

6-14-2017

## State v. Harrison Appellant's Brief Dckt. 44599

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44599
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR 2015-22441
v.	)	
	)	
TIMOTHY PAUL HARRISON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

A jury found Timothy Harrison guilty of trafficking by possession of over one pound of marijuana, and he was sentenced to a unified term of eight years, with three years fixed. Mr. Harrison asserts that his sentence is excessive in light of the mitigating factors present in his case.

Statement of the Facts & Course of Proceedings

Timothy Harrison and three companions were driving through Idaho on their way from Oregon to Virginia, when an Idaho State Police trooper pulled Mr. Harrison over for an

obstructed license plate. (PSI, pp.3-6.)<sup>1</sup> A subsequent search of Mr. Harrison's Jeep led to his being charged by criminal complaint with trafficking by possession of over one pound of marijuana, and with misdemeanor possession of paraphernalia and driving without privileges. (R., pp.10-16.) After a preliminary hearing, Mr. Harrison was bound over into the district court, and an information was filed charging him with these crimes. (R., pp.28-32.)

Mr. Harrison exercised his constitutional right to a jury trial and a jury found him guilty of all charges.<sup>2</sup> (R., pp.144-175, 224-226.) During the sentencing hearing, the State requested the court impose a unified term of 13 years, with three years fixed (Tr. 9/13/16, p.188, Ls.13-23), counsel for Mr. Harrison requested the court impose the minimum one-year fixed term with the court to determine the appropriate indeterminate term (Tr. 9/13/16, p.203, Ls.15-18), and Mr. Harrison himself asked that the fixed portion of his sentence not exceed 18 months (Tr. 9/13/16, p.210, Ls.1-4). The district court ultimately imposed a unified term of eight years, with three years fixed. (R., pp.267-268; Tr. 9/13/16, p.212, Ls.20-25.) Mr. Harrison filed a timely Notice of Appeal. (R., pp.269-273.)

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<sup>1</sup> Citations to the Presentence Investigation Report and its attached documents will include the designation "PSI," and will refer to the page numbers associated with the electronic file containing those documents.

<sup>2</sup> The State also alleged that Mr. Harrison was a persistent violator and he admitted to having two prior felony convictions. (R., pp.90-94; Tr. 6/13/16, p.146, L.25 – p.165, L.17.) However, in exchange for Mr. Harrison dismissing a post-verdict motion for a new trial, the State dismissed the persistent violator allegation. (R., pp.242-244, 255-256; Tr. 9/13/16, p.181, L.5 – p.184, L.12.)

## ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Harrison a unified sentence of eight years, with three years fixed, in light of the mitigating factors that exist in his case?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed Upon Mr. Harrison A Unified Sentence Of Eight Years, With Three Years Fixed, In Light Of The Mitigating Factors That Exist In His Case

Mr. Harrison asserts that, given any view of the facts, his unified sentence of eight years, with three 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. Harrison does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Harrison 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)).

Mr. Harrison has long suffered from both substance abuse and mental health problems. He first consumed alcohol when he was eight years old, and tried marijuana for the first time when he was ten. (PSI, pp.18-20.) In addition to alcohol and marijuana, at various times in his life Mr. Harrison has used methamphetamine, cocaine, methadone, and various hallucinogenic and designer drugs. (PSI, pp.18-20.) Mr. Harrison has been diagnosed with PTSD, ODD, ADHD, and severe social anxiety disorder. (PSI, pp.17-18.) He has struggled with the sudden death of his son, and considered attempting suicide because of this loss. (PSI, p.18.)

However, all is not lost for Mr. Harrison. In his written comments to the court, Mr. Harrison stated that for the first time in his life, he recognizes that he needs to get treatment for his substance abuse and mental health issues, and he asked the court for help with these problems. (PSI, pp.21-22.) During the sentencing hearing, Mr. Harrison made it clear to the court that, whether ordered to or not, he intended to seek both drug treatment and mental health counselling. (Tr. 9/13/16, p.208, Ls.1-14.)

Mr. Harrison also enjoys the support of family and friends. His mother, Gloria Harrison, wrote a letter in support noting that this was the first time that Mr. Harrison admitted that he has a substance abuse problem and that he needs help. (Exh., p.7.)<sup>3</sup> A friend of his, Brenda Whittaker, wrote a letter letting the court know that Mr. Harrison was an honest, trustworthy, and reliable person, who not only was not dangerous, but who was an asset to society. (Exh., p.6.)

Idaho Courts recognize that substance abuse and mental health issues, coupled with the willingness to seek treatment, and the support from family and friends, are all mitigating factors supporting a less severe sentence. *See Hollon v. State*, 132 Idaho 573 (1999); *State v. Nice*, 103

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<sup>3</sup> The letters submitted in support of Mr. Harrison are included within a 12-page electronic file, containing various exhibits and three post-verdict letters written by Mr. Harrison to the district court.

Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982). Mr. Harrison asserts that, in light of the mitigating factors that exist in his case, the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Harrison respectfully requests that this Court reduce the fixed portion of his sentence to 18 months, or for whatever relief this Court deems appropriate.

DATED this 14<sup>th</sup> day of June, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
JASON C. PINTLER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14<sup>th</sup> day of June, 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:

TIMOTHY PAUL HARRISON  
INMATE #87922  
ICIO  
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OROFINO ID 83544

JUNEAL C KERRICK  
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E-MAILED BRIEF

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E-MAILED BRIEF

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CRIMINAL DIVISION  
E-MAILED BRIEF

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

JCP/eas