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## State v. Wirfs Appellant's Brief Dckt. 44305

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44305
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2015-12989
v.	)	
	)	
CHRISTOPHER LYNN WIRFS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Christopher Lynn Wirfs pled guilty aggravated battery with a deadly weapon and stalking, the district court sentenced him to an aggregate sentence of thirty years, with twenty-five years fixed. Mr. Wirfs appeals, asserting the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State filed a Criminal Complaint alleging Mr. Wirfs committed the crimes of aggravated battery with the use of a deadly weapon (a sentencing enhancement), in violation of I.C. §§ 18-903(a), -907(b), 19-2520, and unlawful possession of a firearm, in

violation of I.C. § 18-3316. (R., pp.11–12.) The State subsequently filed an Amended Complaint alleging the additional crimes of stalking in the first degree, in violation of I.C. § 18-7905, and a misdemeanor for resisting and/or obstructing a law enforcement officer, in violation of I.C. § 18-705. (R., pp.44–46.) According to the presentence investigation report (“PSI”), Mr. Wirfs began stalking and harassing the victim after she ended their brief dating relationship. (PSI,<sup>1</sup> p.3.) About two months after she ended their relationship, Mr. Wirfs went to the victim’s house and started walking towards her as she got out of her vehicle. (PSI, p.3.) The victim ran away when she saw Mr. Wirfs, and Mr. Wirfs fired two gunshots at her, striking her once in the lower back. (PSI, p.3.) Mr. Wirfs fled the scene, but was taken into custody shortly thereafter. (PSI, p.4.) The victim had surgery to remove the bullet from her hip. (PSI, p.4.)

Mr. Wirfs waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.52–55.) The State filed an Information charging him with aggravated battery with a deadly weapon, unlawful possession of a firearm, stalking, and resisting and/or obstructing arrest. (R., pp.56–58.) Pursuant to a plea agreement, Mr. Wirfs pled guilty aggravated battery with a deadly weapon and stalking. (Tr. Vol. I,<sup>2</sup> p.17, Ls.9–17; p.30, L.6–p.34, L.19.) The State would dismiss the remaining charges. (Tr. Vol. I, p.17, Ls.18–21.)

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<sup>1</sup> Citations to the PSI refer to the 1,394-page electronic document containing the confidential exhibits.

<sup>2</sup> There are two transcripts on appeal. The first, cited as Volume I, contains a motion hearing, held on January 5, 2016, and the entry of plea hearing, held on March 15, 2016. The second, cited as Volume II, contains the sentencing hearing, held on May 18, 2016.

At sentencing, the State recommended a sentence of thirty years, with twenty-five years fixed, for aggravated battery with a deadly weapon. (Tr. Vol. II, p.10, Ls.1–7.) For stalking, the State recommended a sentence of five years fixed, to be served concurrent to the sentence for aggravated battery with a deadly weapon. (Tr. Vol. II, p.10, Ls.7–8.) Mr. Wirfs requested the district court impose an aggregate sentence of twenty years, with five years fixed. (Tr. Vol. II, p.39, L.24–p.40, L.2.) The district court sentenced Mr. Wirfs to twenty-five years, with twenty years fixed, for aggravated battery with a deadly weapon, and five years fixed for stalking, to be served consecutively. (Tr. Vol. II, p.71, L.18–p.72, L.24.) Mr. Wirfs filed a timely Notice of Appeal from the district court’s Judgment of Conviction and Commitment. (R., pp.127–30, 138–40.)

### ISSUE

Did the district court abuse its discretion when it imposed a unified aggregate sentence of thirty years, with twenty-five years fixed, upon Mr. Wirfs, following his guilty plea to aggravated battery with a deadly weapon and stalking?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed A Unified Aggregate Sentence Of Thirty Years, With Twenty-Five Years Fixed, Upon Mr. Wirfs, Following His Guilty Plea To Aggravated Battery With A Deadly Weapon And Stalking

“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. Wirfs’s sentence does not exceed the statutory maximum. See I.C. §§ 18-908 (fifteen years maximum for aggravated battery), 19-2520 (fifteen year sentencing enhancement for use of a deadly

weapon), 18-7095(4) (five years maximum for stalking). Accordingly, to show that the sentence imposed was unreasonable, Mr. Wirfs “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). “The decision of whether to impose sentences concurrently or consecutively is within the sound discretion of the trial court.” *State v. Helms*, 130 Idaho 32, 35 (Ct. App. 1997); *see also* I.C. § 18-308.

Here, Mr. Wirfs asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment in light of the mitigating factors, including his mental health issues and family support.

Idaho Code § 19-2523 requires the sentencing court to consider the defendant’s mental health condition if it is a significant factor, and the record must show that the sentencing court adequately considered this factor when imposing a sentence.

