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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRADLEY CLYDE GOODRICH,)	
)	Supreme Court Docket No. 45844-
Petitioner-Appellant,)	2018
)	
-vs-)	ADA COUNTY NO. CV01-17-7511
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

HONORABLE JOEL D. HORTON, PRESIDING

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF CASES AND AUTHORITIES	ii
STATUTES	iii
STATEMENT OF THE CASE	1
ISSUES ON APPEAL	5
ARGUMENT:	
THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT IMPOSED AND EXECUTED MR. GOODRICH'S SENTENCE AND DIDN'T APPROPRIATELY CONSIDER THE FACTORS TO BE CONSIDERED IN SENTENCING	6
ARGUMENT:	
DID THE PETITIONER-APPELLANT'S MEDICAL CONDITION INTERFERE WITH HIS ABILITY TO KNOWINGLY ENTER A GUILTY PLEA; DID THE COURT TAKE INTO ACCOUNT HIS HEALTH ISSUES AT THE TIME OF SENTENCING AND DID THE COURT HAVE HIS MEDICAL DOCUMENTATION	12-14
CONCLUSION	15
CERTIFICATE OF SERVICE	16

TABLE OF CASES AND AUTHORITIES

CASES	Page
<i>Cook v. State</i> , 145 Idaho 482, 489-90 (Ct. App. 2008)	8
<i>McPheters v. Maile</i> , 138 Idaho 391, 394, 64 P.3d 317, 320 (2003).....	13
<i>State v. Brown</i> , 121 Idaho at 1978; 393, 825 P.2d at 490	11
<i>State v. Burdett</i> , 134 Idaho 271, 276; 1 P.3d 299, 304 (Ct. App. 2000)	10
<i>State v. Charboneau</i> , 124 Idaho 497, 500 (1993)	6
<i>State v. Eubank</i> , 114 Idaho 635, 639 (Ct. App. 1988)	8
<i>State v. Jackson</i> , 130 Idaho 293, 294 (1997).....	6, 10, 11
<i>State v. Kellis</i> , 148 Idaho 812, 815 (Ct. App. 2010)	7
<i>State v. Lee</i> , 117 Idaho 203, 205 (Ct. App. 1990)	7
<i>State v. McCoy</i> , 94 Idaho 236, 240 (1971)	6
<i>State v. Merwin</i> , 131 Idaho 642, 648 (1998)	8
<i>State v. Miller</i> , Case No. 35845 (Ct. App. 2010)	10
<i>State v. Nice</i> , 103 Idaho 89, 91 (1982)	8, 11
<i>State v. Owen</i> , 73 Idaho 394, 402 (1953)	8
<i>State v. Reinke</i> , 103 Idaho 771, 772 (Ct. App. 1982)	6, 10
<i>State v. Shepherd</i> , 94 Idaho 227, 228 (1971)	8
<i>State v. Stroud</i> , 137 Idaho 457; 461, 50 P.3d 472, 476 (2002)	11
<i>State v. Theil</i> , 158 Idaho 103 (2015)	6
<i>State v. Toohill</i> , 103 Idaho 565, 568 (Ct. App. 1982)	6
<i>State v. Wolfe</i> , 99 Idaho 382, 384; 582 P.2d 728, 730	11
<i>Van v. Portneuf</i> , 147 Idaho 552, 556, 212, P.3d, 982, 986	13
<i>Wesco Autobody v. Ernest</i> 881 Idaho 243, P.3d 1069 (2010)	13

STATUTES

	Page
Idaho Code § 2521	5
Idaho Code § 2523	10
Idaho Code § 19-4906	12
I.R.C.P 56	12

STATEMENT OF THE CASE

NATURE OF THE CASE

Bradley Goodrich was sentenced April 25, 2016. He contends that the District Court abused its discretion when it imposed and executed his sentence rather than retaining jurisdiction over the case, as per previous discussions with the prosecuting attorney. Specifically, he asserts the District Court failed to sufficiently consider the sentencing goals of rehabilitation and protection of society as well as other sentencing goals, in doing so, as the mitigating factors in this case reveal those goals would be better served by retaining jurisdiction. In fact, all factors should have been given more consideration in the Mr. Goodrich's favor. Accordingly, the Supreme should vacate the sentencing order and remand this case with instructions to retain jurisdiction. This is an appeal of the past conviction relief case filed by the Petitioner-Appellant.

