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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|--------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 45371 |
| Plaintiff-Respondent, |) | |
| |) | MADISON COUNTY NO. CR 2017-874 |
| v. |) | |
| |) | |
| PAUL ARNETT, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Paul Arnett pleaded guilty to one felony count of possession of methamphetamine, and one misdemeanor count of possession of marijuana. The district court imposed a sentence of seven years, with three years fixed, for the felony charge. On appeal, Mr. Arnett asserts the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In April of 2017, the Madison County Sheriff's office was contacted regarding suspicious activity in the reporting party's neighborhood. (Presentence Report (*hereinafter*, PSI), p.4.)¹ The deputy who responded saw a truck "pulling a flatbed trailer with a Suburban on it." (PSI, pp.4, 33.) Mr. Arnett was driving the truck, and when the deputy made contact with him and asked why he was taking the vehicle, Mr. Arnett said that his friend asked him to get the vehicle off the property. (PSI, p.4.) However, when the deputy contacted the friend, he told the deputy that he did not ask Mr. Arnett to take the Suburban. (PSI, p.4.) After further investigation, Mr. Arnett, and the two passengers in the truck were arrested. (PSI, pp.4, 35.)

Thereafter, the deputies discovered marijuana, methamphetamine, drug paraphernalia, and a firearm in the truck. (PSI, p.5.) A set of tools and a backpack were also discovered; the backpack contained a prescription for Mr. Arnett and a bottle of codeine that did not belong to him. (PSI, p.5.) The owner of the property on which the Suburban had been parked said that there were tools, cords, and chains missing from his shed on the property. (PSI, p.5.)

The State subsequently charged Mr. Arnett with two felony counts of possession of a controlled substance, one felony count of attempted grand theft, one felony count of burglary, one misdemeanor count of possession of a controlled substance, and one misdemeanor count of possession of paraphernalia. (R., pp.83-85.) Pursuant to a plea agreement, Mr. Arnett agreed to plead guilty to possession of methamphetamine and possession of marijuana. (5/15/17 Tr., p.9, Ls.20-22, p.28, L.16 – p.30, L.18.) In exchange, the State agreed to dismiss the other charges and not file a persistent violator enhancement. (5/15/17 Tr., p.9, L.22 – p.10, L.7.)

¹ All citations to the PSI and its attachments refer to the 110-page electronic document.

At the sentencing hearing, the State recommended that the district court impose a sentence of ten years, with three years fixed. (7/3/17 Tr., p.10, Ls.10-11.) Mr. Arnett's counsel noted that Mr. Arnett had pending warrants out of state and asked the district court to retain jurisdiction so that Mr. Arnett could participate in a rider program and get prompt treatment for his substance abuse and mental health problems. (7/3/17 Tr., p.7, L.18 – p.8, L.8.) The district court imposed a sentence of seven years, with three years fixed, on the felony count, and a concurrent sentence of 180 days on the misdemeanor count. (7/3/17 Tr., p.19, Ls.7-18; R., pp.99-101.) Mr. Arnett then filed a notice of appeal timely from the judgment of conviction. (R., pp.114-16.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of seven years, with three years fixed, following Mr. Arnett's plea of guilty to possession of methamphetamine?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Three Years Fixed, Following Mr. Arnett's Plea Of Guilty To Possession Of Methamphetamine

Based on the facts of this case, Mr. Arnett's sentence of seven years, with three years fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, the appellate court will conduct an independent examination 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).

