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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45668
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-17937
v.)	
)	
CURTIS EUGENE LEE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Curtis Eugene Lee appeals from the district court’s Judgment of Conviction, Suspended Sentence, and Order of Probation. Mr. Lee was sentenced to a unified sentence of five years, with one year fixed, suspended for a four year probationary term, for his possession of a controlled substance conviction. He asserts that the district court abused its discretion in failing to withhold judgment and in imposing a longer term of probation than was requested.

Statement of the Facts & Course of Proceedings

On July 20, 2017, an Information was filed charging Mr. Lee with possession of a controlled substance, methamphetamine, and possession of drug paraphernalia. (R., pp.19-20.)

The charges were the result of a concerned citizen's report to police that a man was face down next to a creek. (PSI, pp.2-3.)¹ Officers made contact with Mr. Lee and discovered methamphetamine in his shorts. (PSI, p.3.)

Mr. Lee entered a guilty plea to the possession of a controlled substance charge. (R., p.27.) At sentencing, the prosecution departed from the agreed upon sentencing recommendation and recommended a lesser sentence of five years, with one year fixed, suspended for a term of probation, with no length of a probationary term suggested. (Tr., p.31, Ls.4-9.) Defense counsel requested a two or three year term of probation. (Tr., p.37, Ls.5-14.) While defense counsel did not specifically request a withheld judgment, it was clear that was Mr. Lee's desired sentence. (PSI, p.14; Tr., p.47, Ls.2-12.) The district court imposed a unified sentence of five years, with one year fixed, suspended for a four year probationary term. (R., pp.38-43.) Mr. Lee filed a Motion for Reconsideration of Sentence. (R., p.15.) The district court denied the motion.² (R., pp.52-54.) Mr. Lee filed a Notice of Appeal timely from the denial of the Rule 35 motion.³ (R., pp.56-57.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Lee, a unified sentence of five years, with one year fixed, suspended for a four year probationary term, following his plea of guilty to possession of a controlled substance?

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.

² Mr. Lee did not provide any new or additional information in support of his Rule 35 motion as is required under *State v. Huffman*, 144 Idaho 201, 203 (2007). Therefore, he does not address the denial of the motion on appeal.

³ Mr. Lee's Rule 35 motion was filed within fourteen days. According to I.A.R. 14(a), his time to appeal from the judgment of conviction was stayed until an order was issued on the Rule 35 motion. As such, his appeal is also timely from the district court's Judgment of Conviction, Suspended Sentence, and Order of Probation.

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Lee, A Unified Sentence Of Five Years, With One Year Fixed, Suspended For A Four Year Probationary Term, Following His Plea Of Guilty To Possession Of A Controlled Substance

Mr. Lee asserts that, given any view of the facts, his unified sentence of five years, with one year fixed, suspended for a four year probationary term, 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. Lee does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Lee 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. Lee asserts that the district court failed to give proper weight and consideration to 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 admitted substance abuse problem and desire for treatment. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982).

Mr. Lee first used methamphetamine at the age of fifty. (PSI, p.12.) Prior to arrest he was snorting “two lines” about once a month. (PSI, p.13.) He believed he has used methamphetamine approximately thirty times in his life. (PSI, p.13.) Although in one evaluation his substance abuse was not severe enough to meet the criteria for a substance use disorder, it was recommended that he participate in Level 0.5 Pre-treatment/Early Intervention services. (PSI, p.19.) Unlike the initial evaluation, the June 18, 2017 treatment plan shows a diagnosis of amphetamine-type substance disorder and a recommendation for intensive outpatient care. (PSI, pp.13, 56.) It is clear that Mr. Lee is willing to participate in treatment as, prior to sentencing, he began outpatient treatment with Ambitions of Idaho. (PSI, p.13.)

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.* Mr. Lee has the support of his family. Mr. Lee’s mother, Donna Aldrich, noted that her son is “very helpful, kind, and loving.” (PSI,

p.8.) He also has the support of his brother, Rodney Lee, whom he has a “great” relationship. (PSI, p.8.) Mr. Lee supplied the district court with several letters of support from cousins, Charlene Aldrich and Christine, and his mother, Donna Aldrich. (PSI, pp.30-32, 35.)

Further, Mr. Lee suffers from significant health issues. The Idaho Court of Appeals has held that the health problems of the defendant are a factor for the district court to consider in evaluating a motion for a sentence reduction. *State v. James*, 112 Idaho 239, 243-44 (Ct. App. 1986). Mr. Lee describes his health as “poor.” (PSI, p.12.) He has been diagnosed with several serious medical issues. (PSI, p.11.) He takes numerous medications to assist with these medical issues. (PSI, pp.11-12.) He believes he has about ten more years to live based on the progression of his illnesses. (PSI, p.12.)

Additionally, Mr. Lee has recognized his problems, expressed his remorse for committing the instant offense, and discussed his plans to move forward. 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, 824 P.2d at 209. Mr. Lee made the following statement to the district court at the sentencing hearing:

In a way I am so glad this happened because that crap has taken away my sole [sic]. And I am so glad. I put my family through heck doing this. And I have had a great life. I have lived my life. I love my family. I love my friends. And every [sic] since I got laid off that is when everything started spiraling out of control. I finally got diagnosed, that is what the problem was. I lost my identity and everything.

Back on track now. I made a handful of mistakes in my 60 years, I admit. But you wont [sic] see me again, I swear to God.

(Tr., p.37, L.19 – p.38, L.5.)

Finally, Mr. Lee supplied the district court with numerous letter of recommendation or commendation from his former co-workers: Sue Klein, Michael Dennis, Patricia McFarland, Cressa Lomis, Debbi Kempf, Kenetha Mann, Nancy Bakalis, Sharon Nicholson, James Walker, Michele Richter, Stephen Eisel, and Norbert White. (PSI, pp.38-52.)

Based upon the above mitigating factors, Mr. Lee 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 substance abuse, desire for treatment, family support, serious health issues, and acceptance of responsibility, it would have entered a withheld judgment and imposed a shorter period of probation.

CONCLUSION

Mr. Lee 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 8th day of May, 2018.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of May, 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:

CURTIS EUGENE LEE
365 WALTMAN LANE
MERIDIAN ID 83642

NANCY A BASKIN
DISTRICT COURT JUDGE
E-MAILED BRIEF

ANTHONY GEDDES
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas