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State v. Alexander Appellant's Brief Dckt. 45795

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45795
Plaintiff-Respondent,	)	
	)	BANNOCK COUNTY NO. CR 2017-3026
v.	)	
	)	
KOREN ALEXANDER,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Koren Alexander appeals from the district court's Minute Entry and Order Judgment of Conviction. Mr. Alexander was sentenced to a unified sentence of five years, with two years fixed, following his conviction for removing a firearm from a law enforcement officer. He asserts that the district court abused its discretion in sentencing him to as excessive sentence without giving proper weight and consideration to the mitigating factors that exist in his case.

Statement of the Facts & Course of Proceedings

On April 27, 2017, a Prosecuting Attorney's Information was filed charging Mr. Alexander with removing a firearm from a law enforcement officer. (R., pp.44-45.) The charges were the result of a struggle that occurred after Mr. Alexander ran from the officer attempting to arrest him. (PSI, p.6.)[1]

Mr. Alexander entered a not guilty plea to the charge. (R., pp.54, 54.) The case proceeded to trial and Mr. Alexander was found guilty. (R., pp.173-77, 180-87.) At the sentencing hearing, the State recommended a unified sentence of five years, with two years fixed. (Tr. 1/22/18, p.317, Ls.1-2.) Defense counsel requested that Mr. Alexander be placed on probation. (Tr. 1/22/18, p.323, Ls.22-25.) The district court imposed a unified sentence of five years, with two years fixed. (R., pp.195-97.) Mr. Alexander filed a Notice of Appeal timely from the district court's Minute Entry and Order Judgment of Conviction. (R., pp.199-202.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Alexander, a unified sentence of five years, with three years fixed, following his conviction for removing a firearm from a law enforcement officer?

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Alexander, A Unified Sentence Of Five Years, With Two Years Fixed, Following His Conviction For Removing A Firearm Form A Law Enforcement Officer

Mr. Alexander asserts that, given any view of the facts, his unified sentence of five years, with two years fixed, is excessive. Where a defendant contends that the sentencing court

[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.

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. Alexander does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Alexander 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. Alexander 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 young age and status as a first time felony offender were not given proper consideration. "The courts have long recognized that the first time offender should be accorded more lenient treatment than the habitual criminal." *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971); *see also State v. Lee*, 117 Idaho 203, 206 (Ct. App. 1990). Although Mr. Alexander has a misdemeanor record, the instant offense was his first felony criminal offense. (PSI, pp.7-9.) Further, Mr. Alexander was only twenty years old when the instant offense occurred. (PSI, p.5.) Youthful age is also a mitigating factor that should be considered at the time of sentencing. *State v. Caudill*, 109 Idaho 222, 224 (1985).

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. Alexander has the support of his father. (PSI, p.10.)

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. Alexander has been previously diagnosed with depression and anxiety. (PSI, pp.12-13.) He was prescribed Zoloft for his depression and Buspar for his anxiety. (PSI, p.12.)

Additionally, Mr. Alexander 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. In completing the presentence investigation, Mr. Alexander noted that he

was remorseful for his criminal conduct. (PSI, p.7.) He also expressed his desire to change his life when he wrote, "I hope that I can show and prove to everyone that I did come back to get my life on track. I did make it harder on myself, and I know it doesn't look like I came to fix my life but I hope I get the chance to prove it I'm sorry and I will learn from this and make myself better." (PSI, p.14.) He reiterated his goal of changing his life at the sentencing hearing:

> I made a mistake that day. . . . I -- just got back into town, was ready to spend a day with my girlfriend at the time, and turn myself in. When I got pulled over, I got scared, and I automatically reacted to – I don't want to go to jail. I was going to fix my issues that I had at the time, and I ended up catching another charge because of it – because of being – automatically going into the mid-set of, I don't want to go to jail.
>
> I don't have anybody there for me. It was before my dad actually got back in the picture. My dad got back in the picture and bailed me out on November – like November 7th, I think – I believe. Since then he has been helping me a lot. He bought me a phone. He has got me a car. He has gotten me an apartment, and then moved in with me, and his P.O. is all right with that too.
>
> I have gotten two jobs. I work at Taco Bell and at Burnett's. I do want to go to college next semester. I know it seems like I'm violent because of this charge, and that I'm a risk to the community, but I been out for two months, and there is no new anything. There is no – nothing. Like, I [have] been doing good. Working. Living with my dad. Completing the GAIN assessment and PSI, respecting the rules of no new occurrences with cops.
>
> I was just – I would just ask that it be taken into account that I wasn't receiving any medication at that time when I did get pulled over. I was prescribed Buspar and Zoloft, and I got a 30-day supply. I never actually got to get the other prescription due to never really meeting a mental health counselor.
>
> I would just like the chance, Your Honor, to prove myself that I can do it. I am not that person. I'm not a risk to the community. I'm willing to work. I'm willing to go to school. I'm willing to pay my fines. Probation. I'm willing to – I grew up is what I'm trying to say, You Honor.

(Tr. 1/22/18, p.329, L.1 – p.330, L.19.)

Based upon the above mitigating factors, Mr. Alexander 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 young age, status as a first time felon, family support, mental health issues, and remorse, it would have crafted less severe sentence.

CONCLUSION

Mr. Alexander 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 25th day of September, 2018.

/s/ Elizabeth Ann Allred
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September, 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
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

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