I.C. § 19-2523; *Delling*, 152 Idaho at 132–33. Here, Mr. Wirfs’s mental health condition is a significant, if not the most significant, factor in his life. At age eleven, Mr. Wirfs was diagnosed as “emotionally disturbed” and with ADHD. (PSI, p.90.) Mr. Wirfs’s mother tried to get him help “to no avail” and had difficulty finding the resources to help him as an adolescent. (PSI, p.90.). Since his mother was unable to find resources to help Mr. Wirfs as a child, he never learned how to appropriately care for his mental health condition, which is evident from his three hospitalizations for psychosis as an adult. In 2003, at age twenty-three, Mr. Wirfs had a psychotic episode in a county jail and was transferred to a Saint Alphonsus hospital. (PSI, pp.15–16, 90, 107–08. 148, 150.) He expressed thoughts about harming himself and had been hearing voices. (PSI, p.107.) Once admitted in the hospital, Mr. Wirfs believed he was there “to do God’s work.” (PSI, p.107.) Mr. Wirfs was again admitted to the hospital just two years later. (PSI, pp.16, 135–37, 139–40.) He was diagnosed with bipolar disorder and a “hypomanic episode.” (PSI, p.140.) In 2013, Mr. Wirfs was hospitalized for a third time. (PSI, pp.16, 120–32.) He was found on an overpass on I-84 threatening to commit suicide with a knife. (PSI, p.120.) He believed he was on “an Indian quest.” (PSI, p.128.) Mr. Wirfs was diagnosed with bipolar disorder and another manic episode with “psychotic features.” (PSI, p.128.)

Left untreated, Mr. Wirfs’s mental health condition immensely impacts his mental state and greatly influences his behavior, shown by the instant offense. Mr. Wirfs unfortunately stopped taking his medication sometime after the 2013 hospital release. (PSI, pp.120–21.) He joined a church and had a plan to “just rely on Jesus,” which his hospital physician recognized as “obviously a very, very poor prognosis.” (PSI, pp.120–21.) Before committing the instant offense, Mr. Wirfs reported that he was “hearing

voices ‘on and off.’” (PSI, p.15.) He explained to the district court at sentencing, “I’d been overwhelmed with voices in my head commanding me to do something vengeful. To hold her at gunpoint and shoot myself became the only solution I could think of.” (Tr. Vol. II, p.59, Ls.17–21.) He believed a “higher power” was commanding him and he had “to obey” the “ultimatums.” (Tr. Vol. II, p.60, Ls.12–13.) Mr. Wirfs also reported, “My mental illness became so overwhelming; it is very hard to balance my life unmedicated [sic], which is why I’ve turned to marijuana and alcohol, trying to help me relax and ease my mind.” (Tr. Vol. II, p.60, Ls.5–8.) Mr. Wirfs was suicidal after the instant offense and was initially placed on suicide watch in jail. (PSI, pp.15–16, 21.)

Now properly treated while incarcerated, Mr. Wirfs fully understands that he must take his medication and obtain mental health treatment. He recognized that his mental illness contributed to his legal problems. (PSI, p.18.) He explained during the presentence investigation, “I am so very sorry for what I’ve done. I often feel powerless over the voices in my head. I vow to never be off my medication ever again. I never wanted to hurt anybody. I am sorry.” (PSI, p.18.) Similarly, Mr. Wirfs stated at sentencing, “Since I’ve been in jail, I’ve restarted my medication and I’ve been feeling much better, clearly able to look back on my behaviors. Hearing voices in my head is a scary thing.” (Tr. Vol. II, p.60, Ls.9–12.) He also told the district court, “I know what I’ve done was wrong. Please understand that I would never have behaved this way in my right mind. I promise to never be off my medication again.” (Tr. Vol. II, p.60, Ls.16–19.) These statements demonstrate Mr. Wirfs is fully committed to managing his mental health to prevent any further criminal behavior.

In addition, Mr. Wirfs has a supportive family and is a productive member of society when properly treated for his mental health issues. His mother wrote a letter to the district court stating that she was learning all she could about Mr. Wirfs's mental illness. (PSI, p.91.) She also explained that she called the police to try and intervene before the instant offense, but she was unable to get help. (PSI, p.91.) Further, Mr. Wirfs's friend described him as "a very kind, giving, forgiving, and honest person." (PSI, p.93.) His friend wrote that Mr. Wirfs was a positive influence and supportive person. (PSI, p.93.) His friend also wrote that she had never seen Mr. Wirfs engage in any aggressive behavior. (PSI, p.95.) Mr. Wirfs's brother also wrote a letter of support. (PSI, p.97.) His brother stated:

To be honest, I believe that [Mr. Wirfs] has the potential to not only come to see the fruits of his decision-making for what they truly are, but can eventually deeply repent and completely change. To some that may seem a tall order, but when I talk to Chris, I am seeing this potential in him more and more. I will continue to work with him, and encourage him in making positive changes so that when his sentence is completed, he will have made major strides in becoming a law-abiding, productive, and contributing member of society.

(PSI, p.98.) These letters of support and good character letters from Mr. Wirfs's family and friend stand in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 594–95 (1982) (family support and good character as mitigation); see also *State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (district court considered family and friend support as mitigating circumstance).

As recognized by his trial counsel at sentencing, some period of incarceration is warranted for the crimes committed by Mr. Wirfs. (See Tr. Vol. II, p.38, L.2–p.58, L.20 (defense counsel's argument).). In addition, a period of incarceration allows for Mr. Wirfs to establish healthy medication habits and receive mental health treatment.



Twenty-five years fixed, however, is excessive to achieve these objectives of criminal punishment. The district court should have given more weight to the mitigating factors of Mr. Wirfs's mental condition and his family support and imposed a lesser term of imprisonment.

CONCLUSION

Mr. Wirfs respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that this Court vacate the district court's judgment of conviction and remand this case to the district court for a new sentencing hearing.

DATED this 25<sup>th</sup> day of January, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25<sup>th</sup> day of January, 2017, 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:

CHRISTOPHER LYNN WIRFS  
INMATE #72432  
ISCC  
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RICHARD D GREENWOOD  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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E-MAILED BRIEF

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

JCS/eas