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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45853
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-25361
v.)	
)	
HOLLEN DAVID FAUGHT,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Hollen D. Faught pled guilty to driving under the influence of alcohol, the district court sentenced him to twenty years imprisonment, with five years fixed. Mr. Faught appeals, and he asserts the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State alleged Mr. Faught committed the crimes of felony driving under the influence of alcohol (“DUI”) and driving without a driver’s license. (R., pp.21–22 (amended complaint).) Following a preliminary hearing, the magistrate found probable cause for the offenses and bound Mr. Faught over to district court. (R., pp.19–20, 24–23.) The State then filed an Information

charging him with both offenses. (R., pp.28–29.) Shortly thereafter, the State filed Part II of the Information to add the persistent violator sentencing enhancement. (R., pp.37–38.)

Pursuant to a plea agreement with the State, Mr. Faught pled guilty to the felony DUI and the sentencing enhancement. (Tr., p.5, Ls.11–17, p.15, L.11–p.19, L.9.) The State agreed to dismiss the other charge. (Tr., p.5, Ls.16–17.) The State also agreed to recommend a sentence of twenty years, with seven years fixed. (Tr., p.5, Ls.14–15.)

At sentencing, the State made a recommendation consistent with the plea agreement. (Tr., p.25, Ls.14–19.) Mr. Faught requested a sentence of fifteen years, with three years fixed, and a period of retained jurisdiction. (Tr., p.29, Ls.6–10.) The district court sentenced him to twenty years in prison, with five years fixed. (Tr., p.36, L.23–p.37, L.4.) The district court declined to retain jurisdiction. (Tr., p.37, Ls.10–16.) Mr. Faught timely appealed from the district court’s judgment of conviction. (R., pp.69–71, 73–74.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of twenty years, with five years fixed, upon Mr. Faught, following his DUI guilty plea?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Twenty Years, With Fixed Years Fixed, Upon Mr. Faught, Following His DUI Guilty Plea

“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. Faught’s sentence does not exceed the statutory maximum. *See* I.C. §§ 18-8005(6), (9) (ten-year maximum), 19-2514 (five-year mandatory

minimum, maximum of life). Accordingly, to show that the sentence imposed was unreasonable, Mr. Faught “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). “The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant’s rehabilitative potential and suitability for probation.” *State v. Jones*, 141 Idaho 673, 676 (Ct. App. 2005). “[P]robation is the ultimate objective of a defendant who is on retained jurisdiction.” *Id.* at 677. The district court’s decision to retain jurisdiction is reviewed for an abuse of discretion. *Id.* “There can be no abuse of discretion in a trial court’s refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation.” *Id.*

In this case, Mr. Faught asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment or retained jurisdiction in light

of the mitigating factors, including his mental health issues, severe alcoholism, and family support.

Mr. Faught's significant mental health condition stands in favor of mitigation. Idaho Code § 19-2523 requires the sentencing court to consider the defendant's mental health condition if it is a significant factor, and the record must show that the sentencing court adequately considered this factor when imposing a sentence. I.C. § 19-2523; *Delling*, 152 Idaho at 132–33. Here, sixty-two-year-old Mr. Faught has lived with schizophrenia for almost his entire life. (Presentence Investigation Report (“PSI”),¹ p.14.) He started to hear voices in his head as a child. (PSI, pp.14, 477–78.) His childhood was “confusing” and school was “always hard” because he heard voices. (PSI, p.476.) As a child, he did not realize that hearing voices was not normal. (PSI, p.476.) About three years ago, Mr. Faught “finally got sick of it” and saw a physician. (PSI, p.478.) Mr. Faught was prescribed Haldol. (PSI, p.478.) He reported that the voices are “quieter” when he is on the medication. (PSI, p.14.) Mr. Faught's severe mental health issues support a lesser sentence.

Related to his mental health condition, Mr. Faught suffers from severe alcohol use disorder. (PSI, pp.477, 480.) Mr. Faught's alcohol abuse issues, the impact of his alcohol abuse on his behavior, and his need for treatment are strong factors in mitigation. A sentencing court should give “proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho 89, 91 (1982). The impact of alcohol abuse on the defendant's criminal conduct is “a proper consideration in mitigation of punishment upon sentencing.” *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Mr. Faught first drank alcohol at age thirteen and

¹ Citations to the PSI refer to the 482-page electronic document with the confidential exhibits.

consistently drank alcohol at age eighteen or nineteen. (PSI, pp.476–77.) He acknowledged that he drinks too much. (PSI, p.14.) He reported that he currently uses alcohol to feel “normal” due to Haldol’s side effects. (PSI, p.478.) Mr. Faught’s alcohol addiction also supports a lesser sentence.

Finally, Mr. Faught has the support of his family. *State v. Shideler*, 103 Idaho 593, 594–95 (1982) (family support and good character as mitigation); *see State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (district court considered family and friend support as mitigating circumstance). Mr. Faught’s family is very supportive of him. (PSI, p.17.) He lives in a trailer park in Garden City, and two of his sisters also live there. (PSI, p.12.) Mr. Faught speaks with his sisters on a regular basis. (PSI, p.17.) He plans to return to his trailer, which he owns, upon his release. (PSI, pp.12, 475.) One of his sisters stated that Mr. Faught was “a great guy when he is on his meds and not drinking.” (PSI, p.12.) He enjoys walking and fishing. (PSI, p.12.) He also receives social security benefits for his mental health issues. (PSI, pp.13, 475.) These positive aspects of Mr. Faught’s life, such as his family support, are strong mitigating factors.

In summary, Mr. Faught maintains the district abused its discretion by imposing an excessive sentence. The mitigating factors here show that Mr. Faught can be successful in the community with proper treatment for his mental health condition and substance abuse disorder. Proper consideration of these mitigating factors support a lesser sentence.

CONCLUSION

Mr. Faught respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that this Court vacate his judgment of conviction and remand his case for a new sentencing hearing.

DATED this 30th day of August, 2018.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 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

JCS/eas