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## State v. Katz Appellant's Brief Dckt. 44502

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44502
Plaintiff-Respondent,	)	
	)	BANNOCK COUNTY NO. CR 2014-13789
v.	)	
	)	
CHRISTOPHER PAUL KATZ,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Christopher Paul Katz pled guilty to two counts of possession of sexually explicit materials. He received a unified sentence of six years, with three years fixed, but the district court retained jurisdiction. Following his rider, the district court relinquished jurisdiction, and Mr. Katz filed an Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion requesting leniency. On appeal, Mr. Katz contends that the sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts. Mr. Katz further contends that the district court erred by failing to reduce his sentence or place him on probation in light of the additional information submitted in conjunction with his Rule 35 motion.

## Statement of the Facts & Course of Proceedings

On March 30, 2014, Microsoft Corporation reported to the Idaho Internet Crimes Against Children task force that it had uploaded some explicit images of young-looking females from an IP address registered to Christopher Katz. (Presentence Investigation Report (*hereinafter*, PSI),<sup>1</sup> p.55.) Based on these facts, Mr. Katz was charged by information with four counts of possession of sexually exploitative material. (R., pp.33-35.)

Pursuant to a plea agreement, Mr. Katz pled guilty to two counts of possession of sexually exploitative material and the remaining two counts were dismissed. (8/19/15 Tr., p.5, Ls.6-12; p.7, Ls.19-22; p.11, L.18 – p.12, L.15; R., pp.74-90.) As part of the plea agreement, the State agreed to recommend a unified term of no more than seven years, with three years fixed, and to recommend no more than a retained jurisdiction. (8/19/15 Tr., p.5, Ls.10-16; p.6, Ls.20-23; R., pp.75-76.) Prior to sentencing, Mr. Katz filed a motion to continue his sentencing and to update his PSI and psychosexual evaluation (*hereinafter*, PSE). (R., pp.98-99.) After hearing argument on the motions, the district court denied them and proceeded to sentence Mr. Katz. (11/30/15 Tr., p.5, L. 4 – p.13, L.1; R., pp.98-101.) The State recommended a sentence of five years, with three years fixed and that the district court retain jurisdiction. (11/30/15 Tr., p.14, Ls.11-14.) Defense counsel recommended a sentence of five years, with three years fixed, and either probation or retained jurisdiction. (11/30/15 Tr., p.8, Ls.18-21; p.13, Ls.2-21.) The district court sentenced Mr. Katz to a unified term of six years, with three years

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<sup>1</sup> The designation “PSI” includes the PSI and all attachments contained in the electronic file, including addendums to the PSI, police reports, the psychosexual evaluation, and letters in support of Mr. Katz.

fixed, but it retained jurisdiction over Mr. Katz. (11/30/15 Tr., p.21, L.24 – p.22, L.2; R., pp.98-108.)

On July 29, 2016, without a hearing, the district court relinquished jurisdiction and ordered Mr. Katz to serve the underlying sentence previously imposed. (R., pp.119-121.) On September 9, 2016, Mr. Katz filed a Notice of Appeal. (R., pp.122-125.)

On August 29, 2016, Mr. Katz filed an I.C.R. 35 Motion (*hereinafter*, Rule 35) seeking a reduction of his sentence and submitting additional information for the court's consideration in support of his motion. (R., pp.135-149.) Attached to the motion were copies of certificates documenting Mr. Katz's rehabilitative progress and a letter he had written to the court. (R., pp.137-149.) The motion was denied after a hearing. (10/17/16 Tr., p.7, Ls.12-13; R., pp.150-152.)

Mr. Katz contends on appeal that the district court abused its discretion by imposing an excessive sentence, by relinquishing jurisdiction, and by failing to reduce his sentence pursuant to his Rule 35 motion.

## ISSUES

1. Did the district court abuse its discretion when it imposed a unified sentence of six years, with three years fixed, upon Mr. Katz following his plea of guilty to two counts of possession of sexually exploitative material?
2. Did the district court abuse its discretion when it relinquished jurisdiction over Mr. Katz?
3. Did the district court abuse its discretion when it denied Mr. Katz's Idaho Criminal Rule 35 Motion?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion When It Imposed Upon Mr. Katz A Sentence That Is Excessive Given Any View Of The Facts

The evidence in this case reveals that Mr. Katz has supportive family members who want to help in his rehabilitation. Mr. Katz's mother is very supportive. (PSI, pp.62, 139.) She provided a letter detailing Mr. Katz's learning difficulties and his emotional immaturity and the difficulties that he dealt with due to these conditions. (PSI, pp.62, 139.) Her letter demonstrated her support of Mr. Katz. (PSI, pp.62, 139.) Mr. Katz also has a girlfriend who is supportive of him and plans to "help him through this." (PSI, p.63.) See *State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts).

Another mitigating factor that the district court failed to properly consider was Mr. Katz's mental health conditions. Mr. Katz has struggled with homelessness since adolescence. (PSI, pp.9-10.) Mr. Katz suffers from depression and has often contemplated suicide, but has not committed suicide because of the impact it would have on his children. (PSI, pp.9, 11-12, 66.) He has been committed for a period of

psychiatric evaluation in the past. (PSI, p.11.) He also has ADD and ADHD; Mr. Katz even had difficulty staying on task during the psychosexual evaluation. (PSI, pp.7-8, 64.) Mr. Katz is also very emotionally immature—the PSE evaluator noted several times that his behavior at the evaluation was that of a junior high school student. (PSI, pp.7-9, 62.) However, the district court appeared to use Mr. Katz’s mental health conditions as aggravating information. (11/30/15 Tr., p.19, Ls.10-11 (incorporating Mr. Katz’s mental health conditions into the list of other aggravating facts, saying, “You’re emotionally immature. You have an antisocial personality”).) The Idaho Supreme Court has recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant’s mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). A defendant’s mental health problems should be considered as mitigating information at sentencing. *State v. Odiaga*, 125 Idaho 384, 391 (1994) (holding that, in light of the abolishment of the insanity defense, a defendant’s mental health condition must be considered). It was an abuse of discretion to treat Mr. Katz’s mental health problems as an aggravator and essentially punish him for being mentally ill.

