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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45398
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2016-7920
v.)	
)	
BRIAN LEE CHANCE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Brian Lee Chance appeals from his judgment of conviction for failure to register as a sex offender. Mr. Chance pleaded guilty and the district court imposed a unified sentence of eight years, with two years fixed, and the court retained jurisdiction. Following the period of retained jurisdiction, the district court executed the sentence. Mr. Chance now appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence and by relinquishing jurisdiction.

Statement of the Facts & Course of Proceedings

On June 4, 2016, Garden City Police Officer Dennis came into contact with Mr. Chance regarding a trespassing complaint. (Presentence Investigation Report (*hereinafter*, PSI, p.3.) Officer Dennis noted that Mr. Chance was a registered sex offender with an address on Overland Road in Boise. (PSI, p.3.) The address listed was a plasma center; Mr. Chance said that routinely donated plasma there and stated that the center would let him sleep inside or in the parking lot. (PSI, p.3.)

Officer Dennis then learned that Mr. Chance had begun living behind a business located on State Street in Garden City. (PSI, p.3.) Mr. Chance stated that was using this address as a storage for his trailer and a few vehicles; when asked why he did not register at this residence, he said that he did not have a vehicle until that day. (PSI, p.3.)

Mr. Chance was charged with failure to register as a sex offender. (R., p.34.) The State subsequently filed a persistent violator enhancement. (R., p.59.) Mr. Chance eventually pleaded guilty to the charge and the State dismissed the enhancement. (R., p.69.) The district court imposed a unified sentence of eight years, with two years determinate, and the court retained jurisdiction. (R., p.86.) The district court subsequently relinquished jurisdiction. (R., p.93.)

Mr. Chance appealed. (R., p.96.) He asserts that the district court abused its discretion by imposing an excessive sentence and by relinquishing jurisdiction.

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of eight years, with two years fixed, upon Mr. Chance following his plea of guilty to failure to register as a sex offender?
- II. Did the district court abuse its discretion when it relinquished jurisdiction?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Eight Years, With Two Years Fixed, Upon Mr. Chance Following His Plea Of Guilty To Failure To Register As A Sex Offender

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Chance’s sentence does not exceed the statutory maximum. See I.C. § 18-8311. Accordingly, to show that the sentence imposed was unreasonable, Mr. Chance “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Mr. Chance addressed the district court at the sentencing hearing. He stated,

I’ve got a rap sheet probably as long as myself. I’m not going to deny it. I was young, dumb and landed myself in prison, probation, everything.

And after I got out of prison, part of it was prison itself was an eye opener, but when I got out of prison and I met my now ex-wife and some – a few other friends of mine that – those were eye openers that made me realize that's not the life for me.

You know, I've had some struggles and I've made some poor choices, this case in particular. I don't want to minimize it. I failed to update the address in the allotted amount of time. I had – between back surgery, losing jobs, dealing with CPS case [sic] with my ex-wife in regard to kids taken, my health going down the drain, my relationship going down the drain, trying to keep a roof over our heads, trying to keep food on the table, I've gone through a lot, Your Honor. I've got an issue with if I get too much with my brain, it wants to shut down. It wants to fight me.

And I was trying to fight through that and I lost track of time. And I didn't – I should have made myself notes, you know, when I was moving from different places so that I knew the timeline so I knew I should do it within that time period. You know, I admit I failed to do that. You know, I regret that because a simple error of doing a simple – following a simple rule like that, it's not even here. It's given me a lot of headache, a lot of pain, grief.

And I regret it. I should have paid more attention. I – you know, I've gone through that. You know, thinking back to the different methods, I've talked to some friends, you know, where it comes to situations like that, they know what the rules are that I've got to go by so that I have that reinforcement from family and friends to, hey, you need to take care of what you need to, the registration. And periodically I'll get phone calls from my stepmom asking me about that. Just, you know, to give me that reminder and make sure that I'm doing what I need to.

You know, I developed that support system, you know, that I didn't have years ago. I thought I could handle the world on my own. And I realize as I've gotten older – I'm 32 now – I feel like I'm going on 80. You know, I can't – I have issues breathing, walking, you know, and I'm still dealing with these cases.

And, Your Honor, I don't – I can understand if I was out like robbing places and hurting people and stuff like that; send me to prison, you know. I've made – like I said, I don't want to minimize it, but I made an error in my time frame judgment. I personally don't want to go to prison for something like that, I've got family to take care of, I've got my own health to take care of. I know from experience I won't get the treatment in prison that I need. I've seen guys straight up die in prison because they didn't get the treatment they needed and I don't want to be one of those guys. I don't want my kids to turn around and not have their dad. I don't want to have my family lose a son, a brother, an uncle because I can't get the treatment that I need.

