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State v. Walters Appellant's Brief Dckt. 44821

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44821
Plaintiff-Respondent,)	
)	CUSTER COUNTY NO. CR 2016-22
v.)	
)	
COLE JASON WALTERS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Cole Walters contends the district court abused its discretion by executing his sentences, as opposed to suspending them, or even retaining jurisdiction. A sufficient consideration of the mitigating factors reveals that those more lenient options, which would have actually promoted the goal of rehabilitation, would better serve all the goals of sentencing. As such, this Court should remand this case for an order placing Mr. Walters on probation.

Statement of the Facts & Course of Proceedings

Pursuant to a plea agreement, Mr. Walters pled guilty to one count of delivering methamphetamine on one date and one count of possessing methamphetamine on a different

date. (*See* R., pp.303, 308-09.) As part of his plea agreement, he waived his right to appeal the district court's denial of his motion to suppress.¹ (R., p.303.)² Mr. Walters was 49 years old at the time, and the instant offense constituted his second felony conviction.³ (Presentence Investigation Report (*hereinafter*, PSI), pp.1, 7.) Ultimately, the PSI author recommended the district court retain jurisdiction over the case, and the GAIN-I recommended Mr. Walters participate in intensive outpatient treatment to address his substance abuse issues. (PSI, pp.14, 35.)

At the sentencing hearing, defense counsel provided several letters of support for Mr. Walters. (Tr., p.38, L.24 - p.39, L.3; *see* Exhibits PDF, pp.7-17.)⁴ Defense counsel noted

¹ Mr. Walter's motion to suppress was based on the fact that, when the officers sought a search warrant for Mr. Walter's home, they did not inform the magistrate that the confidential informant (CI) who had performed the alleged controlled buy in this case was facing charges for forgery, falsifying records, and preparing false evidence, nor did they inform the magistrate that they had lost sight of the CI for several minutes after the alleged buy but before debriefing her. (R., pp.61-62.) The district court agreed that the officer had not presented that information to the magistrate, but there was no evidence showing that omission was knowing or reckless, and that, even with the omitted information, the "magistrate likely would have found that there was a *reasonable suspicion* that drugs were located at the residence named on the affidavit." (R., pp.208-10 (emphasis added).)

² In addition to waiving the right to challenge the denial of the motion to suppress, the plea agreement also purports to waive Mr. Walters' ability to file a petition for post-conviction relief. (R., p.303.) However, such waivers are, at a minimum, disfavored. *See, e.g.*, AMERICAN BAR ASSOCIATION, ABA Resolution 113E (2013) (available at www.americanbar.org) (opposing "plea or sentencing agreements that waive a criminal defendant's post-conviction claims addressing ineffective assistance of counsel . . . unless based on past instances of such conduct that are specifically identified in the plea or sentencing agreement or transcript of the proceedings"); National Association of Criminal Defense Lawyers, NACDL Ethics Advisory Committee, Formal Opinion 12-02 (2012) (available at www.nacdl.org) (concluding it is unethical for a criminal defense lawyer participate in plea agreements calling for waivers of defendants' rights to collaterally attack convictions, in part, because waivers of ineffective assistance claims create inherent conflicts of interest for defense lawyers). At most, they are void. *See, e.g., Majors v. State*, 568 N.E.2d 1065, 1067-68 (Ind. 1991).

³ While there were several other charges on Mr. Walters' record, the majority had either been dismissed or the prosecutor had decided not to pursue them. (Tr., p.33, Ls.3-10; *see* PSI, pp.4-7.)

⁴ All citations to "Tr." refer to the volume entitled "44821-Walters Transcripts.pdf."

that Mr. Walters and his wife (who was his co-defendant in this case) had been paying for urinalysis tests during the pendency of their cases, which showed they were remaining sober. (Tr., p.40, Ls.13-18.) Additionally, defense counsel noted that, if Mr. Walters were incarcerated, they would lose his social security disability income.⁵ (Tr., p.42, Ls.1-4.) Mr. Walters explained he and his wife depended on that income to cover their bills, including rent. (Tr., p.52, Ls.10-17.) However, he also explained he understood there would be consequences and he accepted responsibility for his actions in this case. (Tr., p.52, Ls.19-20) Based on all these factors, defense counsel recommended the district court suspend Mr. Walters' sentence for a period of probation. (Tr., p.40, Ls.8-10; *see also* Tr., p.58, Ls.8-10 (defense counsel asking if the district court was going to retain jurisdiction after it pronounced Mr. Walters' sentences).)