Further, Mr. Katz expressed remorse and accepted responsibility for his acts. (8/19/15 Tr., p.5, Ls.6-12; p.7, Ls.19-22; p.11, L.18 – p.12, L.15; R., pp.74-90; PSI, p.58.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991). Mr. Katz is taking responsibility for his actions and told the presentencing investigator, “I have not

looked at anything since this happened. I feel like shit over it because I am not that kind of person, I don't search for child porn." (PSI, p.58.)

Mr. Katz asserts that the court abused its discretion by not fully considering all of the mitigating facts described herein. Mr. Katz asserts that, given any view of the facts, his sentence of six years, with three years fixed, is excessive.

## II.

### The District Court Abused Its Discretion When It Relinquished Jurisdiction Over Mr. Katz

Before the district court relinquishes jurisdiction over a defendant, it must evaluate whether probation would be appropriate under I.C. § 19-2521. *State v. Statton*, 136 Idaho 135, 137 (2001). "The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion." *State v. Schultz*, 149 Idaho 285, 288-289 (Ct. App. 2010). Upon review of a sentence following a period of retained jurisdiction, this Court reviews the entire record, encompassing events both before and after the original judgment. *Id.* at 289.

Mr. Katz contends the district court abused its discretion in relinquishing jurisdiction in light of his limited successes during his period of retained jurisdiction and the fact that his mental health conditions negatively affected his ability to be successful on the rider.

Mr. Katz was participating in his programming and was working to change his criminal thinking and behavior. (PSI, pp.146, 156-157, 160.) Although, while on his

rider, Mr. Katz did receive disciplinary sanctions,<sup>2</sup> he also engaged in commendable behavior, including reaching his Career Bridge One goal of bringing his math skills above a sixth grade level. (PSI, p.149.) While on the rider, he demonstrated ambition and helpfulness when he inventoried the refrigerator quickly and accurately, and he helped a corrections officer with a sorting task. (PSI, pp.155, 160.) Mr. Katz did fairly well for the first three months of his rider, with only two warnings issued during that time. (PSI, p.148.) However, the warnings escalated after the first three months. (PSI, p.148.) However, Mr. Katz's progress on the rider was severely impeded by the fact that he has below average intellectual functioning. (PSI, pp.7, 23.) Mr. Katz was enrolled in special education classes when in school. (PSI, p.12.) For example, Mr. Katz appeared to struggle to understand the concepts being taught in class on several occasions. (PSI, pp.157-158.) The district court failed to recognize that Mr. Katz's accomplishments while in the retained jurisdiction program would equate to a successful probation when it relinquished its jurisdiction over Mr. Katz. The district court also failed to recognize that Mr. Katz's mental health conditions adversely affected his rider programming.

In light of all of the mitigating evidence that was presented to the district court that demonstrates Mr. Katz's significant rehabilitative potential, the district court abused its discretion when relinquished its jurisdiction over Mr. Katz.

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<sup>2</sup> Mr. Katz was twice disciplined for having unauthorized property in his bunk; he received two Disciplinary Offense Reports (DOR) for these rule violations. (PSI, p.147.) He also received multiple verbal and written warnings. (PSI, p.148.) Relinquishment was recommended soon after the DORs were issued. (PSI, p.145.)

### III.

#### The District Court Abused Its Discretion When It Denied Mr. Katz's Rule 35 Motion In Light Of The New Information Offered

Although Mr. Katz contends that his sentence is excessive in light of the information in front of the district court at the time of his November 30, 2015, sentencing hearing (see Part I, *supra*), he asserts that the excessiveness of his sentence is even more apparent in light of the new information submitted in conjunction with his Rule 35 motion. Mr. Katz asserts that the district court's denial of his motion for sentence modifications in his case represents an abuse of discretion.

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* "If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.*

Mr. Katz asserts that his sentence should have been reduced in light of the new information submitted in conjunction with his Rule 35 motion. Mr. Katz asserts the district court's denial of his motion for modification of his sentences represents an abuse of discretion.

In support of his motion for a sentence reduction, Mr. Katz submitted a dozen pages of supporting documentation, including a letter to the court and several coursework certifications. (R., pp.137-149.) The letter contained information regarding

Mr. Katz's goals and his increased understanding of his addiction and its negative effects. (R, pp.137-138.) Mr. Katz completed courses in: digital literacy, vocational safety, and adult literacy. (R., pp.147-149.) Mr. Katz, through counsel, advised the district court at the Rule 35 hearing that he had employment opportunities and could receive sex offender treatment within the community. (10/17/16 Tr., p.4, Ls.9-25.)

Based on the foregoing, including the mitigating evidence before the district court on November 30, 2015, and in light of the new and additional information submitted by Mr. Katz in support of his Rule 35 motion, the district court abused its discretion by imposing an excessive sentence, by relinquishing jurisdiction, and by failing to reduce his sentence pursuant to his Rule 35 motion.

#### CONCLUSION

Mr. Katz 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. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 12<sup>th</sup> day of April, 2017.

\_\_\_\_\_  
/s/  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12<sup>th</sup> day of April, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

CHRISTOPHER PAUL KATZ  
INMATE #116858  
ISCI  
PO BOX 14  
BOISE ID 83707

STEPHEN S DUNN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

RANDALL D SCHULTHIES  
BANNOCK COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

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

SJC/eas