Independent appellate sentencing examinations are based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). Appellate courts conduct a

multi-tiered inquiry when an exercise of discretion is reviewed on appeal. “The sequence of the inquiry is: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.” *State v. Hedger*, 115 Idaho 598, 600 (1989) (citation omitted). When a sentence is unreasonable based on the facts of the case, it is an abuse of discretion. *State v. Nice*, 103 Idaho 89, 90 (1982). Unless it appears that confinement was necessary “to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case,” a sentence is unreasonable. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). Accordingly, if the sentence is excessive, “under any reasonable view of the facts,” because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are several mitigating factors that illustrate why Mr. Arnett’s sentence is excessive under any reasonable view of the facts. First, Mr. Arnett has struggled with severe substance abuse problems for years, and he has never received appropriate treatment. (PSI, pp.12-13, 16; 7/3/17 Tr., p.10, L.24 – p.12, L.3.) Mr. Arnett’s parents divorced after his father suffered a traumatic brain injury, and shortly thereafter Mr. Arnett started using marijuana when he was only 12 years old. (PSI, pp.12, 16.) He explained that, after his parents’ divorce, he lived primarily with his father who was rarely home, so he was left to his own devices. (PSI, p.12.) As a result, he also started using crack cocaine when he was only 14 years old. (PSI, pp.12, 16.) Mr. Arnett also admitted that he was physically abused as a child. (PSI, p.17.) And when he was only 15, Mr. Arnett suffered a broken back in a motorcycle accident, and he was put on pain

medication. (PSI, pp.12, 15.) Unfortunately, his substance abuse problems became even more serious after that. (PSI, p.12.)

But Mr. Arnett never received meaningful and effective treatment for his problems; he told the court that he was not trying to make excuses for what he had done, but he had not been able to get into rehab and just wanted a chance to engage in treatment. (7/3/17 Tr., p.10, L.19 – p.11, L.18.) He said he tried to participate in a treatment program in 2015, but found it was “more like a homeless shelter,” and someone there offered to sell him drugs within the first day or two, so he left the program. (7/3/17 Tr., p.11, L.21 – p.12, L.1; PSI, p.13.) And, as his counsel alluded to, without treatment to break the cycle, he resorted to committing crimes to support his drug habit. (7/3/17 Tr., p.7, Ls.8-13.) A defendant’s substance abuse problems and difficult childhood should be considered as mitigating. *State v. Nice*, 103 Idaho 89, 91 (1982); *State v. Gonzales*, 123 Idaho 92, 93-94 (Ct. App. 1993).

Additionally, Mr. Arnett’s substance abuse and difficult childhood almost certainly led to serious physical and mental health problems. He said he was diagnosed with congestive heart failure in 2014, but he had not received treatment for it because he could not afford it and did not have health insurance. (PSI, p.15.) He was also diagnosed with Bipolar and Anxiety Disorders in approximately 2007. (PSI, p.16.) Physical and mental health issues are also recognized mitigating factors. *State v. Turner*, 136 Idaho 629, 636 (Ct. App. 2001); *State v. Odiaga*, 125 Idaho 384, 391 (1994).

Finally, while Mr. Arnett’s work history indicates he has always had a strong work ethic, it is clear that his personal problems have restricted his ability to find stable and consistent work and build a meaningful career. (PSI, pp.12-13.) He deserves a genuine opportunity to engage in treatment and rehabilitation so that this pattern does not continue. His tragic history and long-

term addiction supported a sentence focused on rehabilitation and treatment instead of prison time. Indeed, given the mitigating information in this case, Mr. Arnett's sentence was excessive because it was not necessary to achieve the goals of sentencing established in *Toohill*. Certainly society would be protected if Mr. Arnett went on a rider. This would also serve as a strong deterrent and ensure there was significant retribution for the offense. But most importantly in this case, it would provide Mr. Arnett with a chance to immediately engage in the kind of treatment he has never had in order to finally break the cycle of drug use that has severely impaired his ability to live a productive and fulfilling life. Given the facts of this case, Mr. Arnett's extended sentence was not necessary and was therefore unreasonable. As such, the district court abused its discretion when it failed to adequately consider the mitigating information in this case and thus failed to reach its sentencing decision through an exercise of reason.

CONCLUSION

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

DATED this 19th day of March, 2018.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th 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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ISCI
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BOISE ID 83707

GREGORY W MOELLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

R JAMES ARCHIBALD
ATTORNEY AT LAW
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas