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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45531
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR 2017-6673
v.)	
)	
AARON M. ALEXANDROVICH,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Aaron M. Alexandrovich appeals from the district court's Sentencing Disposition and Notice of Right to Appeal. Mr. Alexandrovich was sentenced to a unified sentence of twenty-five years, with six years fixed. He asserts that the district court abused its discretion sentencing him to an excessive sentence without giving proper weight and consideration to the mitigating factors that exist in this case.

Statement of the Facts & Course of Proceedings

On May 15, 2017, an Information was filed charging Mr. Alexandrovich with lewd conduct with a minor under sixteen. (R., pp.34-35.) The charges were the result of a report to police that Mr. Alexandrovich had inappropriately touched his niece, F.L.D., when she was younger. (PSI, pp.2-3.)¹ Shortly thereafter, he admitted to the inappropriate touching. (PSI, pp.12-15.)

Mr. Alexandrovich entered a guilty plea to the amended charge of sexual abuse of child under sixteen. (R., pp.41-43.) At sentencing, the prosecution recommended the imposition of a unified sentence of twenty-five years, with ten years fixed. (Tr. 10/4/17, p.18, Ls.12-14.) Defense counsel requested that Mr. Alexandrovich be placed on probation. (Tr. 10/4/17, p.22, Ls.24-25.) The Presentence Investigator also recommended probation. (PSI, p.13.) Nonetheless, the district court imposed a unified sentence of life years, with six years fixed. (R., pp.50-54.) Mr. Alexandrovich filed a Notice of Appeal timely from Sentencing Disposition and Notice of Right to Appeal. (R., pp.53-55.) He also filed a Motion to Correct an Illegal Sentence, noting sexual abuse had a maximum sentence of twenty-five years. (R., pp.61-62.) The district court granted the motion and modified the sentence to a unified sentence of twenty-five years, with six years fixed. (R., pp.63-64.)

¹ For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as “PSI” and referenced pages will correspond with the electronic page numbers contained in this file.

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Alexandrovich, a unified sentence of twenty-five years, with six years fixed, following his plea of guilty to sexual abuse?

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Alexandrovich, A Unified Sentence Of Twenty-Five Years, With Six Years Fixed, Following His Plea Of Guilty To Sexual Abuse

Mr. Alexandrovich asserts that, given any view of the facts, his unified sentence of twenty-five years, with six 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. Alexandrovich does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Alexandrovich 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)).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)).

Mr. Alexandrovich asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason. Specifically, he asserts that the district court failed to give proper consideration to his status as a first time offender. Prior to the instant offense Mr. Alexandrovich had never been convicted of a crime, neither misdemeanor nor felony. (PSI, p.4.) The Idaho Supreme Court has recognized that a first time offender should be accorded more lenient treatment than a habitual criminal. *State v. Hoskins*, 131 Idaho 670, 673 (1998).

Additionally, Mr. Alexandrovich has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, “In light of Alberts’ expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Id.* 121 Idaho at 209. Mr. Alexandrovich has expressed his remorse for committing the instant offense stating:

First and foremost . . . I’m sorry, I want to let it be known that I am terribly, terribly sorry for what happened. . . . I can’t take it back. I wish I could. I – I pray every day and every night to take it back and it just kills me, but it – I wish that it was mine to bear and not hers, and that’s what is the worst for me is

that she has the pain from it, too. . . . I have financial stability in order to seek any help that the Court would deem necessary for me, and I am fully willing to give every ounce of me to those to ensure that I – this never happened again and I cannot repeat the past. I am not my mistake. I am not. I know in my heart that I am not the mistake that I made, and it takes however long to prove that to you, however it needs to be proven. I will do that.

(Tr. 10/4/17, p.23, L.19 – p.28, L.3.) He also noted that, “I feel sick to my stomach everytime [sic] I think about it, and wish I could take it all back.” (PSI, p.3.)

In his Presentence Investigation Report comments to the district court he wrote:

I would like to say that I want to hold the burden of what I have done to those I live for as long as is needed in the most honest and forthright as I can. But, I would like the chance to prove that I am not my mistake, not a danger to anyone, and to continue to be as lawful, honest, hard working, contributing member of society as I have always and will continue to be. I have no criminal history, no drug and alcohol or any other dependencies, a strong support system, a guaranteed place of employment & with a boss who backs me fully, and strong desire to keep my life moving in a good direction. I wholly and completely wish I can take back the past, to make those of my family that I hurt whole, but I can't / I can only move forward trying to so the best I can, to prove I am not my mistake, and to do whatever I can to help her move forward, even if that means doing so in an anonymous way, or trying to erase me from them. [sic]

(PSI, pp.10-11.) It is not only clear that Mr. Alexandrovich is remorseful, but that he is also willing to participate in any treatment necessary. He has been diagnosed as low risk and it was recommended that he participate in “time-limited sex offender treatment.” (PSI, pp.39, 48.)

Furthermore, in *State v. Shideler*, 103 Idaho 593, 594 (1982), the Idaho Supreme Court noted that family and friend support were factors that should be considered in the Court’s decision as to what is an appropriate sentence. *Id.* Although Mr. Alexandrovich’s mother is his biggest supporter, he also has the support of his friends, other family, and his colleagues. (PSI, pp.5, 41, 54; Augmentation: Letter Dated 10/3/17 from Lori Horn.)² He supplied letters of support from Bobbi Bridgers, an aunt; Steve Hammond, a co-worker; Lori Horn, his mother;

² A Motion to Augment was filed contemporaneously with this Appellant’s Brief.

Dick Flerchinger, his employer; Steve Furst, a supervisor; Kevin Cope, a friend; Jordawn House, a cousin; Dawn House, an aunt; Peter Alexandrovich, his father; Hillary Bennet, his girlfriend; Jeff Horn, his step-father; and Adriona Dickson, his sister. (PSI, pp.52-61; Augmentation: Email dated 10/3/17 from Adriona Dickson, Letter Dated 10/3/17 from Lori Horn, and Email dated 10/3/17 from Jeff Horn.)

Idaho courts have previously recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Alexandrovich suffers from mental health concerns. He has been diagnosed with Schizoid and avoidant (socially) personality Features; Major Depression, recurrent, severe, without psychotic features; Adjustment Disorder with anxiety; and Social Anxiety Disorder. (PSI, p.46.)

Finally, Mr. Alexandrovich received a Bachelor of Science degree in Architecture from the University of Idaho in 2015. (PSI, p.62.) He has been steadily employed with D&S Electrical for several years. (PSI, pp.7-8.) He is a very skilled, reliable, and valued employee. (PSI, p.55.) A strong employment history is a factor that should be considered when making sentencing determinations. *State v. Mitchell*, 77 Idaho 115, 119 (1955); *State v. Hagedorn*, 129 Idaho 155, 161 (Ct. App. 1996).

Based upon the above mitigating factors, Mr. Alexandrovich asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his status as a first time offender, remorse, desire to participate in treatment, friend and family support, mental health issues, and strong employment history, it would have crafted a less severe sentence.

CONCLUSION

Mr. Alexandrovich 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.

DATED this 24th day of May, 2018.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of May, 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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JOHN T MITCHELL
DISTRICT COURT JUDGE
E-MAILED BRIEF

SEAN P WALSH
ATTORNEY AT LAW
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CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas