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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45663
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-3105
v.)	
)	
DARRELL A. DEMOTTE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Darrell A Demotte appeals from his judgment of conviction for felony operating a motor vehicle under the influence of alcohol and resisting and/or obstructing an officer. Mr. Demotte was found guilty following a jury trial, and the district court imposed a unified sentence of seven years, with two years fixed, and 365 days in jail. Mr. Demotte appeals, and he asserts that his sentence of seven years, with two years fixed, is excessive under the circumstances of his case.

Statement of the Facts & Course of Proceedings

On January 31, 2017, Officer Churchfield of the Meridian Police Department responded to a convenience store in Meridian for an intoxicated driver check. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) At trial, Mr. Demotte acknowledged that his blood alcohol content was over the limit; the sole issue was whether Mr. Demotte had been driving. (Tr., p.104, Ls.2-6.) Mr. Demotte's explanation of the events of that night have been consistent: he has always asserted that on that night he was watching movies with his roommate, Josh Riley. (PSI, p.4.) He took his medications and drank four beers and then wanted to go to the convenience store to check his lottery tickets. (PSI, p.4.)

Mr. Riley took Mr. Demotte to the convenience store but was not happy about it, and they fought along the way. (PSI, p.4.) Mr. Demotte had urinated himself which made Mr. Riley more upset. (PSI, p.4.) When they arrived at the convenience store, Mr. Riley removed the keys from the ignition and reached for his gym bag from the back seat; because he was short and couldn't reach it, he crawled into the bag seat and threw the keys at Mr. Demotte's seat. (PSI, p.4.) Mr. Demotte reached down to grab the keys, then jumped over the console to the driver's side and exited out the driver's side door. (PSI, p.4.) Mr. Riley then walked home in anger. (PSI, p.4.)

Johanna Smith, a cashier at the convenience store, testified that she saw Mr. Demotte's vehicle drive into the parking lot. (Tr., p.178, Ls.1-8.) She identified Mr. Demotte as the driver. (Tr., p.181, Ls.10-12.) Notably, however, Ms. Smith testified at the preliminary hearing that individual who was the driver was wearing a baseball cap and a tan jacket. (Tr., p.184, Ls.14-24.) However, Mr. Demotte was not wearing a baseball cap. (*See State's Exhibit 2.*) Further,

Mr. Riley testified at trial and acknowledged that he drove Mr. Demotte to the convenience store and that he was wearing a baseball cap. (Tr., p.197, Ls.17-24; p.206, Ls.14-18.)

Mr. Demotte was charged with operating a motor vehicle while under the influence of alcohol and with resisting and/or obstructing an officer. (R., p.47.) Despite Mr. Riley's testimony, Mr. Demotte was convicted at trial. (R., pp.107-08.) For the DUI charge, the district court imposed a unified sentence of seven years, with two years fixed. (R., p.143.) On appeal, he asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of seven years, with two years fixed, upon Mr. Demotte following his conviction for operating a motor vehicle while under the influence of alcohol?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Two Years Fixed, Upon Mr. Demotte Following His Conviction For Operating A Motor Vehicle While Under The Influence Of Alcohol

“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. Demotte's sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Demotte “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).

Pastor Mark Bernhardt submitted a letter to the court, explaining that he had known Mr. Demotte for two years and found him to be a man of great character. (Bernhardt Letter.)¹ He described Mr. Demotte as a proud member of the community and in great standing with the church and that he volunteered his time for many causes. (Bernhardt Letter.) Further, Mr. Demotte was sole caregiver to his mother and he spent most of his time in that capacity. (Bernhardt Letter.)

Mr. Demotte’s neighbor, Karrie Bishop, wrote that Mr. Demotte cared very well for his elderly mother and helped out around the neighborhood any way he could. (Bishop Letter.) She wrote about how Mr. Demotte had assisted an elderly neighbor with dementia to get her legal affairs in order and to move to a memory center. (Bishop Letter.) He would give neighbors rides to the store or help them with other errands. (Bishop Letter.)

¹ The letters in support of Mr. Demotte are contained on pages 408-412 of the electronic document entitled “Demotte 45663 psi.pdf.”

Josh Riley also submitted a letter to the court, emphasizing that Mr. Demotte was a good man and that his 96-year-old mother depended on him for her daily needs. (Riley Letter.) Like Mr. Demotte's other supporters, Anthony Renn noted that he was a primary caregiver for his elderly mother and she depended on him. (Renn Letter.) He also noted that Mr. Demotte brought meals to the neighbors, helped with household repairs, and had been a genuine friend. (Renn Letter.)

While Mr. Demotte maintained his innocence, counsel emphasized that he would "respect any terms and conditions placed upon him, and is willing to be supervised." (Sent. Tr., p.15, Ls.9-15.) Counsel noted that when he was just three years old, he was found running away due to abuse; he spent much of his youth in group homes and foster placement and had no relationship with his biological parents. (Sent. Tr., p.15, Ls.16-20.) Mr. Demotte's mother is his adoptive mother who rescued him at a young age, and so a lot of Mr. Demotte's concerns focused on her. (Sent. Tr., p.15, L.21 – p.16, L.2.)

Further, Mr. Demotte is a cancer survivor of 11 years and had a stroke during the pendency of this case. (Sent. Tr., p.16, Ls.14-18.) He also has a pacemaker. (Sent. Tr., p.16, Ls.18-19.) These were issues that Mr. Demotte had been struggling with and trying to rehabilitate from. (Sent. Tr., p.16, Ls.20-24.)

Finally, Mr. Demotte addressed the district court at sentencing. He stated that his actions "with the police officers, I think, were abhorrent. And, quite frankly, I'm humiliated beyond belief. I do apologize for my actions that evening." (Sent. Tr. p.18, Ls.21-25.) The events of the evening in question convinced Mr. Demotte to stop drinking. (Sent. Tr., p.19, Ls.11-21.) Mr. Demotte noted that he disagreed with the verdict and that in his previous DUI cases he admitted his guilt. (Sent. Tr., p.19, Ls.5-8.)

CONCLUSION

Mr. Demotte 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 5th day of October, 2018.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas