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## State v. Laseter Appellant's Brief Dckt. 44870

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44870
Plaintiff-Respondent,	)	
	)	GOODING COUNTY NO. CR 2015-1479
v.	)	
	)	
THOMAS LASETER,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, the jury convicted forty-two-year-old Thomas Laseter of felony possession of a controlled substance. The district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. After Mr. Laseter participated in a “rider,” the district court relinquished jurisdiction. On appeal, Mr. Laseter asserts the district court abused its discretion when it imposed his sentence, and when it relinquished jurisdiction.

Statement of the Facts & Course of Proceedings

Officer Switzer of the Gooding Police Department went to a grocery store in response to a reported fight between two male subjects in the store’s parking lot. (Presentence Report

(*hereinafter*, PSI), p.3.) When he arrived, the officer recognized the two men as Mike Salazar and Mr. Laseter. (PSI, p.3.) Mr. Laseter told Officer Switzer he had been involved in the fight. (PSI, p.3.) It appeared to Officer Switzer, based on Mr. Laseter's recollection of the event, that a verbal argument began between the two men before it turned physical. (PSI, p.3.) Mr. Laseter stated the argument was about drugs. (PSI, p.3.)

Officer Switzer found a pocket knife on Mr. Laseter's person and noticed the odor of an alcoholic beverage coming from him. (PSI, p.3.) Mr. Laseter was arrested for battery and taken to the Gooding County Jail. (PSI, p.3.) During the intake process, Officer Switzer found a pill on Mr. Laseter's person. (PSI, p.3.) The pill was sent to the Idaho State Lab for further testing. (PSI, p.3.) Officer Switzer later learned from the Idaho State Lab that the pill found on Mr. Laseter was morphine. (PSI, p.3.)

The State charged Mr. Laseter by Information with one count of possession of a controlled substance, felony, I.C. § 37-2732(c)(1). (R., pp.31-33.) Mr. Laseter entered a not guilty plea. (R., p.34.) The case proceeded to a jury trial. (R., pp.46-50.) At the conclusion of the trial, the jury found Mr. Laseter guilty of possession of a controlled substance. (R., pp.49, 51.)

At the sentencing hearing, the State recommended the district court impose a unified sentence of seven years, with three years fixed, and to retain jurisdiction. (Tr., June 7, 2016, p.38, L.1 – p.39, L.11.) Mr. Laseter recommended the district court consider placing him on probation. (Tr., June 7, 2016, p.41, Ls.7-11, p.42, L.22 – p.44, L.3.) The district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.57-62.)

Mr. Laseter participated in a Cognitive-Behavioral Interventions for Substance Abuse (CBI-SA) “rider” at the North Idaho Correctional Institution (NICI). (Addendum to the Presentence Investigation (*hereinafter*, APSI), p.1.) NICI staff recommended the district court consider relinquishing jurisdiction. (APSI, p.7.) The district court, without conducting a rider review hearing, subsequently relinquished jurisdiction. (*See R.*, pp.69-71.)

Mr. Laseter filed a Notice of Appeal timely from the district court’s Order Relinquishing Jurisdiction After Retained Jurisdiction. (*R.*, pp.72-74; *see R.*, pp.80-84 (Amended Notice of Appeal).)

### ISSUES

1. Did the district court abuse its discretion when it retained jurisdiction over Mr. Laseter, rather than place him on probation?
2. Did the district court abuse its discretion when it relinquished jurisdiction?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Retained Jurisdiction Over Mr. Laseter, Rather Than Place Him On Probation

Mr. Laseter asserts the district court abused its discretion when it retained jurisdiction over him, rather than place him on probation. 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 “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

