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### State v. Snow Appellant's Brief Dckt. 45314

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45314
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2016-9778
v.	)	
	)	
ZACHARY WAYNE SNOW,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Zachary Snow pled guilty to possessing methamphetamine, the district court sentenced him to seven years, with two years fixed, and retained jurisdiction. The district court later relinquished jurisdiction on the Idaho Department of Correction's recommendation. Mr. Snow appeals from his judgment of conviction and asserts that his original sentence is excessive considering the mitigating factors in this case, and that the district court also abused its discretion by not reducing his sentence at the rider review hearing.

## Statement of Facts and Course of Proceedings

Mr. Snow pled guilty to possessing methamphetamine after an officer saw him get a bag of methamphetamine from another man while sitting in a parked car near the Rhodes Skate Park. (R., pp.103, 105–14; Plea Tr., p.12, Ls.9–23; Sent. Tr.,<sup>1</sup> p.5, Ls.19–24; PSI, p.3.) In exchange for his plea, the State agreed to dismiss the possession of paraphernalia charge and the persistent violator enhancement, and recommend a sentence of seven years, with two years fixed, and a period of retained jurisdiction. (Plea Tr., p.4, L.22–p.5, L.21; R., pp.103, 105–14.)

At sentencing, the State made a recommendation consistent with the plea agreement. (Sent. Tr., p.10, Ls.10–15.) Defense counsel suggested that the court “follow the plea agreement.” (Sent. Tr., p.13, Ls.7–8.) He then discussed why a rider was appropriate in this case, and asked that the court exercise its “discretion in terms of the length of the sentence,” but to “allow some trust and some credence to the recommendations that are being made by the attorneys in this particular case.”<sup>2</sup> (Sent. Tr., p.16, L.23–p.17, L.2.) Finally, Mr. Snow told the court:

Since I’ve been in jail, I’ve thought lot [sic] about my actions and I understand a lot of times like when I tell stories, I think they come out across as unclear or attitude or they’re fictional sometimes. Because—honestly because of my past and because of the way I’ve decided to live my life too.

But also when I was younger, I didn’t have a choice. I was subject to a lot of influences that were not exactly my own, Your Honor, and now that I’m a grown adult, you know, necessarily I can make my own choices and my choice is to get clean because I hate waking up every morning and looking in the mirror and seeing—you know, and it’s not me. Like, I’m not the person I used to be. I used to be a happy kid. I used to have a family and good friends and a chance and

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<sup>1</sup> Citations to “Sent. Tr.” refer to the electronic document containing the transcripts of the sentencing and rider review hearings.

<sup>2</sup> Given this entire discussion, as well as the recitation of the plea agreement at the plea hearing and in the written plea agreement, Mr. Snow asserts that his attorney did not adopt the state’s two plus five sentencing recommendation, but rather advocated for the court to accept the rider proposed by both parties as part of the plea without making a particular suggestion regarding the length of the sentence.

I'm looking at going to prison for a little bit of dope, but it was just only a matter of time or it could have been worse.

So I'm glad nobody got hurt, you know, and the only person that really got hurt was my ego, you know. I'm really happy that I've taking responsibility for my actions and that people can see that, yeah, I have a problem and that meth does ruin people's lives and I always thought it was a joke. I could do a little bit and or sleep and it would be fine, but if I do it today or quit next Tuesday, it was just a couple more days. I always made excuses for my addiction.

There's no excuse anymore. I'm tired of it. I'm tired of being a monster that I see in the mirror every day. I want Zack back. I want to be myself. And my mom, my family and everybody is—I have a choice to make my own family. I want to have something for myself that I can say I did on my own. And a rider or a chance to take this opportunity, like [my attorney was saying], to change my ways and to learn from mistakes is—I'm praying and hoping for the best because I really—like I said, I'm running out of time. I just hope that everybody realizes that I'm sorry, that it's—I do these things and, yes, I understand I make mistakes, but I don't completely rationalize the [sic] time that I'm doing something wrong and that's a mistake I'm making because I'm not accepting the help, but I'm ready to accept the help and hoping everybody agrees.

(Sent. Tr., p.17, L.21–p.19, L.13.) The court discussed Mr. Snow's background, which it said was one of the “most frightening” it had seen for someone so young, and adopted the State's recommendation of a total term of seven years, with two years fixed, and retained jurisdiction.

(Sent. Tr., p.21, L.8–p.26, L.12; R., pp.124–26.)

A few months later, the IDOC recommended that the court relinquish jurisdiction because Mr. Snow had multiple rule violations and did not appear to want to change.