STATEMENTS OF THE FACTS & COURSE OF PROCEEDINGS

Mr. Goodrich grew up in a home dominated by an abusive alcoholic stepfather. This childhood left him scarred and facing a life that no child should have to deal with. When Mr. Goodrich was thirteen, he witnessed his mother shoot and kill his adoptive father in a case of mistaken identity. (*See* Pre-sentence Investigation Report (*hereinafter*, PSI), pp.192-93, 207.) His mother was subsequently convicted of second degree murder and served time in prison, during which time Mr. Goodrich moved to California to try and support himself. (PSI, p.193.) Unfortunately, Mr. Goodrich developed a lifestyle, which included abusing alcohol and drugs, such as marijuana. (Tr., p.26, L.9 - p.27, L.12.) Nevertheless, Mr. Goodrich was able to persevere and lived a mostly law-abiding life, except for a brief period of time when he was going through a divorce. (*See* Tr., p.43, L.6 - p.44, L.6.)¹ The bulk of the time he worked to support himself. The last 17 years for Albertson's where he became a dependable produce manager.

Things began to change in 2013, when Mr. Goodrich suffered a back injury while on the job, which left him unable to work. (*See* PSI, p.197.) He was prescribed hydrocodone until 2015, and he became addicted to that medication. (Tr., p.30, Ls.9-10.) His situation continued to devolve, which ended with him using methamphetamine with a sixteen-year-old girl, with whom he had fostered a romantic, then a sexual, relationship. (*See, e.g.*, R., pp.64-67.) Ultimately, Mr. Goodrich was charged with several counts of sexual battery of a minor and several other charges related to his own possession of methamphetamine, as well as providing methamphetamine to the victim. (*See* R., pp.64-67.) There was a legitimate question as to whether he was aware of her true age.

Pursuant to a plea agreement, Mr. Goodrich pleaded guilty to one count of sexual battery of a minor and one count of possession of a controlled substance. (Change of Plea Tr., p.8, Ls.9-14.)

¹References to "Tr." refer to the volume containing the transcript of the sentencing hearing held on April 25, 2016.

In exchange, the State agreed to dismiss the remaining charges, as well as charges in another case (though it retained the ability to argue the facts of the dismissed charges at sentencing), and recommend a sentence with two years fixed. (Change of Plea Tr., p.8, Ls.12-22.)

At the sentencing hearing, defense counsel recommended an aggregate underlying sentence of ten years, with two years fixed, with a period of retained jurisdiction so that the Court could assess Mr. Goodrich's potential for rehabilitation. Counsel made a strong case for this rehabilitation potential. (Tr., p.40, Ls.13-25.) Defense counsel noted Mr. Goodrich's moderate and increasing desire for, and amenability to, change. (Tr., p.33, L.14 - p.36, L.24.) The District Court acknowledged several of the mitigating factors, even agreeing with Mr. Goodrich's concern that the victim's report carried an element of exaggeration. (Tr., p.45, Ls.15-22.) However, it decided not to retain jurisdiction, but rather, to impose and execute a unified sentence of twenty years, with five years fixed, on the possession charge. (Tr., p.48, Ls.9-18.) It explained that it did not want to discount the possibility that Mr. Goodrich could become a law-abiding citizen again at some point in the future, but clarified, "the primary focus of this sentence was punishment for the bad behavior that occurred here." (Tr., p.51, Ls.3-14.)

One factor that was not considered, was a severe medical condition that Mr. Goodrich had. This should have not only affected the validity of his guilty plea, but the nature of the sentence. Prior to sentencing he had fallen in the courtroom and struck his head (Affidavit of Bradley Clyde Goodrich, filed January 22, 2018, Case No. CV01-17-07511). This left him woozy and confused at the time of his sentencing. He began to experience additional problems later and found that he had a large growth, as big as a golf ball, inside his eye socket. This was later surgically removed on December 27, 2016 by Dr. Cole W. Anderson, DMD. It is believed that this was caused by the fall. Mr. Goodrich also has heart and other health problems. This should be a consideration in sentencing.

Mr. Goodrich filed a Notice of Appeal time from the judgment of conviction. (R., pp.183,
188.)

ISSUES ON APPEAL

- (A) Did judge abuse his discretion by not granting the Petitioner-Appellant post-conviction relief?
- (B) Did the Petitioner-Appellant's medical condition interfere with his ability to knowingly enter a guilty plea to these charges?
- (C) Did the District Court take the Petitioner-Appellant's health issues at the time of plea and sentencing into account?
- (D) Did the District Court take into account Petitioner-Appellant's medical documentation?