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) (internal quotation marks omitted). Mr. Laseter does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Laseter must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. Laseter submits that, because the district court did not give adequate consideration to mitigating factors, the district court abused its discretion when it retained jurisdiction. Specifically, the district court did not adequately consider Mr. Laseter’s health issues. While the presentence report stated Mr. Laseter “said his overall physical health is ‘pretty good,’” it further stated “he has previously been diagnosed with Bipolar Disorder and Schizophrenia.” (PSI, p.18.) During the sentencing hearing, defense counsel informed the district court Mr. Laseter “has various health issues and some of them are pretty significant. He has asthma. He’s diagnosed with bipolar disorder. He has lower back issues and lower back problems. He’s got an upper back problem in the area of his neck.”<sup>1</sup> (Tr., June 7, 2016, p.41, L.21 – p.42, L.1.) Counsel also explained Mr. Laseter “has cirrhosis of the liver, and he has a bladder problem.” (Tr., June 7, 2016, p.42, Ls.1-2.) Mr. Laseter’s counsel expressed concerns that “it would require some extra

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<sup>1</sup> Mr. Laseter’s counsel did not offer any changes, corrections, additions, or objections of the content of the presentence report. (Tr., June 7, 2016, p.36, Ls.6-9.)

effort for [the rider program] to treat Tom and the various medical conditions.” (See Tr., June 7, 2016, p.42, Ls.3-6.)

The district court also did not adequately consider Mr. Laseter’s family support. At the sentencing hearing, defense counsel stated, “Tom’s mother Colleen has supported him, continues to support him through all of these proceedings, but her health is poor also, and we have talked at great lengths about how Tom can help his mother.” (Tr., June 7, 2016, p.42, Ls.10-14.) Counsel reported Mr. Laseter “would like to be able to be placed on probation to help his mother as well.” (Tr., June 7, 2016, p.42, Ls.14-15.) Mr. Laseter told the district court, “my mom is sick. I lost my uncle while I was locked up here for three months. Lost my uncle behind bars. I don’t want to lose another loved one behind bars.” (Tr., June 7, 2016, p.44, Ls.6-9.)

Additionally, the district court did not give adequate consideration to Mr. Laseter’s substance abuse problems and his current desire to overcome them. At the sentencing hearing, defense counsel informed the district court, “[w]hat Tom and I have talked about and what I’ve explained to Tom is the very best thing he can do for his mother is to get clean and sober. Nothing is more important than that.” (Tr., June 7, 2016, p.42, Ls.16-18.) During the presentence investigation, Mr. Laseter reported he first started using marijuana when he was eleven years old, alcohol around the age of fifteen, and crank at the age of nineteen. (PSI, p.20.) He further reported he had been abusing prescription medications for the past fifteen to twenty years. (PSI, p.20.) Mr. Laseter “disclosed his drug use contributed to his teeth rotting, and so he began extracting his own teeth in order to get prescription medications which he says he would then give to other people.” (PSI, p.20.)

Mr. Laseter’s GAIN-I assessment contained diagnoses of alcohol dependence without physiological symptoms, cannabis dependence without physiological symptoms, and opioid

abuse. (PSI, pp.22, 28.) Mr. Laseter reported “he has not quit using substances yet and is about 50% ready to stop.” (PSI, p.33.) He also reported “drinking daily somewhere between 4-6 drinks just to wake up and start his day.” (PSI, p.36.) The GAIN-I assessment recommended “Intensive Out Patient Treatment at the Gooding Pro Active office along with drug testing.” (PSI, p.36.)

At the sentencing hearing, defense counsel told the district court Mr. Laseter “would like to have the opportunity to work every day on his sobriety with probation and do the intox, again, attend AA, any intensive outpatient with the Walker Center, anything else he could possibly do.” (Tr., June 7, 2016, p.41, Ls.15-19.) Mr. Laseter, addressing the district court, stated “I would do whatever it takes if I get probation. . . . I’ll do it all: the doc’s, the UA’s, whatever. I’ll go to meetings. I’ll keep—I’ll walk the line. If you give me the chance, I’ll prove to the courts that I’m able to do that.” (Tr., June 7, 2016, p.44, Ls.10-17.)

