

4-5-2017

## State v. Dockins Appellant's Brief Dckt. 44659

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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                              |
|-----------------------|---|------------------------------|
| STATE OF IDAHO,       | ) |                              |
|                       | ) | NO. 44659                    |
| Plaintiff-Respondent, | ) |                              |
|                       | ) | ADA COUNTY NO. CR01-16-26583 |
| v.                    | ) |                              |
|                       | ) |                              |
| ADAM R. DOCKINS,      | ) | APPELLANT'S BRIEF            |
|                       | ) |                              |
| Defendant-Appellant.  | ) |                              |
| _____                 | ) |                              |

STATEMENT OF THE CASE

Nature of the Case

After Adam R. Dockins pled guilty to possession of a controlled substance, the district court sentenced him to four years, with one year fixed, and retained jurisdiction. Mr. Dockins appeals. He contends the district court abused its discretion by not suspending his sentence and placing him on probation.

Statement of Facts and Course of Proceedings

In August of 2016, the State filed a Complaint alleging Mr. Dockins committed the crimes of possession of a controlled substance, methamphetamine, in violation of I.C. § 37-2732(c), and possession of drug paraphernalia, a syringe, in violation of

I.C. § 37-2734A. (R., pp.6–7.) According to the Presentence Investigation Report (“PSI”), the police searched a car, driven by Mr. Dockins, and found a crystal substance and a syringe inside a plastic glove between the front seats. (PSI,<sup>1</sup> p.3.) Mr. Dockins waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.14–16.) The State filed an Information charging Mr. Dockins with possession of a controlled substance and possession of drug paraphernalia. (R., pp.6–7.) Pursuant to a plea agreement, Mr. Dockins pled guilty to possession of a controlled substance. (Tr., p.22, Ls.4–p.23, L.11; R., p.28 (written plea agreement).) The State agreed to dismiss the paraphernalia charge. (R., p.28.)

At the sentencing hearing, the State recommended a sentence of seven years, with two years fixed, and Mr. Dockins requested a sentence of five years, with one year fixed. (Tr., p.34, L.24–p.35, L.2, p.38, Ls.8–11.) The State and Mr. Dockins both recommended the district court suspend Mr. Dockins’s sentence and place him on probation. (Tr., p.33, Ls.3–8, p.34, L.24–p.35, L.8, p.38, Ls.8–11.) The presentence investigator recommended the district court retain jurisdiction (a “rider”). (PSI, p.16.) The district court sentenced Mr. Dockins to four years, with one year fixed. (Tr., p.41, Ls.17–20; R., pp.38–40.) The district court did not place Mr. Dockins on probation and instead retained jurisdiction. (Tr., p.41, L.20–p.42, L.2; R., p.39.)

Mr. Dockins timely appealed from the district court’s judgment of conviction.<sup>2</sup> (R., pp.42–43.)

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<sup>1</sup> Citations to the PSI refer to the 109-page electronic document containing the confidential exhibits.

<sup>2</sup> The district court’s judgement of conviction contains a clerical error: it states Mr. Dockins’s pled guilty to possession of a controlled substance *and* possession of drug paraphernalia. (R., p.38.)

## ISSUE

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

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Four Years, With One Year Fixed, Upon Mr. Dockins, Following His Guilty Plea To Possession 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. Dockins’s sentence does not exceed the statutory maximum. See I.C. § 37-2732(c)(1) (seven year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Dockins “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 primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant’s rehabilitative potential and suitability for probation.” *State v. Jones*, 141 Idaho 673, 676 (Ct. App. 2005). “[P]robation is the ultimate objective of a defendant who is on retained jurisdiction.” *Id.* at 677. The district court’s decision to retain jurisdiction is reviewed for an abuse of discretion. *Id.* “There can be no abuse of discretion in a trial court’s refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation.” *Id.* Similarly, “[t]he choice of probation, among available sentencing alternatives, is committed to the sound discretion of the trial court . . . .” *State v. Landreth*, 118 Idaho 613, 615 (Ct. App. 1990).

Here, Mr. Dockins asserts the district court abused its discretion by declining to suspend his sentence and place him on probation. He contends the information in the record demonstrates he is a suitable candidate for probation.