ARGUMENT

THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT IMPOSED AND EXECUTED MR. GOODRICH'S SENTENCE AND DIDN'T APPROPRIATELY CONSIDER THE FACTORS TO BE CONSIDERED IN SENTENCING

Where a Defendant contends that the sentencing court imposed and 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, 772 (Ct. App. 1982). In order to show an abuse of discretion in the District Court's sentencing decision, the Defendant needs to show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997).

The governing criteria, or sentencing objectives, 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. The protection of society is the primary objective the Court should consider. *State v. Charboneau*, 124 Idaho 497, 500 (1993). Therefore, a sentence which protects society and also accomplishes the other objectives will be considered reasonable. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). This is because the protection of society is influenced by each of the other objectives, and as a result, each must be addressed in sentencing. *Charboneau*, 124 Idaho at 500; I.C. § 19-2521. However, the Idaho Supreme Court has also held that rehabilitation "should usually be the initial consideration in the imposition of the criminal sanction." *State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

The District Court's focus was not on either the primary goal or the initial consideration

of sentencing. Rather, it stated, “the primary focus of this sentence was punishment for the bad behavior that occurred here.” (Tr., p.51, Ls.3-5.) While that is a valid consideration, it should not be a primary focus of the sentence, particularly given all the mitigating factors present in this case. For instance, Mr. Goodrich, who was fifty-six years old at the time of the sentencing (PSI, p.182), had significant periods of law-abiding and productive behavior. (See PSI, pp.188-91.) He was able to do so despite witnessing a truly tragic event which ultimately resulted in him developing a destructive lifestyle involving drug and alcohol abuse. (See, e.g., Tr., p.33, Ls.1-13.)

To that point, Mr. Goodrich did express remorse, and accepted responsibility, for his conduct, particularly in regard to the charge of giving drugs to the victim. (PSI, p.187; Tr., p.42, Ls.16-23.) Acknowledgment of guilt indicates that he is taking the first steps toward rehabilitation. See *State v. Kellis*, 148 Idaho 812, 815 (Ct. App. 2010). And, as defense counsel explained, Mr. Goodrich has a desire to continue that process. (Tr., p.33, L.14 - p.36, L.24.) Furthermore, as the psychosexual evaluation revealed, Mr. Goodrich’s risk to re-offend was the product of dynamic factors, *i.e.*, factors that were capable of changing through rehabilitative efforts. (See PSI, pp.162-63) As such, it recommended treatment in a supervised scenario. (See PSI, p.178; *cf.* Tr., p.21; Ls.7-12 (the prosecutor acknowledging that recommendation).)

For these reasons, defense counsel explained a period of retained jurisdiction would best serve the goals of sentencing because it would provide the District Court with additional information on Mr. Goodrich’s growing dedication to, and ability to complete, a rehabilitative program, and so, more quickly return to being a productive member of society. (Tr., p.40, Ls.13-23.) That is, after all, the purpose of allowing the District Courts to retain jurisdiction. See, e.g., *State v. Lee*, 117 Idaho 203, 205 (Ct. App. 1990) (“The Purpose of retaining jurisdiction after

imposing a sentence is to afford the trial court additional time for evaluation of the Defendant's rehabilitation potential and suitability for probation." And, as defense counsel stated (Tr., p.40, Ls.13-23), if the District Court was not satisfied with Mr. Goodrich's performance during the period of rained jurisdiction, it could still relinquish jurisdiction and require Mr. Goodrich to serve the underlying sentence. *See, e.g., State v. Merwin*, 131 Idaho 642, 648 (1998) (affirming an order revoking probation despite a recommendation from the rider staff that the Defendant be placed on probation).

Furthermore, while the District Court did acknowledge some of the mitigating factors (*See, e.g., Tr., p.47, Ls.10-20*), it did not sufficiently consider their full impact in regard to *all* the sentencing factors. Rather, it considered those factors in regard to how they affected the amount of punishment it would order. (*See, e.g., Tr. p.47, Ls.10-22* (explaining that, because Mr. Goodrich's demonstrated ability to overcome prior addictions and live a law-abiding lifestyle, "it is for that reason I'm not giving you a longer sentence than I do. I could send you to prison for life.")) The District Court did not, for example, sufficiently appreciate the impact of those factors on the potential for actually addressing Mr. Goodrich's underlying issues through a timely opportunity for rehabilitation. (*See Tr., p.51, Ls.5-14* (the District Court simply articulating the hope that Mr. Goodrich can become a productive member of society at some unspecified point in the future).) His advancing age is also a factor. Both the Idaho Supreme Court and the Idaho Court of Appeals have recognized that the timing of rehabilitative programming is an important consideration at sentencing. *See, e.g., State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971); *State v. Nice*, 103 Idaho 89, 91 (1982); *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App. 2008); *State v. Eubank*, 114 Idaho 635, 639 (Ct. App. 1988).

