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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45097-2017
)	
v.)	
)	
TRAVIS SHANE ANDERSON,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**Appeal From The District Court Of The First Judicial
District Of The State Of Idaho, In And For The
County Of Kootenai**

**Honorable Rich Christensen
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Travis Shane Anderson pled guilty to one count of 1st degree kidnapping, a violation of Idaho Code §18-4501(1), and 1 count of Aggravated Battery, a violation of Idaho Code §18-903, 18-907(1)(a). The parties had entered into a binding plea agreement whereby the total scope of the unified sentence was agreed upon, while the parties retained the limited ability to argue the fixed or determinate portion of the sentence, from an agreed-upon range of 12 to 15 years.

The District Court sentenced Mr. Anderson to a fixed term of 14 years, with an indeterminate term of 18 years, which was within the Rule 11 plea agreement.

The District Court failed to sufficiently consider all of the mitigating factors present in this case – most notably, that Mr. Anderson accepted responsibility and expressed remorse for his crime, had severe substance abuse issues, had no prior felony record and no significant prior criminal history, was sentenced more harshly than his more culpable co-defendant, and had significant untreated mental health issues. Based on these failures, Mr. Anderson asserts that the District Court abused its discretion in imposing the fourteen year determinate portion of the sentence.

Mr. Anderson submits that the District Court abused its discretion and acted in manifest disregard of Idaho law, when the Court failed to require a comprehensive mental health evaluation in accordance with Idaho Code §§19-2522 and -2523.

Statement of Facts and Course of Proceedings

The State issued a Criminal Complaint against Mr. Anderson on or about November 27, 2015, charging him with one count of First Degree Kidnapping and one

count of Aggravated Battery. (R., ps. 62-63). Mr. Anderson waived his Preliminary Hearing. The State filed an Information on December 23, 2015, containing the same two charges as the Complaint. (R., ps. 79-80).

Mr. Anderson pled guilty to, along with co-defendant Angela Frisby, having confined the victim Kisha Munson, with the intent to cause her to be secretly confined or imprisoned, for the purpose of obtaining money, property or any other thing of value for her return. Mr. Anderson also pled guilty to repeatedly beating Ms. Munson with his hands and feet, again in concert with Ms. Frisby, causing great bodily harm. (*See* R., ps. 92-93). The victim had admitted to stealing Mr. Anderson's car, which contained all of the items he and his girlfriend had purchased for the pending birth of their child. (*See* S.H. Tr., p 30, ls. 8-13; PSR, p. 3, para. 2).

Mr. Anderson changed his plea to guilty on both charges, on April 8, 2016, based on a written "Pretrial Settlement Offer" signed by the parties. (*See* R., p. 91). The Court scheduled the case for sentencing on June 2, 2016, ordered a Pre-Sentence Investigation Report ("PSR"), and ordered a GAIN assessment. The GAIN assessment recommended mental health services for Mr. Anderson. The Department of Health and Welfare conducted a "review" of the GAIN's mental health findings, and also recommended further treatment. (PSR, p. 80-81).

The District Court sentenced Mr. Anderson on August 11, 2016. The Court imposed a unified sentence of thirty-two years, with fourteen years fixed and eighteen years indeterminate. (R., ps. 106, 108-09). The Court issued an Amended Judgment on March 8, 2017, and again on March 10, 2017. Mr. Anderson timely appeals from the District Court's Amended Judgment. (R., p. 143).

ISSUES

1. Whether the District Court abused its discretion when it imposed an excessive unified sentence of thirty-two years, with fourteen years fixed, upon Mr. Anderson following his pleas of guilty?
2. Whether the District Court abused its discretion and committed reversible error when it failed to require a comprehensive mental health evaluation of Mr. Anderson for sentencing?

ARGUMENT

I. The District Court Abused Its Discretion When It Imposed An Excessive Unified Sentence Of Thirty-two Years, With Fourteen Years Fixed, Upon Mr. Anderson Following His Plea Of Guilty.