The absence of a serious criminal record shows Mr. Dockins can succeed on probation while also providing adequate protection for society. “The absence of a criminal record is a mitigating factor that courts consider.” *State v. Miller*, 151 Idaho 828, 836 (2011). “It has long been recognized that ‘[t]he first offender should be accorded more lenient treatment than the habitual criminal.’” *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (alteration in original) (quoting *State v. Nice*, 103 Idaho 89, 91 (1982)). Here, Mr. Dockins’s criminal record contains five alleged misdemeanor offenses,<sup>3</sup> but

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<sup>3</sup> One of the offenses is designated as “unknown.” (PSI, p.5.)

these offenses occurred in 2004 and 2006. Mr. Dockins was not charged with any additional crimes until the instant offense in August of 2016. The instant offense is Mr. Dockins's first felony conviction. Thus, Mr. Dockins's criminal history consists of one felony offense and ten- and twelve-year-old misdemeanors. This information shows Mr. Dockins is not a danger to society and can comply with the terms of supervision.

Further, the unfortunate circumstances that caused Mr. Dockins's relapse do not lead to the conclusion that Mr. Dockins should be incarcerated on a rider. Mr. Dockins began experimenting with methamphetamine at age twelve, but stopped using in his early twenties. (PSI, pp.4, 12.) In 2005, he got married and had two children. (PSI, pp.7-8.) He also served in the military for two years before a hardship discharge. (PSI, p.10.) While he was serving in the military, his wife moved from Oregon to Idaho with their children. (PSI, p.7.) It seems Mr. Dockins returned to Oregon, not Idaho, after his discharge from the military. (PSI, p.7.) In 2012, Mr. Dockins and his wife divorced. (PSI, p.8.) Mr. Dockins was employed as a handyman and then as a heavy equipment operator in Oregon. (PSI, p.10.) During this time, it appears Mr. Dockins remained drug-free. (PSI, pp.12, 19.) In June of 2015, a work accident started the downward spiral that led to Mr. Dockins's relapse. Mr. Dockins got hit by a semi-truck at work, injured his back, and lost his job. (PSI, pp.10, 13.) He became homeless. (PSI, pp.7, 13.) Then, about two months before the instant offense, Mr. Dockins decided to go to Idaho to visit his children. (PSI, pp.7, 8.) In Idaho, he learned the State of Idaho had taken his children into protective custody due to his ex-wife's drug use. (PSI, pp.8, 11, 12.) Mr. Dockins "began injecting as much methamphetamine as he could tolerate" to cope with his feelings. (PSI, pp.4, 11, 12.) He admitted he had contemplated suicide in the

past, but did not follow through because of his children.<sup>4</sup> (PSI, pp.11, 12; see *also* PSI, p.23 (“fleeting” thoughts of suicide while incarcerated).) These facts demonstrate Mr. Dockins’s relapse was purely matter of circumstance—Mr. Dockins was unemployed, homeless, depressed, and worried about his children. These facts also establish, however, that Mr. Dockins is able to maintain steady employment, stay sober, and contribute to society. With proper treatment and supervision, Mr. Dockins can lead a productive life in the community while still providing adequate protection to society.

In light of these facts, Mr. Dockins asserts the district court abused its discretion by declining to suspend his sentence. The district court should have given him the opportunity to show he can succeed on probation.

#### CONCLUSION

Mr. Dockins respectfully requests that this Court vacate the district court’s judgment of conviction retaining jurisdiction and remand this case with instructions for the district court to suspend Mr. Dockins’s sentence and place him on probation.

DATED this 5<sup>th</sup> day of April, 2017.

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

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<sup>4</sup> Mental health treatment was also recommended for Mr. Dockins. (PSI, pp.29–30.) He reported being diagnosed with ADHD, depression, and bipolar disorder. (PSI, p.11.)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5<sup>th</sup> day of April, 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:

ADAM R DOCKINS  
INMATE #121366  
CAPP  
15505 S PLEASANT VALLEY ROAD  
KUNA ID 83634

MICHAEL REARDON  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

MARK COONTS  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

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

JCS/eas