(PSI, p.297–306.) The State concurred with that recommendation (Sent. Tr., p.30, L.9–p.31, L.3), while defense counsel asked that the court consider another rider or to reduce Mr. Snow's sentence to five years, with one year fixed<sup>3</sup> (Sent. Tr., p.31, L.6–p.36, L.11). Defense counsel acknowledged that Mr. Snow had performed very poorly on his rider, but suggested that his current sentence was too long considering that he possessed only two-hundredths of a gram of

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<sup>3</sup> Defense counsel incorrectly believed that Mr. Snow had been sentenced to a unified term of five years, with two years fixed, as opposed to seven years, with two years fixed. (Sent. Tr., p.33, Ls.7–8.)

methamphetamine. (*Id.*) Finally, Mr. Snow told the court that he had never been religious before but had started going to “sober recovery,” had housing approved, and had the support of his family again. (Sent. Tr., p.37, Ls.9–22.) He also explained that his doctors recently modified some of his medications after concluding that they actually had the opposite of their intended effect and thus had made his behavior worse. (Sent. Tr., p.38, Ls.6–12.) He said he wanted a life of safety and security, wanted to show that he’s a man the community can trust and consider a good person, and that he was willing to accept the court’s judgment and go forward from there in a positive manner. (Sent. Tr., p.39, Ls.3–11.)

The court discussed Mr. Snow’s poor performance on his rider before relinquishing jurisdiction without reducing his sentence. (Sent. Tr., p.39, L.16–p.41, L.22: R., pp.129–30.) The court later denied Mr. Snow’s Rule 35 motion again requesting leniency, which he did not support with new or additional information.<sup>4</sup> (R., pp.137–38, 144–45.) Mr. Snow filed a notice of appeal timely from the court’s order relinquishing jurisdiction. (R., pp.132–35.)

### ISSUE

Did the district court abuse its discretion when it sentenced Mr. Snow to seven years, with two years fixed, and when it refused to reduce Mr. Snow’s sentence at relinquishment?

### ARGUMENT

#### The District Court Abused Its Discretion When It Sentenced Mr. Snow To Seven Years, With Two Years Fixed, And When It Refused To Reduce Mr. Snow’s Sentence At Relinquishment

When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “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,

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<sup>4</sup> Mr. Snow does not challenge the court’s denial of this second request for leniency.

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). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834.

The district court can lower a sentence under Rule 35(b) “if the sentence originally imposed was unduly severe” in light of new or additional information. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.*

First, Mr. Snow’s original sentence is excessive considering the mitigating evidence in this case. At the time of this crime, Mr. Snow was homeless and just twenty years old. His extremely difficult childhood sheds light on how he got to that point. Mr. Snow had behavioral problems from the time he was very young, possibly from an organic brain disorder related to his mother’s drug use while she was pregnant. (PSI, pp.9, 11.) When he was little, his mother would give him double doses of medications and tie his feet to the coffee table to try to keep him calm. (*Id.*) He has no relationship with his father, who was never around when he was young. (*Id.*) Child Protective Services placed Mr. Snow in foster care at an early age after his mother left him with his aunt and uncle. (PSI, p.8.) He was in foster care for about six years, where he felt like he was “the unwanted one” and was beat up by his foster brothers. (*Id.*) He eventually went back to live with his aunt and uncle. (*Id.*) His uncle was “extremely abusive,” even throwing Mr. Snow through windows, but Mr. Snow stayed there until he was sixteen. (*Id.*) At that point he went back to live with his mother, only to learn that she and her husband were using drugs and that her husband abused her. (PSI, p.9.) Eventually, his mother got divorced and

remarried a week later. (*Id.*) Mr. Snow respects his current step-father, who he said is nice, has faith in Mr. Snow, and stood up for him in court. (*Id.*)

Given this childhood, it's not surprising that Mr. Snow struggles with mental illness and drug abuse. Aside from his organic brain disorder, Mr. Snow has been diagnosed with antisocial disorder, conduct disorder, and bipolar disorder. (PSI, p.14.) He may also suffer from reactive attachment disorder and personality disorder. (PSI, pp.14, 32.) He has attempted suicide at least once, and has self-harmed various times. (PSI, p.13.) Mr. Snow started drinking at age eleven, and by sixteen he was using methamphetamine. (PSI, p.14.) He has a methamphetamine use disorder, and when he was arrested for this crime, he had been using about two grams of methamphetamine a day. (PSI, pp.15, 32.) He believes methamphetamine has taken control of his life by contributing to his crimes and financial downfall. (PSI, p.15.)

Going forward, Mr. Snow wants to get clean, and is confident he could do so with the help of treatment, God, and family. (PSI, pp.15, 17.) He believes that is the only way to get his life on track. (PSI, p.17.) Considering these mitigating factors, the district court abused its discretion by sentencing Mr. Snow to seven years of incarceration, with two years fixed.

Second, Mr. Snow's sentence is excessive in light of the new information he provided to the court at relinquishment. Although Mr. Snow acknowledged that he did not earn a chance at probation, he asked that the court consider reducing his sentence to five years, with one year fixed. By way of new information, Mr. Snow told the court that he had started going to "sober recovery," that he had the support of his family again, and that the medications he had been taking while incarcerated actually exacerbated his poor behavior and so his doctors recently modified them. (Sent. Tr., p.37, Ls.9–p.22, p.38, Ls.6–12; PSI, p.306.) In light of this new information, the court abused its discretion by not reducing Mr. Snow's sentence.

CONCLUSION

Mr. Snow respectfully requests that this Court please reduce his sentence as it deems appropriate.

DATED this 8<sup>th</sup> day of January, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
MAYA P. WALDRON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8<sup>th</sup> day of January, 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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\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

MPW/eas