A. Introduction

Travis Anderson did not proceed to trial, but rather pled guilty prior to trial. He accepted responsibility for his conduct and pled guilty to one count of First Degree Kidnapping and one count of Aggravated Battery. Pursuant to a plea agreement, the parties stipulated to the total term of the sentence, with discretion to argue for between twelve and fifteen years on the determinate portion of the sentence. (R., p. 91). At sentencing, the Government recommended a sentence of fifteen years determinate and seventeen years indeterminate. (R., p. 90, 91; S. H. Tr., p. 19, ls. 5-7). The defense recommended a sentence of twelve years determinate, and twenty years indeterminate. (R., p. 90; S.H. Tr., p. 32, ls. 24-25; p. 33, ls. 14-15).

Following Mr. Anderson's plea of guilty, the District Court sentenced him to a unified sentence of thirty-two (32) years, with fourteen (14) years determinate, on the Kidnapping charge, and a twelve (12) year determinate sentence on the Aggravated Battery charge, to run concurrently. (R. 106, 108-09).

Several mitigating factors were present in Mr. Anderson's case, all of which indicated that a more lenient determinate sentence would have been appropriate. Those included the fact that Mr. Anderson accepted responsibility and expressed remorse for his actions, had no prior violent felony record or record of similar charges, his more-culpable co-defendant was sentenced to a ten year determinate and fifteen year indeterminate term,

he had severe substance abuse issues, and he suffered from significant mental health issues.

The District Court's insufficient consideration of all the mitigating factors, and therefore, its insufficient consideration of Idaho's recognized sentencing objectives, caused it to impose an excessive determinate sentence in an abuse of its discretion. This Court should remedy that abuse.

B. The District Court Failed To Sufficiently Consider The Mitigating Factors Present In This Case And So Imposed An Excessive Determinate Sentence.

1. Introduction

Mr. Anderson asserts that, given the facts and circumstances of the case and his background, his unified sentence of thirty-two years, with fourteen years fixed, was excessive. When 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. *State v. Trevino*, 132 Idaho 888, 896 (1999)(citing *State v. Reinke*, 103 Idaho 771, 772 (Ct. App. 1982)).

When reviewing the length of a sentence, the appellate courts utilize an "abuse of discretion" standard. *State v. Dabney*, 159 Idaho 790, 794 (2016)(citing *State v. Al-Kotrani*, 141 Idaho 66, 70 (2005)). The appellate court must conduct an independent review of the record on appeal. *State v. Jeppesen*, 138 Idaho 71, 76 (2002)(citing *State v. Cannady*, 137 Idaho 67, 73 (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)(quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr.

Anderson does not allege that his sentence exceeds the statutory maximum; therefore, he must show that the District Court abused its discretion in imposing the sentence. *Id.* When considering whether the trial court abused its discretion, the appellate court must consider (1) the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the applicable legal standards; and (3) whether the trial court reached its decision by an exercise of reason. *State v. Bailey*, 161 Idaho 887, 890 (2017)(citing *State v. McIntosh*, 160 Idaho 1, 8 (2016)); *State v. Stevens*, 146 Idaho 139, 143 (2008). In order to reach a decision “by an exercise of reason”, the court must take into consideration “facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate.” *Bailey, supra.* (citing *State v. Hooper*, 119 Idaho 606, 611 (1991)). Mr. Anderson asserts that the District Court failed to engage in such an “exercise of reason”, based on the Court’s statement that “you’re still left with simply numbers” and “it’s just talking about numbers” (S.H. Tr., p. 37, ls. 1-2; p. 41, l. 16), and based on the factors discussed below in detail.

Accordingly, in order to show an abuse of discretion, Mr. Anderson must show that, in light of the governing criteria, the sentence was excessive considering any view of the facts. *McIntosh*, 160 Idaho at 8 (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991)); *State v. Oliver*, 144 Idaho 722, 727 (Idaho 2007).

The governing criteria, or criminal sentencing objectives, 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. *Al-Kotrani*, 141 Idaho

at 70; *State v. Strand*, 137 Idaho 457, 460-61 (2002). The protection of society is the primary objective the sentencing court should consider. *State v. Charboneau*, 124 Idaho 497, 500 (1993). Therefore, a sentence that protects society and also accomplishes the other objectives will generally be considered reasonable. *Id.*; *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). For purposes of sentencing review, the Court will consider the minimum period of incarceration as the probable measure of confinement. *State v. Lundquist*, 134 Idaho 831, 836 (2000). In Mr. Anderson’s case, the minimum period of incarceration is fourteen years.

In exercising its discretion, the “most fundamental requirement is reasonableness”. *Bailey*, 161 Idaho at 894; *McIntosh*, 160 Idaho at 8; *Hooper*, 119 Idaho at 608 (citing *State v. Dillon*, 100 Idaho 723, 724 (1979)).

The appellate court should consider several factors to determine whether the sentencing objectives are served by a particular sentence. *State v. Knighton*, 143 Idaho 318, 320 (2006). They include, but are not limited to “the defendant’s good character, status as a first-time offender, sincere expressions of remorse and amenability to treatment, and support of family¹.” *Id.*; see also I.C. §19-2521 (wherein the Legislature articulated several factors it suggested the sentencing court consider in its determination of whether to place the defendant on probation, or whether the facts indicate that it should depart from that result and impose a prison sentence).

Insufficient consideration of these factors has been the basis for a more lenient sentence in several cases. See, e.g., *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App.

¹ Mr. Anderson had clear and strong support from his family, as demonstrated by their heartfelt testimony on the record at his Sentencing Hearing. (See S.H. Tr., p. 13, l. 16 – p. 18, l. 3). This factor was clearly met in Mr. Anderson’s case.

2008); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991); *State v. Carrasco*, 114 Idaho 348, 354-55 (Ct. App. 1988), *rev'd on other grounds*, 117 Idaho 295, 301 (1990); *State v. Shideler*, 103 Idaho 593, 595 (1982). In this case, several of those factors were present, but were insufficiently considered by the District Court when it determined Mr. Anderson's sentence, particularly the determinate portion of his sentence. As a result, his sentence did not serve the recognized sentencing objectives and was excessive.

Additionally, the Eighth Amendment to the United States Constitution prohibits the imposition of cruel and unusual punishment. U.S. CONST., amend. VIII. The Eighth Amendment prohibition against the infliction of cruel and unusual punishments prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed. *Gonzalez v. Duncan*, 551 F.3d 875, 879 (9th Cir. 2008). In addition to the statutory arguments submitted herein, Mr. Anderson also asserts that his determinate sentence violated his Eighth Amendment rights by being greater than necessary to accomplish the goals and objectives of sentencing and by being disproportionate to his crime, and therefore constituted "cruel and unusual punishment". This Court should remedy any constitutional violations by correcting the determinate portion of Mr. Anderson's sentence.

2. Lack of Prior Record

One of the enumerated factors under Idaho law indicating prison is inappropriate (lack of a prior record) directly applied to Mr. Anderson's case. *See* I.C. §19-2521(2)(g).

This was Mr. Anderson's first felony conviction, albeit a serious felony. His misdemeanor record consisted of a marijuana possession charge and a Petit Theft charge.

His marijuana charge was from 2008, approximately eight years before this case. His Petit Theft charge was from 2010, some six years before this case.

Neither of Mr. Anderson's prior convictions was for crimes of violence. Mr. Anderson had no prior history of violent offenses, drug-related offenses, or sexual-related crimes. He does not have a record of victimizing other people or endangering society.

The Idaho Supreme Court has previously considered the fact that the defendant had no felony record to be a mitigating factor which partially justified a more lenient sentence. *Shideler*, 103 Idaho at 595; *State v. Nice*, 103 Idaho 89, 90 (1982); *see also* I.C. § 19-2521(1)(f), (2)(g) (indicating that where the defendant does not have a significant record, the sentencing court should be more disposed to suspending the sentence rather than opting for imprisonment). The logic in support of this proposition is that such a person usually does not yet have a fixed character for crime and therefore rehabilitation at this early stage is more likely. *See State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971).

The Idaho Supreme Court provided significant guidance on this issue in *State v. Shideler, supra*. In *Shideler*, the defendant pled guilty to a charge of armed robbery, while charges of assault with a deadly weapon and possession of a firearm during the commission of a crime were dismissed. The district court sentenced the defendant to an indeterminate term of twenty years. *Shideler*, 103 Idaho at 593.

The Supreme Court reviewed the sentence under an "abuse of discretion" standard, and overturned the sentence. The Court found that the crime was very serious and threatened harm to others, and that a "substantial sentence of imprisonment" was required, both for protection of society and to "reflect society's condemnation of the

defendant's behavior" and for general deterrence. *Id.* at 594. However, the Court looked closely at the defendant's personal characteristics, noting specifically that the defendant had no prior criminal history and had severe mental health issues. *Id.*

The Supreme Court overturned the twenty-year indeterminate sentence imposed upon the convicted robber. The Court noted that

"this was the defendant's first felony with no prior history of any criminal activity and this court has 'recognized that the first offender should be accorded more lenient treatment than the habitual criminal.'" *Id.* (citing *State v. Owen*, 73 Idaho 394, 402 (1953)(overruled on other grounds)).

The Court further noted that the defendant had accepted responsibility for his acts, and reduced his sentence from an indeterminate twenty year sentence to an indeterminate twelve year sentence, a time reduction of forty percent. *Id.* at 595.

Mr. Anderson asserts that the *Shideler* case should guide this Court in its assessment of his appeal. The *Shideler* case provides guidance for several reasons, including the similarities in the defendant's mental health issues as well as their mutual acceptance of responsibility. It should be noted, of course, that Mr. Shideler obtained a sentence reduction on appeal despite having committed a violent offense which apparently involved use of a deadly weapon, while Mr. Anderson's offense did not contemplate or threaten him using a deadly weapon against the victim. Finally, the *Shideler* Court placed great significance on the lack of a prior record, similar to Mr. Anderson. *See id.* at 595. Mr. Anderson urges this Court to give great weight to the *Shideler* decision.

Mr. Anderson's limited and non-felony criminal record, along with his willingness to accept responsibility for his actions, indicated that a more lenient sentence

was appropriate. *See, e.g.*, I.C. § 19-2521(1)(f), (2)(g); *Shideler*, 103 Idaho at 595; *State v. Hall*, 114 Idaho 887, 889 (Ct. App. 1988). Based thereon, Mr. Anderson asserts that the District Court abused its discretion by imposing an excessive determinate sentence.

3. Acceptance of Responsibility

Mr. Anderson accepted responsibility for his actions, by pleading guilty and admitting his behavior. He also expressed his remorse, indicating his sorrow and remorse directly to the victim during the sentencing hearing. (*See S.H. Tr.*, ps. 33-34)(stating verbatim that

.....
"I just want to say that I do sincerely feel remorseful for what happened. I want to apologize to the victim, to the community, to my family and everyone affected by this." (*Id.*, p. 33, l. 24 – p. 34, l. 2)

"... there's nothing that [the prosecutor] can say that can make me feel worse about what I did. As talented as [the prosecutor] is [at] painting a picture, I feel that much worse."

"This is horrific. I understand that. And so I would just ask that you would ... have some sort of mercy on me to see that I truly am remorseful for my actions and accountable for what I've done." (*Id.*, p. 33, l. 24 – p. 34, l.2; p. 34, ls. 6 – 8; p. 34, ls. 12-15).
.....

Acknowledgment of guilt and acceptance of responsibility by the defendant are critical first steps toward rehabilitation. *See State v. Kellis*, 148 Idaho 812, 815 (Ct. App. 2010), *rev. denied*. By making these acknowledgements, Mr. Anderson demonstrated that he had taken these critical first steps. They also demonstrated that he was and is amenable to treatment. (*See S.H. Tr.*, p. 34, ls. 10-12). Mr. Anderson also freely admitted that he needed drug treatment. (P.S.R., p. 13)(stating that "Mr. Anderson indicated feeling drug treatment is necessary").

