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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 45685, 45686 & 45687
)	
v.)	KOOTENAI COUNTY NOS.
)	CR 2017-10093, CR 2017-11162
TANNER DEAN FLOWERDEW,)	& CR 2017-11188
)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

During a psychotic episode triggered by a month-long methamphetamine binge, Tanner Dean Flowerdew grew paranoid, believing government agents were out to get him, and were watching him from the vacant house across the street. He broke into the house to see what they were up to, and he was later caught leaving the area in a stolen car. After being arrested and taken to jail, he tried digging himself out, twice. Pursuant to an agreement, Mr. Flowerdew pled guilty to possession of a stolen vehicle, burglary, attempted escape, and injury to the jail. The district court sentenced Mr. Flowerdew to an aggregate prison term of fifteen years, with ten

years fixed. The court later restructured his sentences, pursuant to Rule 35, to run them all concurrently, for an aggregate prison term of ten years, with five years fixed.

On appeal, Mr. Flowerdew asserts that in light of his severe drug addiction and his mental health disorders, his sentence is excessive and unreasonable, and that the district court abused its discretion by declining to retain jurisdiction, and by not further reducing the fixed portions of his sentences.

Statement of the Facts and Course of Proceedings

Mr. Flowerdew was living in an apartment with several others, having recently been introduced to methamphetamine and opioids, just three months prior to committing these crimes. (PSI, pp.10, 22.)¹ He had struggled with alcohol addiction in the past, but these illegal substances were new to him. (PSI, pp.10, 22.) He had begun by smoking the meth, but after a month he was using it intravenously, and then was using it three to four times a day. (PSI, p.10.) He developed psychotic behaviors and became extremely paranoid and became convinced government agents and informants were out to get him. (PSI, pp.10, 22.) He believed the vacant rental house across the street was being used as a “dug out” by federal law enforcement. (PSI, pp.10, 22.) He decided to break in to find out “what they were up to,” and he also took several items. (PSI, pp.9, 22.) High on meth and driving a stolen car, he was stopped, arrested, and taken to the Kootenai County jail. (PSI, p.8.) He remained in a psychotic, delusional state at the jail, believing that his jailers were “in on it,” and he tried chipping his way out of his cell, twice. (PSI, pp.9, 11, 42, 97.)

¹ Citations to the Presentence Investigation Report and attached materials will use the designation “PSI” and will include the page numbers associated with the 102-page electronic file containing those documents.

Based on these events, the State charged Mr. Flowerdew with eight felonies and several misdemeanors. (R., pp.53, 163 254.) Pursuant to an agreement with the State, Mr. Flowerdew plead guilty to four counts in three of the cases: possession of a stolen vehicle (Appeal No.45685); burglary (Appeal #45685); and attempted escape and injury to jail property (Appeal #45687). (R., pp.179, 275; 8/10/17 Tr., p.15, L.2 – p.17, L.5.) In exchange, the State agreed to dismiss the remaining charges. (R., pp.50, 257, 259.) There was no agreement regarding sentencing. (R., pp.178, 288.)

In addition to the PSI, the district court ordered a psychological evaluation (PSE), pursuant to I.C. § 19-2522, which was the first professional mental health examination ever completed for Mr. Flowerdew. (PSI, p.1; 10/27/17 Tr., p.15. Ls.5-6.) The PSE report diagnosed Mr. Flowerdew with multiple mental health problems associated with the current charges, the most predominant being drug-induced psychotic disorder. (PSI, p.98.) The report concluded that, with medication, individual out-patient therapy, and prosocial supports, Mr. Flowerdew's risk of engaging in offending behaviors would be reduced "significantly." (PSI, p.99.)