Based on the above mitigating factors, Mr. Laseter asserts the district court abused its discretion when it retained jurisdiction over him, rather than place him on probation.

## II.

### The District Court Abused Its Discretion When It Relinquished Jurisdiction

Mr. Laseter asserts that the district court abused its discretion when it relinquished jurisdiction.

An appellate court reviews a district court’s decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). The district court’s discretion in deciding whether to relinquish jurisdiction is not limitless. *State v. Rhoades*, 122 Idaho 837, 837 (Ct. App. 1992).

When an exercise of discretion is reviewed on appeal, the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.

*State v. Hedger*, 115 Idaho 598, 600 (1989) (internal quotation marks omitted).

Mr. Laseter submits that his performance while on the CBI-SA rider shows that the district court abused its discretion when it relinquished jurisdiction. While the CBI-SA facilitator stated Mr. Laseter was not serious about his programming and had to redo an assignment after not completing his homework one day, the facilitator also stated, “[o]n the whole, the entire group was reluctant and resistant and would take two group sessions to complete a single session.” (APSI, p.4.) Mr. Laseter reported, “I learned a lot of good skills. . . .” (APSI, p.4.)

Also, although Mr. Laseter’s Thinking for a Change (T4C) facilitator stated Mr. Laseter had similar issues with not having the desire to apply himself, even as he was receiving help from his peers (APSI, pp.4-5), his Aggression Replacement Training (ART) facilitator reported “Mr. Laseter struggled to understand the concepts but seemed motivated and kept trying.” (APSI, p.5.) On skill streaming, the ART facilitator stated, “[o]ver the course of the group, Mr. Laseter became more engaged in group and was also able to increase his understanding of the skills and improved role-plays. Mr. Laseter seemed willing to put in the effort; he just had difficulty understanding the concepts.” (APSI, p.5.) As for anger control, the ART facilitator stated Mr. Laseter “displayed a positive attitude and put effort into the situations he would use to role-play the anger control chain,” and he “successfully completed the anger control chain and integrated the skills he learned.” (APSI, p.5.) With respect to moral reasoning, the ART

facilitator stated Mr. Laseter “understands the right thing to do; however, he needs to continue to work on doing the right thing.” (APSI, p.5.)

Mr. Laseter received one formal disciplinary sanction and six informal disciplinary sanctions. (APSI, p.3.) However, the formal disciplinary sanction was for “putting coffee from his locker into another offender’s cup . . . after he had been told that this action needed to stop.” (APSI, p.3.) Three of Mr. Laseter’s informal disciplinary sanctions were also related to commissary, namely consuming commissary during program hours, sharing commissary, and being rumored to pay other rider program participants in commissary for doing his homework. (APSI, p.3.) The other informal disciplinary sanctions were for other group members accusing Mr. Laseter not doing his work, Mr. Laseter not completing his CBI-SA group homework, and his lying down after a direct order not to. (APSI, p.3.) Further, Mr. Laseter had been transferred to NICI for his own safety, after another rider program participant battered him at the Correctional Alternative Placement Program (CAPP). (APSI, p.3.)

Additionally, even though Mr. Laseter struggled with the basic math curriculum in his Career Bridge One program, he completed his pre-release career plan “by meeting the time frame eligibility requirements and by demonstrating to a staff member entry-level competency in goal setting, résumé and cover letter writing, budgeting, completing an application, interviewing, and building a resource plan for probation.” (APSI, pp.5-6.) Thus, the Pre-release facilitator reported Mr. Laseter “has completed the Pre-release program and is prepared for re-entry planning.” (APSI, p.6.)

In light of the above information, Mr. Laseter submits the district court abused its discretion when it relinquished jurisdiction.

CONCLUSION

For the above reasons, Mr. Laseter respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 21<sup>st</sup> day of June, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21<sup>st</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:

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

BPM/eas