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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45851
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY NO. CR42-17-5651
v.)	
)	
JAMES LEE CRANDALL, II,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

James Lee Crandall, II, appeals from the district court's Judgment of Conviction Upon a Plea of Guilty to One Felony Count, and Order of Commitment. Mr. Crandall was sentenced to a unified sentence of ten years, with four years fixed, for his attempted strangulation conviction. He asserts that the district court abused its discretion in sentencing him to an excessive sentence without properly considering the mitigating factors that exist in this case.

Statement of the Facts & Course of Proceedings

On July 12, 2017, an Information was filed charging Mr. Crandall with attempted strangulation. (R., pp75-76.) The charges were the result of a report to police of a potentially suicidal individual. (PSI, p.5.)¹ Officers made contact with Mr. Crandall who smelled of alcohol and expressed concern about his fiancé. (PSI, p.5.) Officers contacted Mr. Crandall's fiancé and learned that Mr. Crandall had allegedly attacked his fiancé by placing her in a chokehold, displaying a revolver, and attempted to forcefully remove her from a vehicle. (PSI, p.5.)

Mr. Crandall entered an *Alford*² plea to the attempted strangulation charge.³ (R., p.79.) At sentencing, the prosecution recommended imposition of a ten year sentence, with three years fixed. (Tr. 2/20/18, p.31, Ls.12-14.) Defense counsel requested that the district court retain jurisdiction. (Tr. 2/20/18, p.35, Ls.1-19.) The district court imposed a unified sentence of ten years, with four years fixed. (R., pp.160-164.) Mr. Crandall filed a Notice of Appeal timely from the district court's Judgment of Conviction Upon a Plea of Guilty to One Felony Count, and Order of Commitment. (R., pp.166-169.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Crandall, a unified sentence of ten years, with four years fixed, following his *Alford* plea to attempted strangulation?

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 *North Carolina v. Alford*, 400 U.S. 25 (1970).

³ Mr. Crandall entered into a plea agreement. (R., p.80.) However, he violated the agreement by committing a new criminal offense. (R., pp.80, 140.)

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Crandall, A Unified Sentence Of Ten Years, With Four Years Fixed, Following His *Alford* Plea To Attempted Strangulation

Mr. Crandall asserts that, given any view of the facts, his unified sentence of ten years, with four years fixed, 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. Crandall does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Crandall 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. Crandall 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 the district court failed to give proper consideration to his family support. 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. Mr. Crandall has the support of his family. (PSI, p.9.) Mr. Crandall's mother, Ramona Hanchey-Crandall, wrote a letter of support for her son. (R., pp.117-118.) She wrote that her son is a wonderful man with a serious alcohol problem. (R., pp.117-118.) Ms. Hanchey-Crandall asked that her son be allowed to get the help he needs and noted that his family is "willing and ready to help in any way they can." (R., p.117.) Mr. Crandall also supplied the district court with two additional letters of support from his Aunt Ileta Jensen, and his sister, Leah Stone. (R., pp.153-155.)

Furthermore, 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. Crandall began using alcohol and marijuana at the age of 16. (PSI, p.15.) Although he has not recently used marijuana, he acknowledges that he wants to stop both drinking alcohol and using drugs. (PSI, p.15.) Mr. Crandall was diagnosed with Alcohol Use Disorder, Severe. (PSI, p.21.) It was recommended that he participate in Level 1 Outpatient Treatment. (PSI, p.29.)

Additionally, Mr. Crandall has taken responsibility for his actions. 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. Mr. Crandall told the district court, “[t]he past few months being incarcerated have given me time to actively seek counsel, read self-help books, and take full responsibility for my errors in thinking. . . . I want to apologize to the court, to my family, and all those involved for taking their time and interrupting their lives.” (Tr. 2/20/18, p.37, Ls.10-18.)

Based upon the above mitigating factors, Mr. Crandall asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered the mitigating factors present in his case it would have crafted a less severe sentence and allowed him an opportunity to participate in a period of retained jurisdiction.

CONCLUSION

Mr. Crandall 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 24th day of July, 2018.

/s/ Elizabeth Ann Allred
ELIZABETH ANN ALLRED
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

EAA/eas