Additionally, Mr. Anderson's acknowledgment of guilt and his acceptance of responsibility, and expressions of remorse, satisfy a statutory factor "in favor of avoiding

a sentence of imprisonment.” (See Idaho Code §19-2521(2)). Specifically, Mr. Anderson’s “character and attitudes ... indicate that the commission of another crime is unlikely.” *Id.* at 2(i). As discussed above, the Supreme Court has recognized “acceptance of responsibility” as an important factor in considering whether to reduce a substantial sentence. See *Shideler*, 103 Idaho at 593.

The Idaho Court of Appeals fairly recently overturned an excessive sentence based in part on the defendant’s acceptance of responsibility, in *Cook v. State*, 145 Idaho 482 (Ct. App. 2008). In *Cook*, the defendant pled guilty to nine counts of grand theft by deception, having defrauded nine different families out of 1.5 million dollars. He was sentenced to eight consecutive prison terms of three-to-eight years. The Court of Appeals considered the defendant’s acceptance of responsibility, the circumstances of the offense, the fact that the charges arose from one continuing plan of wrongdoing, the defendant’s age, and his complete lack of a prior criminal record. *Id.* at 489. The Court found the sentence to be excessive, holding that “... the court did not give sufficient consideration to the defendant’s status as a first time offender, his expressions of remorse, [and] the likelihood of rehabilitation and deterrence possible with a lesser cumulative sentence” *Id.*

Mr. Anderson asserts that the *Cook* Court engaged in an appropriate weighing of all of the various factors at play, including the goals and objectives of sentencing under Idaho law, and came to a well-reasoned decision. Most importantly, Mr. Anderson notes that the factors considered by the *Cook* Court - acceptance of responsibility, the circumstances of the offense, the fact that the charges arose from one continuing plan of wrongdoing, the defendant’s age, and his virtual lack of a prior criminal record – directly

apply to his case and personal circumstances. Mr. Anderson respectfully requests that this Court adopt the *Cook* rationale, apply it to his case, and reduce the fixed portion of his sentence from fourteen years down to twelve years, as this Court deems appropriate.

Mr. Anderson's acknowledgment of guilt, his expression of remorse, and acceptance of responsibility indicate a more lenient fixed sentence was more appropriate. *See Kellis*, 148 Idaho at 815. The District Court erred by failing to properly consider this factor in imposing an excessive sentence upon Mr. Anderson.

4. Substance Abuse and Childhood History

Yet another mitigating factor supported a more lenient sentence. Mr. Anderson had a serious substance abuse issue before and during the time of his criminal behavior. (*See* PSR, ps. 13, 75-76; S.H. Tr., p. 34, ls. 10-12).

This substance abuse began at a young age, during Mr. Anderson's adolescence, and included Mr. Anderson being exposed to his parents engaging in alcohol abuse and drug usage. (*See* PSR, p. 7). A troubled childhood is yet another factor sentencing courts should consider in mitigation. *See State v. Williamson*, 135 Idaho 618, 620 (Ct. App. 2001).

Mr. Anderson reported during his PSR interview that his alcohol and drug usage began at approximately age 12, and continued up to the date of his arrest. (*See* PSR, ps. 11-12).

Mr. Anderson further reported that he began using methamphetamine at age 14, and was a regular daily user for years leading up to his arrest in this case. (*See* PSR, p. 13). Finally, Mr. Anderson reported that he used cocaine, ecstasy, LSD and heroin as well. (*Id.*) However, despite this clear record of substance abuse, the District Court

apparently gave no consideration to this factor at sentencing, failing to even mention it during the Court’s comments in support of its sentence. (*See* S.H. Tr., p. 34, l. 23- p. 42, l. 24). This failure to recognize and consider Mr. Anderson’s “troubled childhood”, as concerns drug abuse and addiction, constitutes error. While this factor does not provide a legal defense or excuse for Mr. Anderson’s behavior, it certainly represented a mitigating factor that the District Court should have considered. *See Williamson, supra*.

This Court should reverse for further proceedings to properly account for these mitigating factors.

5. Mental Health Issues

Finally, compounding those issues, Mr. Anderson had significant mental health issues which the District Court gave little or no heed to in imposing its sentence. Mr. Anderson has been diagnosed with Generalized Anxiety Disorder, Depressive Disorder, and Agoraphobia (‘without history of panic disorder’). Mr. Anderson’s PSR clearly referenced his mental health issues. (*See* PSR, ps. 11, 74, 76, 77, 79, 80-81).

The Idaho Supreme Court has recognized that Idaho Code §19-2523 not only suggests, but requires, the trial court to consider a defendant’s mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). For at least one year prior to his arrest, and likely longer, although the evaluations focused only on the prior twelve months, Mr. Anderson reported that such symptoms affected his behavior. (*See, generally*, PSR p. 80-81). In fact, in order to address these issues in relation to his behavior, the GAIN evaluator and the Mental Health Screening reporter both recommended that he potentially receive future mental health treatment and services. (*Id.* at ps. 79, 81).



Again, despite a clear record of mental health issues, the District Court apparently gave no consideration to this factor at sentencing, as the Court never mentioned mental health matters during the Court's comments in support of its sentence. (*See* S.H. Tr., p. 34, l. 23- p. 42, l. 24).

Given that the District Court failed to mention or reference mental health issues at Mr. Anderson's sentencing hearing, the record is void of any explanation as to whether they entered into the Court's consideration. Mr. Anderson asserts that the District Court committed error by failing to properly consider his mental health issues at sentencing, and urges this Court to remand his case to remedy this error.

6. Sentence Greater Than Necessary To Accomplish Sentencing Goals

Mr. Anderson further asserts that the determinate portion of his sentence was greater than necessary to accomplish the goals of sentencing. Such a sentence was inappropriate because sentences are to be crafted so that they do not force the prison system to continue detaining a person once rehabilitation or age has decreased the risk of recidivism. *Cook*, 145 Idaho at 489; *State v. Eubank*, 114 Idaho 635, 639 (Ct. App. 1988). Mr. Anderson was only 28 years old when he was sentenced. (PSR, p. 1). Yet his sentence, if it stands, would ensure that he will be incarcerated for at least fourteen years (half the length of his entire life to date) regardless of his rehabilitative efforts or maturation during that time. As such, his sentence operates contrary to the admonitions in *Cook* and *Eubank* and constitutes an abuse of discretion.

The Idaho Court of Appeals provided guidance on this issue in *State v. Carrasco*, 114 Idaho 348 (Ct. App. 1988). In *Carrasco*, the Court of Appeals reviewed a sentence of thirty years indeterminate for heroin and cocaine delivery charges. The prosecution

had recommended a sentence of ten years determinate. Relying in part on the fact that the prosecutor's sentencing recommendation was ignored and that instead, "the district judge went a step further" and imposed a thirty year sentence, the Court of Appeals overturned the sentence, and reduced it by a third. *Id.* at 354. The *Carrasco* Court noted that the reduced sentence would provide "correctional authorities greater flexibility in granting [the defendant] a parole, if and when he earn[ed] it." *Id.* at 355. Mr. Anderson urges this Court to adopt the logic of the *Carrasco* decision and apply it directly to the facts in his case.

Mr. Anderson further notes the significant discrepancy in sentencing among the three participants in this matter. Participant Angela Frisby received a sentence of ten years fixed, followed by fifteen years indeterminate. (*See* Kootenai County case no. CR-2015-19465). It is believed that participant Lilly Johnson was sentenced to mental health court after a period of retained jurisdiction. Mr. Anderson acknowledges that Ms. Johnson played a lesser role in the crime. However, Mr. Frisby was, at minimum, equally culpable, if not more culpable, in that Ms. Frisby actually detained and kidnapped the victim from inside a store. (PSR, p. 3, para. 3)(stating that "[r]egarding the kidnapping, Ms. Munson stated she was dragged out of a Spokane store by a woman later identified as Angela Frisby"). The District Court did not find that Mr. Anderson played a greater role, noting that "I'm not so sure that the Court is persuaded one way or another whether or not you were in charge" (S.H. Tr., p. 38, ls. 1-2).

Regardless, co-defendant Frisby received a significantly lesser sentence, both in the fixed and indeterminate portions. In light of the sentencing goals and the general directive to ensure sentences are relatively fair and equal for similar conduct, Mr.

Anderson challenges his sentence. The District Court’s sentence created unwarranted sentencing disparity among similarly culpable defendants. Based thereon, he asserts that the District Court abused its discretion by imposing the 14-year determinate portion of the sentence.

Summary

A sufficient examination of all these factors reveals that a more lenient determinate sentence still addresses all the other sentencing objectives – protection of society, punishment, and deterrence. See *State v. Ransom*, 124 Idaho 703, 713 (1993)(requiring that alternative sentences still address all the sentencing objectives).

In Mr. Anderson’s case, if the sentencing court had imposed the determinate sentence term recommended by the defense, it would still have imposed a substantial prison sentence. Therefore, both the retributive and the deterrent effects of the imposed sentence would still be present. See *State v. Crockett*, 146 Idaho 13, 14-15 (Ct. App. 2008)(discussing how a sentence for a period of probation and retained jurisdiction, rather than prison, addressed all the sentencing objectives and how the court’s continuing jurisdiction affected those objectives). However, the sentence would not be “longer than reasonably necessary to deter similar conduct in the future, to exact retribution, or to protect society.” *Carrasco*, 114 Idaho at 355.

In addition to the twelve-year minimum term of imprisonment, the Idaho Board of Pardons and Parole would retain the ability to revoke Mr. Anderson’s parole and execute the original sentence if Mr. Anderson were to fail to adhere to the terms of his parole upon his release from prison. However, it could do so knowing that each of the statutory sentencing objectives had been properly addressed initially at the sentencing phase.

.....

Based upon these factors, Mr. Anderson asserts that the District Court insufficiently considered all the mitigating factors, which led to its imposition of an excessive determinate sentence in an abuse of its discretion. *See Dabney*, 159 Idaho at 794; *Al-Kotrani*, 141 Idaho at 70. Mr. Anderson respectfully requests that this Court remand this case with instructions to remedy that abuse of discretion.

II. The District Court Committed Reversible Error When It Failed To Order A Mental Health Evaluation Of Mr. Lamb Prior To Sentencing.

Mr. Anderson's mental health status was a significant factor at sentencing. (It apparently remains a significant factor in that the State of Idaho placed Mr. Anderson at the Orofino facility, which treats persons with "dual diagnosis" mental health and drug addiction issues, as noted in this Court's notices to Mr. Anderson prior to Counsel's appearance). The District Court failed to specifically mention Mr. Anderson's mental health issues during sentencing. (*See, generally*, S.H. Tr. p. 34, l. 23 - p. 42, l. 24). Mr. Anderson's PSR specifically referenced his mental health issues, and the PSR attachments included specific mental health diagnoses. (*See* PSR, ps. 11, 74, 76, 77, 79, 80-81). Nonetheless, the District Court proceeded forward at sentencing without a separate, specific comprehensive mental health evaluation.

The decision whether to order a mental health evaluation pursuant to I.C. §19-2522 is discretionary. *State v. Jockumsen*, 148 Idaho 817, 822 (Ct. App. 2010). However, as with any exercise of discretion, the district court's determination must be consistent with applicable legal standards. *Id.* "The legal standards governing the court's decision whether to order a psychological evaluation and report are contained in I.C. §19-

2522.” *State v. Collins*, 144 Idaho 408, 409 (Ct. App. 2007). Idaho Code §19-2522 provides that a mental health evaluation is *mandatory* if there is reason to believe that the mental condition of the defendant will be a significant factor at sentencing and for good cause shown. *State v. Coonts*, 137 Idaho 150, 152 (Ct. App. 2002); *State v. McFarland*, 125 Idaho 876, 879 (Ct. App. 1994).

Mr. Anderson’s counsel did not object to the lack of a psychological or mental health evaluation in accordance with I.C. §19-2522 prior to the District Court’s judgment of conviction. However, a district court is under an independent duty to order a mental health evaluation under I.C. §19-2522 under certain circumstances, even in absence of a request on the part of the defendant or his counsel. “A claim that the district court abused its discretion by failing to *sua sponte* order a psychological evaluation of a defendant before sentencing can be made on appeal without an objection to the lack of an evaluation or a request for an evaluation before the district court.” *State v. Durham*, 146 Idaho 364, 366 (Ct. App. 2008). In that situation, the defendant must demonstrate that the district court manifestly disregarded the relevant provisions of Idaho Criminal Rule 32 by failing to order the psychological examination. *Id.* If the record indicates that a defendant’s mental condition and rehabilitative potential are significant factors, the district court should not proceed to sentencing “without the benefit of a professional diagnosis of that condition and prognosis for improvement,” all of which support a finding under I.C. §19-2522 that a mental health evaluation is required. *See McFarland*, 125 Idaho at 881.

The analysis under I.C. § 19-2522 focuses on factors relevant to appropriate punishment, such as the degree of the defendant’s illness and level of impairment, which

may impact upon the defendant's overall culpability for the offense; the available treatments for his condition, along with the risks and benefits of treatment or non-treatment; and a consideration of the risk of danger that the defendant might pose if released back into the community. I.C. §19-2522(3).

The evidence before the District Court at Mr. Anderson's sentencing failed to address nearly all of the critical factors that are required to be included within a mental health evaluation for sentencing purposes. Unfortunately, the PSR contained limited mental health information for Mr. Anderson, as it was based on a GAIN assessment and a limited mental health screening report only. (*See generally*, PSR, ps. 74, 76, 77, 79, 80-81).

Further, the PSR author was aware of Mr. Anderson's mental health issues, having referenced the topic specifically in the body of Anderson's PSR. (*See* PSR, p. 11). Despite clear indications in the PSR that Mr. Anderson had significant mental health issues, the District Court made no mention of these issues during Mr. Anderson's sentencing hearing. (*See, generally*, S.H. Tr., p. 34, l. 23 – p. 42, l. 24). This was error.

Unfortunately, the District Court compounded this error by not following up on the information available to it through the pre-sentence process, and requiring a comprehensive mental health evaluation. This omission clearly violates the dictates of Idaho Code §19-2522, which requires a court to consider such an evaluation under Mr. Anderson's circumstances.

Since there was no mental health evaluation, it follows that there was no evaluation of what treatments were potentially available to Mr. Anderson in order to address his mental conditions, or any evaluation of the potential risk to the public if

Mr. Anderson were to receive mental health treatment in lieu of additional fixed incarceration. (*See* Idaho Code §19-2522(3)).

The information available to the District Court prior to sentencing made it clear that there was reason to believe that Mr. Anderson's mental condition would be a significant factor at sentencing. However, the information properly available to the District Court did not adequately meet the requirements of I.C. §19-2522(3). In light of this, the District Court acted with manifest disregard for the provisions of Idaho Code §19-2522 and 2523, and Idaho Criminal Rule 32, when it failed to order a psychological report or comprehensive mental health evaluation for sentencing purposes. This Court should remedy this error and remand the case accordingly.

CONCLUSION

Based upon the above and foregoing, Mr. Anderson respectfully requests that this Court reduce the fixed or determinate portion of his sentence as it deems appropriate.

In the alternative, Mr. Anderson respectfully requests that this Court vacate his sentence, and remand his case for a new sentencing hearing after a complete evaluation of Mr. Anderson's mental health conditions is made in accordance with I.C. § 19-2522 and I.C.R. 32.

DATED this 19th day of December, 2017.

/s/ Paul E. Riggins
PAUL E. RIGGINS
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December, 2017, I served a true and correct copy of the foregoing document, by delivering a copy thereof in the method indicated below, to the following persons:

.....

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