At sentencing, Mr. Flowerdew asked the district court for concurrent sentences, with no more than two-years fixed, on all four counts; he also asked the court to retain jurisdiction so that he could undergo treatment demonstrate his rehabilitation potential in the recently-changed rider program. (10/27/17 Tr., p.16, L.1 – p.18, L.8.) The district court disregarded these requests and imposed an aggregate prison sentence of fifteen years, with ten years fixed, structured as follows: ten years, with five years fixed, for the burglary, and a concurrent fixed-five years for the stolen vehicle; consecutive to those sentences, a pair of concurrent fixed five-year terms for the escape and the injury to jail property. (10/27/17 Tr., p.26, Ls.7-24; R., pp.101, 194.)

Pursuant to Mr. Flowerdew's Rule 35 motion, the district court restructured the sentences, ordering that the sentences for each of the four counts run concurrently; the order resulted in reducing the overall, aggregate term to ten years' imprisonment, with five years fixed. (R., pp.124, 222, 319; 2/9/18 Tr., p.19, L.23 – p.21, L.1.) However, the district court denied Mr. Flowerdew's additional request to reduce the fixed portions of his individual sentences; he had originally requested fixed two-year terms. (See 2/9/18 Tr., p.19, L.23 – p.21, L.1; 10/27/17 Tr., p.16, L.1 – p.18, L.8; R., pp.124, 222, 319.)

Mr. Flowerdew timely appealed from the judgments entered in his cases. (R., pp.95, 98, 201, 295.) This Court thereafter ordered these appeals consolidated. (R., pp.95, 117, 216, 313.)

ISSUE

Did the district court abuse its discretion by sentencing Mr. Flower to an excessive prison term, and by declining to retain jurisdiction?

ARGUMENT

The District Court Abused Its Discretion By Sentencing Mr. Flower To An Excessive Prison Term And By Declining To Retain Jurisdiction

A. Introduction

Mr. Flowerdew's criminal conduct in this case was driven by his serious drug addiction and his severe mental health disorders. The aggregate prison term ultimately imposed by the district court – ten years, with five years fixed – is excessive under the circumstances of these cases. Although the court had restructured its originally-imposed sentences, which provided some relief to Mr. Flowerdew, the district court abused its discretion by declining to further reduce the fixed portion of his sentences, as requested, and by declining to retain jurisdiction.

B. Standard Of Review

When a defendant challenges his sentence as excessively harsh, the appellate court conducts an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The court reviews the district court’s sentencing decisions for an abuse of discretion, which occurs if the district court has imposed sentences that are unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “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.” *Miller*, 151 Idaho at 834.

In addition to imposing a sentence directly, the district court has the discretion to retain jurisdiction. *See* I.C. § 19–2601(4). The primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant’s rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction. *State v. Chapel*, 107 Idaho 193, 687 P.2d 583 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). The sentencing court’s refusal to retain jurisdiction may be an abuse of discretion if the court lacks sufficient information upon which to conclude whether the defendant is a suitable candidate for probation. *See State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005).

Once the trial court has imposed sentence, the court may grant a defendant’s timely motion for a reduction of sentence pursuant to Idaho Criminal Rule 35. *See* I.C.R. 35(b). “A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24

(2006). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014).

C. The District Court Abused Its Discretion By Imposing Excessive Sentences And By Declining To Retain Jurisdiction

Mr. Flowerdew was twenty-six years old at the time he was sentenced. (PSI, p.2.) Based on an independent examination of the record, this Court should conclude the district court abused its discretion because the court imposed sentences that are excessive, and therefore unreasonable, in light of Mr. Flowerdew’s severe mental health problems and his serious addictions.

The evaluation ordered by the district court in this case was the first professional mental health examination ever completed for Mr. Flowerdew. (10/27/17 Tr., p.15. Ls.5-6.) The report, prepared by Dr. Heather Rehil-Crest, Pys.D., included multiple mental health diagnoses, including: Amphetamine-induced Psychosis Disorder; Post-Traumatic Stress Disorder; mild Anti-Social Personality Disorder; along with substance abuse and depression. (PSI, p.98.) Dr. Rehil-Crest concluded in her report that the drug-induced psychosis was the predominate mental health problem associated with Mr. Flowerdew’s recent crimes (PSI, p.98.) She further explained that drug-triggered psychotic symptoms – hallucinations and delusions – continued for a period of time even after Mr. Flowerdew became sober, and would have extended through the time he was in the jail. (PSI, p.98.) Dr. Rehil-Crest concluded that anti-psychotic medication, if taken, could *fully* alleviate these symptoms. (PSI, p.98.)