An evaluation of sentencing criteria, as applied to the Defendant, is appropriate here. This evaluation is as follows:

(1) Mr. Goodrich has been employed at meaningful jobs most of his life. His early childhood is discussed above. He came from this background to become a hard working, responsible individual. Yes, he made mistakes along the way, but has not been a significant danger to society throughout. He shows high likelihood that he has learned from his experiences and he will become even less of a risk to society. Retained jurisdiction and the training received would make rehabilitation even more likely.

(2) Deterrence of this individual and the public in general. A retained jurisdiction or probation sentence would serve the deterrence goal well. It's significant punishment and the knowledge and discipline he would learn would be much more helpful than a standard prison sentence.

(3) The possibility of rehabilitation. The Defendant has a substantial likelihood of rehabilitation. He was 56 years old at the time of sentencing, was gainfully employed, and had many years of a normal, productive life as discussed below.

(4) He would be receiving a sentence in line with what others have received for their offences. Retaining jurisdiction would be an adequate punishment and deterrent in this situation.

Furthermore, providing for rehabilitative opportunities actually provides better protection to society in the long-term because it actually addresses the issues which underlie the criminal conduct. This is particularly true in Mr. Goodrich's case, where his risk to re-offend is the product of dynamic, *changeable* factors. (See PSI, pp.158, 163.) Therefore, in this case a sentence which sufficiently considers *all* the goals of sentencing would take the opportunity to change those dynamic factors through a timely rehabilitative program. (See PSI, p.178 (the

psychosexual evaluation recommending precisely that); *cf.* Tr., p.21, Ls, 7-12 (the prosecutor acknowledging that recommendation).) Thus, the District Court's decision to focus on the goal of punishment to the detriment of the goals of protection of society and rehabilitation constitutes an abuse of its discretion.

The case of *State v. Miller*, Case No. 35845 (Ct. App. 2010) contains a detailed discussion of the issues that are also present in this case. *Miller*, *supra*, dealt with a conviction for violation of the controlled substance laws. The Defendant claimed that the sentence was excessive.

The Court cited *State v. Burdett*, 134 Idaho 271, 276; 1 P.3d 299, 304 (Ct. App. 2000) in stating that the standard in such cases is that the sentencing court must have abused its discretion for a sentence to be excessive. However, a sentence may represent such an abuse of discretion because it is unreasonable upon the facts of the case. *State v. Jackson*, 130 Idaho 293, 294; 939 P.2d 1372, 1373 (1997).

The Appeals Court conducts an independent review of the record having regard for the nature of the offender and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772; 653 P.2d 1183, 1184 (Ct. App. 1982) There are no definitive parameters to be applied by the Appellate Court in evaluating claims of excessiveness.

General objectives of appellate sentence or post conviction relief review are:

- (i) to correct the sentence which is excessive in length, having regard to the nature of the offense, the character of the offender, and the protection of the public interest.
- (ii) to facilitate the rehabilitation of the offender by affording him an opportunity to assert grievances he may have regarding his sentence.

- (iii) to promote respect for the law by correcting abuse of the sentencing power and by increasing the fairness of the sentencing power; and
- (iv) to promote the development and application of criteria for sentencing which are both rational and just.

State v. Brown, 121 Idaho at 1978; 393, 825 P.2d at 490. *State v. Wolfe*, 99 Idaho 382, 384; 582 P.2d 728, 730.

Addiction does not excuse the crimes committed while a person is under the influence of drugs. It is, however, a factor which should be considered at sentencing. *Nice*, 103 Idaho at 90; 645 P.2d at 325. Same with mental illness. I.C. § 19-2523; *State v. Stroud*, 137 Idaho 457; 461, 50 P.3d 472, 476 (2002). The court unduly discounted in its sentencing consideration, the effect of Mr. Goodrich's illness and long standing substance addiction. However, his sentence should not be longer than necessary to achieve retribution and the other sentencing goals articulated. *See Jackson*, 130 Idaho at 296; 939 P.2d at 1375. It is also a fact that the sentencing Judge imposed a harsher sentence than what was in the plea agreement.

DID THE PETITIONER-APPELLANT'S MEDICAL CONDITION INTERFERE WITH HIS ABILITY TO KNOWINGLY ENTER A GUILTY PLEA; DID THE COURT TAKE INTO ACCOUNT HIS HEALTH ISSUES AT THE TIME OF SENTENCING AND DID THE COURT HAVE HIS MEDICAL DOCUMENTATION?

There is no dispute that the Petitioner-Appellant fell in a chair prior to his sentencing. There is no dispute that this caused back and related injuries or that he hit his head. There is no dispute that the cysts and the injuries existed at the time of the change of plea and sentencing. The back injury was treated, but not resolved, at the time of sentencing. The cysts were treated after the sentencing. These facts show that significant pain was present at the time of sentencing and would have easily affected Mr. Goodrich's state of mind and judgment.

The standard in a summary disposition of a past conviction relief case is very similar to a summary judgment. Is there a genuine issue of material fact? (Idaho Code § 19-4906). The granting of a summary judgment or a summary disposition depends on a party of being able to present all the facts to the Court. This is especially true of oral testimony which is not allowed. It is not possible to fully present the case without an oral recitation of what happened.

The standard for receiving summary disposition or judgment on the pleadings as recited in Idaho Code § 19-4906(b) "Disposition on the pleadings and record is not proper if there exists a material issue of fact." Idaho Code § 19-4906(c) provides that summary disposition may be granted "if it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Idaho Rules of Civil Procedure 56 sets out the standard for summary judgment in civil cases. Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material

fact and the movant is entitled to judgment as a matter of law.” These standards are basically identical. The standard applied to summary judgments are applicable to post-conviction relief cases.

The case of *Wesco Autobody Supply Inc.*, 149 Idaho 881, 243, P.3d 1069 (2010), restates the standard to be used in evaluating a motion for summary judgement quoting the case *Van v. Portneuf Med. Ctr.*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009), “summary judgement is appropriate if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact and that the moving party is entitled to a judgement as a matter of law.”

“This Court will construe the record in the light most favorable to the party opposing the motion for summary judgment, drawing all reasonable inferences in that party's favor. *Id.* Summary judgment is improper “if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented.” *McPheters v. Maile*, 138 Idaho 391, 394, 64 P.3d 317, 320 (2003)

In the present case there are many issues of material fact if construed in a light most favorable to the Petitioner-Appellant:

1. There was an Affidavit from Dr. Cole Anderson, an oral surgeon, concerning the medical condition and records (filed January 22, 2018, Case No. CV01-17-07511). These facts were not adequately explained and there was nothing opposing the medical claims.
2. The effect of the fall and the tumor on the Petitioner-Appellant's guilty plea was not determined by the court. Those were issues in the case not argued by Mr. Goodrich as a result of his injury and confusion.
3. The court did not fully receive the medical records regarding the fall and tumor.

These records raise numerous issues regarding his condition and its effect.

4. The medical issues were raised by Mr. Goodrich at the change of plea, but were not tried.

5. There were facts that were material concerns, the offenses themselves that were not raised with enough importance.

6. The sentencing Judge gave him a harsher sentence than the plea bargain without adequate explanation.

The independent review conducted by the Supreme Court will show the following about Mr. Goodrich:

1. A middle aged gentleman;
2. With serious health issues including a recent surgery to remove a large growth from his eye and hearth trouble;
3. Someone with strong family help;
4. A native of Idaho for many years;
5. An individual with a good work record;
6. Someone that knows that he did wrong and does not want to be involved in such activities in the future;
7. Someone with a more than difficult childhood;
8. Someone that does have something positive to add to society.

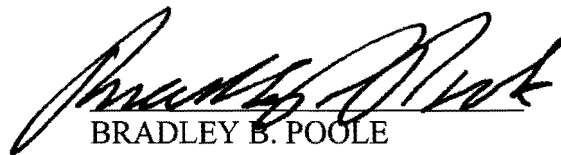
A period of retained jurisdiction would meet these goals more favorably than the current sentence. The Petitioner-Appellant has never been accused of a violent crime. The learning and

discipline that he would learn in the rider program would best protect the public, serve as a deterrent in the future and serve as a punishment and focal point to learn respect for the law.

CONCLUSION

Mr. Goodrich respectfully requests that this Court vacate the sentencing order and remand his case with instructions to retain jurisdiction.

RESPECTFULLY SUBMITTED this 31st day of October, 2018.



BRADLEY B. POOLE
Attorney for Petitioner-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2018, I served a true and correct copy of the within and foregoing document upon the attorney named below in the manner noted:

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