

5-30-2017

## State v. Smith Appellant's Brief Dckt. 44587

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Smith Appellant's Brief Dckt. 44587" (2017). *Not Reported*. 3653.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/3653](https://digitalcommons.law.uidaho.edu/not_reported/3653)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

JUSTIN M. CURTIS  
Deputy State Appellate Public Defender  
I.S.B. #6406  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44587
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2016-9072
v.	)	
	)	
ZACHARY S. SMITH,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Zachary S. Smith appeals from his judgment of conviction for possession of a controlled substance, heroin. Mr. Smith pleaded guilty and the district court imposed a unified sentence of seven years, with two years determinate. Mr. Smith now appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On July 14, 2016, Boise Police responded to a residence in regard to a caller reporting someone banging and kicking their door. (Presentence Investigation Report (*hereinafter*, PSI),

p.3.) An officer made contact with Mr. Smith, an individual with whom he had made contact earlier. (PSI, p.3.) Mr. Smith informed the officer that he was a heroin user and admitted injecting heroin approximately three hours earlier. (PSI, p.3.)

Mr. Smith gave consent to a search of his backpack and duffle bag; in the duffle bag, the officer located a firearm and a lockbox. (PSI, p.3.) Mr. Smith stated that the lockbox was not his and became nervous. (PSI, p.3.) Mr. Smith was instructed to turn around and place his hands behind his back; as the officer attempted to place restraints on him, Mr. Smith fled the area on foot. (PSI, p.3.)

While officers attempted to locate Mr. Smith, another officer continued searching Mr. Smith's belongings and found substances that tested positive for methamphetamine and heroin. (PSI, p.3.) Mr. Smith was subsequently located nearby and placed under arrest.

Mr. Smith was charged with unlawful possession of a firearm, two counts of felony possession of a controlled substance, one count of misdemeanor possession of a controlled substance, resisting or obstructing officers, possession of drug paraphernalia, and misdemeanor using or being under the influence of a controlled substance. (R., pp.38; 42.) He pleaded guilty to one count of possession of a controlled substance, heroin, and the State dismissed the remaining charges. (R., p.47.) The district court imposed a unified sentence of seven years, with two years determinate. (R., p.60.) Mr. Smith appealed. (R., p.63.) He asserts that the district court abused its discretion by imposing an excessive sentence.

## ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of seven years, with two years fixed, upon Mr. Smith following his plea of guilty to possession of a controlled substance?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Two Years Fixed, Upon Mr. Smith Following His Plea Of Guilty To Possession of A Controlled Substance

Mr. Smith asserts that, given any view of the facts, his unified sentence of seven years, with two years fixed, is excessive. 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 (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. Smith does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Smith must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

When asked about the instant crime, Mr. Smith explained that his girlfriend was upset and disappointed with him regarding his continued drug use and he was staying with a friend. (PSI, p.4.) He stated that he had been awake and on drugs for a period of time and was coming “down from a bender.” (PSI, p.4.) He expressed regret over the incident and remorse for running from the police. He attributed his drug addiction to hindering his logical thought processes. (PSI, p.4.) He stated that, “I wish I was working a program like I was supposed to be doing.” (PSI, p.5.)

Mr. Smith acknowledged relapsing on methamphetamine and heroin almost immediately after being released from prison in January, 2015 and that his addiction dependency has increased over time, and it “takes priority over everything.” (PSI, p.15.) He recognized that his addiction caused many problems in his life, stating, “it causes me to abandon those I love, employment, basically I am a slave to my addiction.” (PSI, p.15.) He stated that he wanted to stop using drugs because, “I want to live!” (PSI, p.15.) He thought he could remain drug-free but acknowledged that he needed “structure and a program” to do so. (PSI, p.15.)

To that end, Mr. Smith self-enrolled in a residential treatment program at the Walker Center in Gooding, Idaho in March 2016. (PSI, p.15.) He completed a 28-day program, but relapsed 3 days later. (PSI, p.15.) He felt that 28 days was not a long enough period for him and stated that he needed to “work a 12-step program, and structure from a probation officer.” (PSI, p.16.)

At the sentencing hearing, counsel stated that Mr. Smith realized that his addiction was impacting his friends and family and hurting relationships that he had built up over the years. (Tr., p.20, Ls.12-20.) Further, Mr. Smith’s prior employer was willing to rehire him if he was clean and sober and his employer described him as a great worker. (Tr., p.21, Ls.5-11.) Counsel

therefore requested that the court impose “zero plus five and give the parole commission a little more flexibility in terms of how they want to put him in programming and work center and that type of thing to adjust the transition in the community and get a better base going.” (Tr., p.22, Ls.15-20.)

Finally, Mr. Smith addressed the district court at the sentencing hearing. He stated,

The whole reason that I stay here is because my motivation to stay sober has always been external. It has never been for me or reasons I want to stay sober. I put my responsibility of my life and my sobriety on other people. And it might sound cliché, but at this point in my life I really do risk losing everyone that I have that is like in my immediate family and my support group. Either passing away or because I forced them to have to walk away from me because I am a high risk for them to be in their life.

And it sounds weird to say or it might sound rude or selfish, but if I take all of those people out of my life, my motivation to stay sober is still there. It doesn't matter if I have everyone in my life or not. Like, I want to stay sober for me this time. But I do risk losing everybody. And instead of putting my responsibility on others, it's on me now. Because I only have myself to get out of this and work through. No one else can fight my battles for me.

(Tr., p.23, L.11 – p.24, L.8.)

Mr. Smith also explained, “it is important for me and for everyone to know that like I have remorse for what I've done but remorse doesn't change what I've done or the problems I have at hand. Like I'm focused on trying to change who I am and trying to change like the factors of my life that keep me here.” (Tr., p.24, L.18 – p.25, L.2.) Mr. Smith asked the court for an opportunity to work a 12-step program in a structured environment with an AA member so he could build better relationships with his friends and family. (Tr., p.25, Ls.3-11.)

In sum, Mr. Smith expressed regret and remorse for his actions that gave rise to his crimes in this case. He acknowledged that he had a substance abuse problem and had taken steps to confront it, such as self-enrolling at the Walker Center. Unfortunately, Mr. Smith needed more time and structure to confront his problem. He expressed his desire for treatment through a

12-step program, and he had the ability to get a job if he could stay sober. He realized that he needed to get sober for himself first and not for other people. He therefore acknowledged that it is his responsibility to get sober. Considering Mr. Smith's regret, remorse, recognition of his substance abuse problem and his sincere desire to get treatment, Mr. Smith respectfully submits that the district court abused its discretion by imposing an excessive sentence.

#### CONCLUSION

Mr. Smith 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 30<sup>th</sup> day of May, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30<sup>th</sup> day of May, 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:

ZACHARY S SMITH  
INMATE #99667  
C/O CARIBOU COUNTY SHERIFF'S OFFICE  
159 S MAIN STREET  
SODA SPRINGS ID 83276

DEBORAH A BAIL  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

BRIAN C MARX  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

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

JMC/eas