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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45344
Plaintiff-Respondent,)	
)	JEROME COUNTY NO. CR 2017-1533
v.)	
)	
BRIAN PINELL,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Brian Pinell pled guilty to one count of aggravated assault on a law enforcement officer and was sentenced to a unified term of eight years, with three years fixed. Mr. Pinell asserts the district court abused its discretion by imposing an excessive sentence upon him in light of the mitigating factors that are present in his case.

Statement of the Facts & Course of Proceedings

Highly intoxicated and reeling from a fight with his girlfriend, 26 year-old Brian Pinell sped his SUV past two sheriff's deputies with a friend in the passenger seat; drove recklessly

while trying to elude the deputies; crashed into some rocks; pointed a rifle at the deputies; and then ran into the desert. (PSI, pp.4-6.)¹ After contemplating suicide, Mr. Pinell turned himself in the following day. (PSI, p.6.) Mr. Pinell waived his right to a preliminary hearing and the State filed an Information charging him with two counts of aggravated assault on certain law enforcement personnel, eluding a police officer, felony driving under the influence, and possession of an open container of alcohol in a motor vehicle. (R., pp.63-66, 72-74.)

Mr. Pinell pled guilty to Count I of an Amended Information charging him with aggravated assault on certain law enforcement personnel, with both deputies named as victims; in exchange, the State agreed to dismiss the remaining counts with no agreed upon sentencing recommendations. (R., pp.83-89; Tr., p.4, L.15 – p.14, L.11.) During the sentencing hearing, the State asked the court to impose a unified term of ten years, with five years fixed, while counsel for Mr. Pinell requested the court either place Mr. Pinell on probation or retain jurisdiction, but Mr. Pinell's counsel did not recommend an underlying sentence. (Tr., p.24, Ls.23-24; p.33, Ls.1-15.) The district court imposed a unified term of eight years, with three years fixed, declining to place Mr. Pinell on probation or retain jurisdiction. (R., pp.92-99; Tr., p.36, Ls.14-22.) Mr. Pinell filed a timely Notice of Appeal.² (R., pp.102-105.)

¹ Citations to the Presentence Investigation Report and its attached documents will use the designation "PSI," as well as the page numbers associated with the electronic file containing those documents.

² Mr. Pinell also filed a timely Rule 35 motion seeking leniency, which was denied by the district court. (R., pp.110-116.) Because Mr. Pinell did not include any new or additional information in support of his motion, and in light of the relevant standards of review, Mr. Pinell does not raise any issues related to the denial of his Rule 35 motion in this appeal.

ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Pinell a unified sentence of eight years, with three years fixed, in light of the mitigating factors that exist in this case?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Mr. Pinell A Unified Sentence Of Eight Years, With Three Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Pinell asserts that, given any view of the facts, his unified sentence of eight years, with three 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 giving consideration to 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)). Mr. Pinell does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Pinell 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)).

Mr. Pinell was very remorseful for his actions and he has committed himself to his sobriety. At the time of his crime, he was drinking one-fifth of a gallon of whiskey every day. (PSI, p.12.) He stated that he “wish[ed] [he] could have seen through the w[h]iskey long enough to realize how much damage it had done to [his] life.” (PSI, p.6.) When he first stopped drinking after the instant offense, Mr. Pinell did not want to be sober; however, after a couple of weeks he started to feel much better and decided that he wants to be sober. (PSI, p.13.) Mr. Pinell recognized that alcohol, jealousy, and the guilt stemming from a close friend’s death, were areas that contributed to his criminal behavior, and he is committed to remaining sober and attending anger management classes. (PSI, p.14.) He wrote a letter to the district court expressing his shame and disappointment in himself for his criminal activity, and he is proud of the fact that he has not had a drink since the night of the incident. (PSI, pp.40-42.)

Mr. Pinell also enjoys the support of his mother, Candice Pinell. Ms. Pinell wrote a letter to the court expressing that her son is a kind and helpful person, who has been scarred by the emotional abuse suffered at the hands of his father when he was a child, the death by suicide of his father when he was only 13, and the murder of his close friend when he was only 17. (R., pp.33-34.) Ms. Pinell also addressed the court during the sentencing hearing and let the court know that her son has the support of his family and friends. (Tr., p.26, L.21 – p.27, L.8.)

Idaho courts recognize that alcoholism and the willingness to seek treatment, remorse for one’s conduct, and the support of family and friends, are all mitigating factors that should be considered by the district court when that court imposes a sentence. *See State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). In light of the mitigating factors that exist in his case, Mr. Pinell asserts that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Pinell respectfully requests that this Court remand his case to the district court with instructions that the court retain jurisdiction, or for whatever other relief this Court deems appropriate.

DATED this 30th day of March, 2018.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of March, 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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ISCC
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ERIC WILDMAN
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E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCP/eas