And I've been looking into other hospitals and stuff like that to get appointments set up. I've got one set up to get my lungs checked out. I've also checked into some places to work on my thinking errors. I'm trying to fix these issues on my own as well as asking for help and support from the community. You know, I think I have at least a good start on my plan to be successful and make sure I don't reoffend and do these same – make these same mistakes again.

And I ask you to give a chance on probation, Your Honor. Give it to me for my family, to take care of my health and give me a chance to continue with my progress that I have made and show that I have learned from mistakes that I've made and continue forward.

(Tr., p.19, L.9 – p.22, L.17.) Further, Mr. Chance explained his circumstances to the PSI investigator. He stated that he was struggling with a lot of issues; he had been in a traumatic car accident where he was hit by a drunk driver and need back surgery and he was struggling to work and provide for his family. (PSI, p.4.) He stated, “I did not intentionally fail to register I just let life overwhelm my thoughts and I didn't register in the allotted time I was given. Missed it by a day.” (PSI, p.4.)

Counsel for Mr. Chance requested that the court imposed a sentence of five years, with one year fixed, and that the court place Mr. Chance on probation. (Tr., p.15, Ls.22-25) Counsel acknowledged that Mr. Chance had previously had problems following court orders, but “he does acknowledge his failure and his need to properly register in the future.” (Tr., p.16, Ls.1-9.) Counsel reiterated that Mr. Chance had been going through a lot of problems at the time, but that since bonding out in this case had moved in with his sister and had the support of his family and ex-wife. (Tr., p.16, L.21 – p.17, L.5.)

In this case, Mr. Chance expressed his regret for not registering on time and acknowledged that he needed to properly register in the future. He explained that, with all of the other issues in his life, he let his issues overwhelm him and failed to register. However, since the charges in this case he had found a place to live and had the support of family and friends in the

community. Considering this information, Mr. Chance submits that the district court abused its discretion by imposing a sentence of eight years, with two years fixed.

II.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

The decision to relinquish jurisdiction is a matter within the discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. *See State v. Hood*, 102 Idaho 711, 712 (1981); *State v. Lee*, 117 Idaho 203, 205-06 (Ct. App. 1990).

Although the Addendum to the Presentence Investigation Report (*hereinafter*, APSI), recommended that the court relinquish jurisdiction, counsel for Mr. Chance requested that the court place Mr. Chance on probation. (Tr., p.31, Ls.5-12.) Counsel acknowledged that Mr. Chance did not follow all of the rules, these violations “weren’t of such a degree that I have seen before to where the staff would choose to relinquish jurisdiction.” (Tr., p.31, Ls.29-25.) Indeed, the APSI indicates several disciplinary issues but none of them resulted in a formal DOR; Mr. Chance just received warnings instead. (APSI, p.2.) Counsel for Mr. Chance believed that the recommendation to relinquish jurisdiction came mostly because staff believed that “my client was being too big of a pain in repeatedly asking questions and not accepting their answers. And my client admits that to some extent.” (Tr., p.31, L.23 – p.32, L.3.) Mr. Chance believed that this was caused by an absent case manager who was not available for all of his questions; he would then engage other staff member and get told conflicting things, which is why he did not accept some of the answers. (Tr., p.32, Ls.2-12.)

Further, Mr. Chance had completed a pre-release plan. (Tr. p.33, Ls.1-4.) He was planning on living with his sister and had the support of his brother and wife. (Tr., p.33, Ls.4-8.) They had actively been seeking out classes for him and had been in contact with numerous

agencies in order to provide those courses. (Tr., p.33, Ls.1-15.) Further, during his rider, Mr. Chance worked as a janitor, completed the Vocational Safety certification, passed the National Endowment for Financial Education test, completed the Food Handler's certification, and completed the CPR/First Aid course. (APSI, p.5.)

Considering this information, Mr. Chance submits that the district court abused its discretion by relinquishing jurisdiction.

CONCLUSION

Mr. Chance respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing. Alternatively, he requests that the order relinquishing jurisdiction be vacated and the case remanded for further proceedings.

DATED this 12th day of February, 2018.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of February, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

BRIAN LEE CHANCE
INMATE # 79898
ISCI
PO BOX 14
BOISE ID 83707

MICHAEL REARDON
DISTRICT COURT JUDGE
E-MAILED BRIEF

MARCO DEANGELO
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas