controlled substance. (Tr. Vol. III, p.212, L.1–p.216, L.19; R., pp.104–06.) The State then dismissed the persistent violator charge. (Tr. Vol. III, p.219, L.22–p.220, L.3.)

The crime of trafficking (28 to 200 grams) requires a mandatory minimum fixed term of imprisonment of three years. I.C. § 37-2732B(a)(4)(A). At sentencing, the State recommended an aggregate sentence of fifteen years, with five years fixed. (Tr. Vol. IV, p.12, Ls.7–11.) Mr. Christiansen requested the district court impose three years fixed for both trafficking and delivery, to be served concurrently, with no additional indeterminate

¹ Citations to the PSI refer to the 103-page electronic document containing the confidential exhibits in this case.

² There are four transcripts on appeal. The first, cited as Volume I, contains the entry of plea hearing, held on September 16, 2015. The second, cited as Volume II, contains the first day of the jury trial, held on December 28, 2016. The third, cited as Volume III, contains the second day of the jury trial, held on December 29, 2015. The fourth, cited as Volume IV, contains the sentencing hearing, held on March 30, 2016.

term. (Tr. Vol. IV, p.15, Ls.20–25.) The district court sentenced Mr. Christiansen to ten years, with three years fixed, for both trafficking and delivery, to be served concurrently. (Tr. Vol. IV, p.20, Ls.6–14; R., pp.110–13.)

Mr. Christiansen filed a timely Notice of Appeal from the district court’s Judgment of Conviction and Commitment. (R., pp.110–13, 116–17.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of ten years, with three years fixed, upon Mr. Christiansen, following his conviction for trafficking in methamphetamine and delivery of a controlled substance?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Three Years Fixed, Upon Mr. Christiansen, Following His Conviction For Trafficking In Methamphetamine And Delivery Of A Controlled Substance

“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. Christiansen’s sentence does not exceed the statutory maximum. See I.C. §§ 37-2732B(a)(4)(D) (maximum of life for trafficking in methamphetamine), 37-2732(a)(1)(A) (maximum of life for delivery of a controlled substance). Accordingly, to show that the sentence imposed was unreasonable, Mr. Christiansen “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).

Here, Mr. Christiansen asserts the district court abused its discretion by imposing an excessive indeterminate sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser indeterminate term of imprisonment in light of the mitigating factors, including his acceptance of responsibility, family support, commitment to sobriety, and work history.

In favor of mitigation, Mr. Christiansen has expressed great remorse for his criminal behavior and accepts responsibility for the crime. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). During the presentence investigation, Mr. Christiansen explained that he fell on hard times after his girlfriend lost her job. (PSI, pp.4, 15.) His girlfriend moved in with him and his seventy-year-old mother, who recently fell and was incapacitated. (PSI, p.4.) Mr. Christiansen was “desperate to remedy” their financial situation. (PSI, p.4.) He explained that he chose to sell methamphetamine “to make a quick profit,”

knowing full well the consequences of his actions and “accepting all responsibility.” (PSI, p.4.) He recognized that he “had other options,” but “chose the easy way out.” (PSI, p.15.) He fully appreciated his poor decision to sell methamphetamine. In committing the crime, he felt “ashamed of my choice,” remorseful, and disappointed. (PSI, p.5.) He stated, “I am solely responsibility for my actions and prepared to move forward with my life and the consequences.” (PSI, p.4.) He also reported, “I am responsible for my actions, I cannot undo what I have done. I am regretful and sorry for my actions, but I am prepared to face all the consequences and understand fully that I’ve done this to myself.” (PSI, p.15.) Similarly, Mr. Christiansen stated at sentencing,

[T]here is nothing I can say that could rationalize my actions and I am not going to try to justify my actions. . . . I am more than willing to pay my debt. I know that I owe that to the State of Idaho, and I need to take care of that.

(Tr. Vol. IV, p.16, L.13–p.17, L.3.) These statements of acceptance, remorse, and regret stand in favor of mitigation.

Despite his lapse in judgment and access to methamphetamine, Mr. Christiansen did not relapse. He remained sober. Mr. Christiansen, who was forty-six years old at the time of sentencing, began using methamphetamine in his early twenties. (PSI, pp.1, 29, 89.) At one point, he was injecting methamphetamine five or six times a day. (PSI, pp.29, 89.) He described his drug addiction as “a horrific battle . . . for over twenty years.” (PSI, p.4.) Mr. Christiansen got sober in 2008. (PSI, p.4.) He may have had an isolated relapse in 2012, but he did not relapse during the time of the instant offense. (PSI, pp.15, 28, 29, 30.) He was grateful he “was caught before [he] had a chance to really mess things up.” (PSI, p.15.) Mr. Christiansen reported that his sobriety was important to him and acknowledged that, without putting his sobriety first, he will fail in

all other aspects of his life. (PSI, p.15.) Mr. Christiansen's commitment to his sobriety is a strong factor in mitigation.

In addition, Mr. Christiansen maintained steady employment. Mr. Christiansen worked for Tuscany Tile and Flooring as a tile setter. (PSI, p.13.) His employer, who was also good friends with Mr. Christiansen, wrote a letter to the district court detailing Mr. Christiansen's good character and work ethic. (PSI, p.25.) His employer wrote, "He was very responsible and timely. Always did a nice job when he would come help me. Jon was very customer oriented, detail minded person, being a positive influence in my business. I would hire him in the future." (PSI, p.25.) After his arrest, Mr. Christiansen was an inmate worker at the Ada County Jail. (PSI, p.13.) This positive employment history 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).

Finally, Mr. Christiansen has a strong family support system. Mr. Christiansen reported, "I have a very blessed relationship with my stepfather and both he and my mother are very supportive, loving, and understanding." (PSI, p.10.) His mother wrote that Mr. Christiansen "made great changes in his life in the last 15 months." (PSI, p.19.) His stepfather stated that Mr. Christiansen helped around the house with various projects. (PSI, p.24.) His mother and stepfather both described Mr. Christiansen as a very caring and helpful person. (PSI, pp.19, 24.) The support of Mr. Christiansen's mother and stepfather stand in favor of mitigation. *Shideler*, 103 Idaho at 594–95 (family support and good character as mitigation); *see State v. Ball*, 149 Idaho 658, 663–64

(Ct. App. 2010) (district court considered family and friend support as mitigating circumstance).

In light of these facts, the district court abused its discretion by imposing an indeterminate sentence of seven years. The mandatory minimum fixed sentence of three years was sufficient to accomplish the objectives of criminal punishment. In fact, Mr. Christiansen was found to be a low risk to reoffend. (PSI, pp.15–16.) The district court should have imposed a lesser indeterminate sentence based on the mitigating circumstances in this case.

CONCLUSION

Mr. Christiansen respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he respectfully requests that this case be remanded to the district court for a new sentencing hearing.

DATED this 9th day of November, 2016.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of November, 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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PATRICK H OWEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

NICOLE OWENS
ADA COUNTY PUBLIC DEFENDER
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas