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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45234
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR 16-17452
v.)	
)	
MARIAH LYNN BUCHANAN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

A jury found Mariah Buchanan guilty of possession of methamphetamine, and the district court sentenced her to a suspended unified term of four years, with two years fixed, and placed her on probation. Ms. Buchanan asserts the district court abused its discretion by imposing an excessive underlying sentence in light of the mitigating factors that exist in her case.

Statement of the Facts & Course of Proceedings

Mariah Buchanan was the passenger in a vehicle pulled over for failing to stop at a boat inspection area. (R., pp.10-33.) Subsequent searches revealed a syringe in Ms. Buchanan's

purse containing a liquid, and a baggy found on her person containing a crystalline substance, each of which later tested positive for methamphetamine. (R., pp.10-33; PSI, p.15.)¹ After a preliminary hearing, Ms. Buchanan was bound over into the district court and an information was filed charging her with one count of possession of methamphetamine. (R., pp.47-56, 60-61.) Ms. Buchanan filed a motion to suppress, which was denied by the district court.² (R., pp.57-59, 89-110.) A jury found Ms. Buchanan guilty. (R., pp.135-150, 178.)

During the sentencing hearing, the State asked the court to impose a unified term of four years, with two years fixed, and to retain jurisdiction (Tr. 5/31/17, p.9, Ls.11-17), while counsel for Ms. Buchanan asked the court to impose a suspended unified term of three years, with one year fixed, and to place Ms. Buchanan on probation (Tr. 5/31/17, p.13, Ls.2-5). The district court imposed a suspended unified term of four years, with two years fixed, and placed Ms. Buchanan on probation for a period of two years. (R., pp.191-201; Tr. 5/31/17, p.17, Ls.8-11.) Ms. Buchanan filed a timely Notice of Appeal. (R., pp.202-206.)

¹ Citations to various documents found in the 80-page electronic file which includes the Presentence Investigation Report, will use the designation “PSI” in this Brief.

² The State argued the warrantless search was justified by Deputy Brakeman smelling the odor of marijuana coming from the vehicle, and Ms. Buchanan challenged Deputy Brakeman’s credibility in large part based upon multiple inconsistencies in his testimony and the fact that another officer, Deputy Ballman, did not smell the marijuana even though he was the one who searched the vehicle. (*See generally* R., pp.89-97; Tr. 3/9/17; Tr. 3/15/17.) The district court found Deputy Brakeman to be credible and denied the motion. (Tr. 3/15/17, p.96, L.25 – p.98, L.9.) In light of the fact that this Court will not reweigh the evidence and make its own credibility determination, Ms. Buchanan does not challenge the district court’s denial of her motion to suppress in this appeal. *See State v. Jones*, 145 Idaho 639 (Ct. App. 2008); *State v. Atkinson*, 128 Idaho 559, 561 (Ct. App. 1996).

ISSUE

Did the district court abuse its discretion when it imposed upon Ms. Buchanan an underlying unified term of four years, with two years fixed?

ARGUMENT

Based Upon The Mitigating Factors That Exist In Her Case, The District Court Abused Its Discretion When It Imposed Upon Ms. Buchanan An Underlying Unified Term Of Four Years, With Two Years Fixed

Ms. Buchanan asserts that, given any view of the facts, her underlying unified term of four years, with two years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

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)). Ms. Buchanan does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Buchanan must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Ms. Buchanan was 32 years-old when she was sentenced and she told the PSI writer that she was ashamed and embarrassed by her crime. (PSI, pp.18, 20.) Her sole prior offense was an earlier misdemeanor (reduced from felony) possession of methamphetamine charge. (PSI, p.20.) Ms. Buchanan wanted to be a better mother and a better person, she realized that her choice of friends led her to her legal troubles, and she resolved to take responsibility for herself and to make better choices in the future. (PSI p.25.) During the sentencing hearing, Ms. Buchanan told the district court that she takes responsibility for her actions and that she had already stopped hanging out with the “wrong people.” (Tr. 5/31/17, p.14, Ls.14-19.)

Idaho Courts recognize that a limited criminal history, acceptance of responsibility, and the desire for rehabilitation, are all mitigating factors that should counsel a district court to impose a less-severe sentence. *See State v. Hoskins*, 131 Idaho 670 (1998); *State v. James*, 112 Idaho 239 (Ct. App. 1986); *State v. Sanchez*, 117 Idaho 51 (Ct. App. 1990). In light of the mitigating factors that exist in this case, Ms. Buchanan asserts that the district court imposed an excessive underlying sentence.

CONCLUSION

Ms. Buchanan respectfully requests that this Court reduce her underlying sentence to a unified term of three years, with one year fixed, as requested by her trial counsel during her sentencing hearing, or for whatever relief this Court deems appropriate.

DATED this 21st day of February, 2018.

_____/s/_____
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of February, 2018, 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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2417 E 5TH AVEUNE
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_____/s/_____
EVAN A. SMITH
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JCP/eas