The district court rejected that recommendation, as well as the PSI's recommendation to retain jurisdiction. Rather, it imposed and executed a unified sentence of ten years, with four years fixed, on the delivery charge and a concurrent unified sentence of six years, with two years fixed, on the possession charge.⁶ (Tr., p.56, Ls.11-17, p.58, Ls.8-10.) However, it noted that it had initially planned on imposing more substantial sentences, but it tempered that decision based on the information presented at the sentencing hearing. (Tr., p.56, Ls.6-9.) Mr. Walters filed a notice of appeal timely from the judgment of conviction. (R., pp.320, 325.)

⁵ Mr. Walters receives disability due to the symptoms associated with his being born with clubbed feet and the experimental surgery performed to try and correct that condition. (*See, e.g.*, PSI, p.10.)

⁶ The district court subsequently reduced the term of the delivery sentence to a unified term of six years, with three years fixed, pursuant to I.C.R. 35. (R., pp.337-38.) As such, Mr. Walters' current aggregate sentence is for a term of six years, with three years fixed.

ISSUE

Whether the district court abused its discretion by not suspending Mr. Walters' sentences at the initial sentencing hearing.

ARGUMENT

The District Court Abused Its Discretion By Not Suspending Mr. Walters' Sentences At The Initial Sentencing Hearing

The decision of whether to suspend a sentence when it is imposed is one that is within the district court's discretion. *See, e.g.*, I.C. § 19-2521; *State v. Reber*, 138 Idaho 275, 278 (Ct. App. 2002). In order to show an abuse of discretion in the district court's sentencing decision, the defendant must show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997); *see State v. Hedger*, 115 Idaho 598, 600 (1989) (articulating the standard for reviewing whether the district court abused its discretion). The protection of society is the primary objective the court should consider when it imposes sentences. *State v. Charboneau*, 124 Idaho 497, 500 (1993). However, the Idaho Supreme Court has also indicated that rehabilitation is the first means the district court should consider to achieve that goal. *See State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

Notably, Mr. Walters had demonstrated some ability to be successful on release, as he and his wife (who had already received probation in relation to this matter) had been taking urinalysis tests at their own expense which showed Mr. Walters had remained sober in the year his case was pending. (Tr., p.36, Ls.12-17, p.40, Ls.13-18.) Furthermore, he showed he had taken the first steps toward rehabilitation by expressing remorse and accepting responsibility for his actions. (Tr., p.50, Ls.5-6, p.52, Ls.19-20.) Additionally, several family members and

friends wrote letters of support, and having a support network in place also increases the potential for successful rehabilitation. (Tr., p.38, L.24 - p.39, L.3; *see* Exhibits PDF, pp.7-17.)

A sufficient consideration of these factors demonstrates that Mr. Walters, like his wife, could be successful in continuing his rehabilitation in the community. That is, in fact, what the GAIN-I evaluation recommended when it recommended intensive outpatient treatment. (PSI, p.35.) As a result, the district court's decision to execute Mr. Walters' sentence rather than suspending it for a period of probation (or, at least, retaining jurisdiction as recommended by the author of the PSI (*see* PSI, p.14)) constitutes an abuse of its discretion.

CONCLUSION

Mr. Walters respectfully requests that this Court reverse the order executing his sentences and remand this case for an order placing him on probation.

DATED this 18th day of July, 2017.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of July, 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:

COLE JASON WALTERS
INMATE #122061
C/O BONNEVILLE COUNTY SHERIFF'S OFFICE
605 N CAPITAL AVEUNE
IDAHO FALLS ID 83402

ALAN C STEPHENS
DISTRICT COURT JUDGE
E-MAILED BRIEF

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CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas