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## State v. Bankhead Appellant's Brief Dckt. 45098

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45098
	)	
v.	)	ADA COUNTY NO. CR-FE-2008-9094
	)	
STEVEN JOVALL BANKHEAD,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Steven Jovall Bankhead appeals from the district court's order revoking his probation and executing his previously-suspended sentence of twelve years, with two years fixed, rather than a reduced sentence as recommended by his counsel. Mr. Bankhead contends that his sentence is excessive under the circumstances, and that the district court abused its discretion by declining the requested reduction.

Statement of the Facts and Course of Proceedings

In 2011, Mr. Bankhead was sentenced on his plea of guilty to a 2008 charge of grand theft for possession of stolen financial cards; he received a suspended sentence of twelve years,

with two years fixed, and was placed on probation. (R., pp.59, 64-70, 94.) His probation was revoked in February of 2012, but the district court retained jurisdiction and recommended a rider. (R., p.140.) Mr. Bankhead was unable to complete a rider due to his mental health issues (R., p.145), and in October of 2012, the district court suspended his sentence and reinstated probation; as an additional condition, the court ordered Mr. Bankhead to comply with the mental health treatment plans as directed by his probation officer (R., p.150), and later, that he participate and complete the Ada County Mental Health Court program (R., p.12).

In 2014, Mr. Bankhead heard voices telling him to look for family members in other states, and he absconded from probation and set out to look for them, living on the streets and hitchhiking. (PSI, p.14.) In 2016, authorities arrested him on an Idaho probation violation warrant and returned him to Ada County. (PSI, p.14.)

At the subsequent probation violation proceedings, Mr. Bankhead admitted violating his probation. (Tr., p.15, L.19.) In his recommendation for disposition, Mr. Bankhead acknowledged that continued probation would be problematic, but asked that the district court consider reducing his sentence, as authorized by Rule 35, to a term of ten years with one and one-half years fixed. (Tr., p.23, Ls.2-6.) However, upon revoking Mr. Bankhead's probation, the district court disregarded that recommendation and executed the previously-suspended sentence of twelve years, with two years fixed, as originally imposed. (R., p.278; Tr., p.26, Ls.3-13.) Mr. Bankhead timely appealed. (R., p.282.)

### ISSUE

Did the district court abuse its discretion when, upon revoking Mr. Bankhead's probation, it declined to reduce his sentence pursuant to Rule 35, and executed his original sentence, which is excessive in light of the mitigating circumstances?

## ARGUMENT

### The District Court Abused Its Discretion When, Upon Revoking Mr. Bankhead's Probation, It Declined To Reduce His Sentence Pursuant To Rule 35, And Executed A Sentence That Is Excessive Given The Mitigating Circumstances In This Case

#### A. Introduction

Mr. Bankhead's prison sentence of twelve years, with two years fixed, is excessive given the mitigating circumstances that existed at time the court revoked his probation, and the district court abused its discretion when it declined to reduce that sentence pursuant to Rule 35.

#### B. Standards Of Review

Whenever a trial court revokes probation, it must also decide the appropriate sentence to execute; that is, whether to order the suspended sentence executed or, whether to reduce the sentence pursuant to Rule 35. I.C. 19-2603(2), 20-222; I.C.R. 35(b); *State v. Hanington*, 148 Idaho 26, 27 (Ct. App. 2009). In deciding the appropriate sentence to be executed, the court takes into account events before and after the original judgment. *See Hanington*, 148 Idaho at 28.

Whether to reduce a sentence under Rule 35 is addressed to the sound discretion of the sentencing court. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). Where a defendant challenges his sentence as excessively harsh, 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. *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court's sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*,

103 Idaho 565, 568 (Ct. App. 1982). When reviewing the length of a sentence, the Court considers the entire sentence. *State v. Oliver*, 144 Idaho 722 (2007).

C. The District Court Abused Its Discretion By Revoking Mr. Bankhead's Probation Without Reducing His Sentence

Mr. Bankhead's terrible childhood, his severe and longstanding mental health issues, his dependency on drugs, and his dire need for treatment, serve as strong mitigation in his case and warranted leniency. *State v. Nice*, 103 Idaho 89, 91 (1982).

Mr. Bankhead was born to a twelve-year-old heroin addict who was utterly incapable of caring for him, and he suffered incalculable harm as a result of her abuse. (PSI, pp.13, 31.) He was beat, burnt, and sold for sex in order to support his mother's addiction, and as a young child he left to live on the streets; his grandfather, an alcoholic himself, eventually took him in, becoming the only real family Mr. Bankhead has ever known. (PSI, pp.13, 31.) When he was nine, authorities took him from his grandfather. (PSI, pp.36, 67.) He was put up for adoption and spent time in countless foster homes, behavioral treatment and "youth remediation" centers, hospitals, and for a time he lived at a home for boys. (PSI, pp.13, 31, 36.) Mr. Bankhead is desperate for family and, he submits, his recent absconding to search for possible relatives should be understood, at least in part, a symptom of his dysfunctional upbringing.

Not surprisingly, Mr. Bankhead has a long history of cognitive disorders and mental health challenges that surfaced when he was a child and that continue to impact his life (PSI, pp.16, 32, 100, 106), and that should be considered as a mitigating factor. *See* Idaho Code § 19-2523; *Hollon v. State*, 132 Idaho 573, 581 (1999). His mental health problems led to numerous suicide attempts and hospitalizations, and contributed to his chronic encounters with law enforcement, and his difficulty complying with the requirements of his probation. (PSI, pp.3-12,

16, 100.) Although he has not consistently adhered to treatment of his mental health symptoms, Mr. Bankhead needs and desires ongoing help to gain psychiatric stability. (PSI, pp.16, 22, 106.)

Mr. Bankhead's drug dependency, and his potential for overcoming that dependency, also serve as mitigation. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). He was exposed to drugs as an infant, and began using drugs early on: he started with marijuana when he was eight, and he was using cocaine and methamphetamine regularly by the time he was thirteen. (PSI, p.36.) He uses illicit drugs to self-medicate and mask the symptoms of his mental illness. (PSI, p.100.) According to his recent GAIN assessments, Mr. Bankhead can benefit from out-patient treatment for his mental health and substance abuse issues. (PSI, p.22.)

In light of these mitigating factors, and notwithstanding the aggravating ones, Mr. Bankhead's sentence of twelve years, with two fixed, is unduly severe, and the district court abused its discretion by refusing to reduce that sentence when it revoked his probation.

### CONCLUSION

Mr. Bankhead respectfully requests that this Court vacate his sentence and remand his case to the district court for a new disposition hearing with instructions that the district court execute a reduced sentence of ten years, with one and one-half years fixed. Alternatively, he asks that this Court reduce his sentence as it deems appropriate.

DATED this 11<sup>th</sup> day of September, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11<sup>th</sup> day of September, 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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STEVEN J HIPPLER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

TERI K JONES  
ADA COUNTY PUBLIC DEFENDER  
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DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

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

KAC/eas