In addition to treating Mr. Flowerdew's drug-induced psychosis, Dr. Rehil-Crest emphasized the need to treat the symptoms of his Post-Traumatic Stress Disorder (PTSD), which is a disorder that stems from Mr. Flowerdew's childhood trauma. (PSI, pp.99-100.) When he was five, Mr. Flowerdew was sexually molested by a cousin who later hanged himself, and in the fourth grade, he was molested by male babysitters. (PSI, p.98.) At the age of ten, Mr. Flowerdew was abandoned by his mother and left, suddenly, in the care of his estranged father. (PSI, p.98.) In the care of his father, Mr. Flowerdew suffered physical abuse doled out in the name of discipline; this abuse included being choked to the point of blacking out. (PSI, p.98.) Dr. Rehil-Crest further reported that the strategies that had been used to deal with Mr. Flowerdew's misbehaviors as a juvenile were not effective in treating the undiagnosed PTSD behaviors, and that professional, out-patient treatment and counseling is necessary to address Mr. Flowerdeaw's PTSD. (PSI, pp.98-100.)

The doctor also noted that Mr. Flowerdew may continue to struggle with a "mild" anti-social personality disorder, which she repeated was "not severe." (PSI, p.99.) The doctor was optimistic, noting that Flowerdew was, at that time, surrounded by caring, pro-social individuals, and the Mr. Flowerdew himself was a caring and empathetic person. (PSI, p.99.)

The doctor concluded that, although Mr. Flowerdew's psychological trauma and disorders present a "slightly increased" risk of offending in the future, that risk "will be significantly reduced" if he is provided with psychiatric treatment and is stabilized on medication; provided professional therapy to address his childhood traumas; and afforded increased positive pro-social support. (PSI, p.102).

Mr. Flowerdew's heavy drug addiction, and his potential to overcome that addiction, are also factors that warranted a less severe sentence, as well as another chance with a new rider.

Mr. Flowerdew's addictions began at the age of thirteen when he started smoking, and he was a habitual marijuana user by the time he was fourteen. (PSI, p.17). He began drinking heavily, and sought treatment for that addiction in the past, but recovery for him has remained elusive. (PSI, p.21.) During the period leading up to the instant offenses, Mr. Flowerdew was drinking heavily, and also using meth. (PSI, p.10.)

However, as he explained to the presentence writer, and directly to the district court at sentencing, Mr. Flowerdew has new-found purpose and strength through his religion. (PSI, p.22.) In connection with his Rule 35 motion, he presented the district court a letter from Tiffany Coulton attesting to Mr. Flowerdew's good, Christian character when he is not in the grip of drugs. (R., p.314.) In his own heart-felt letter to the court, Mr. Flowerdew acknowledged that he alone made the poor choices to use drugs and to associate with bad influences, and he showed sincere remorse for the harm his conduct had caused others. (R., pp.311-12.)

In view of these circumstances, the district court should have granted Mr. Flowerdew the opportunity to participate in a rider program, where his progress, treatment, and potential for rehabilitation could be evaluated in a controlled setting, so that he could demonstrate his suitability for probation. The district court also should have granted a reduction of the fixed portions of Mr. Flowerdew's sentences, to two years' fixed on each count, so that he could obtain the medical treatment and psychological counseling services he so clearly and desperately needs. The district court's refusal to do either was unreasonable, representing an abuse of its sentencing discretion.

CONCLUSION

Mr. Flowerdew respectfully requests that this Court vacate his sentences and remand his cases to the district court with directions that the district court retain jurisdiction, or else reduce the fixed portion of his sentences.

DATED this 24th day of July, 2018.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, electronically as follows:

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
Delivered via e-mail to: ecf@ag.idaho.gov

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

KAC/eas