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ORIGINAL

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45861
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-28119
v.)	
)	
DONALD EUGENE DAVIS JR.,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	



STATEMENT OF THE CASE

Nature of the Case

Donald Eugene Davis, Jr. appeals from the district court's Judgment of Conviction and Commitment. Mr. Davis was sentenced to a unified sentence of ten years, with three years fixed, for his trafficking in methamphetamine conviction. He asserts that the district court abused its discretion in sentencing him to an 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 August 22, 2017, an Indictment was filed charging Mr. Davis with two counts of trafficking in methamphetamine, delivery of a controlled substance, possession and/or

manufacturing of drug paraphernalia with the intent to deliver, and possession of drug paraphernalia. (R., pp.19-21.) Mr. Davis and his co-defendant allegedly sold methamphetamine to a confidential informant on two different occasions. (PSI, pp.4-5.)¹ Following the sales, a search warrant was executed and additional methamphetamine and drug related items were discovered. (PSI, p.5.)

Mr. Davis entered a guilty plea to one count of trafficking in methamphetamine and the remaining charges were dismissed. (R., pp.87-88, 92.) At sentencing, the prosecution requested the imposition of a unified sentence of ten years, with three years fixed. (Tr. 2/9/18, p.9, Ls.3-9.) Defense counsel recommended a unified sentence of eight years, with three years fixed. (Tr. 2/9/18, p.10, Ls.1-6.) The district court imposed a unified sentence of ten years, with three years fixed. (R., pp.91-93.) Mr. Davis filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.90-101.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Davis, a unified sentence of ten years, with three years fixed, following his plea of guilty to trafficking in methamphetamine?

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Davis, A Unified Sentence Of Ten Years, With Three Years Fixed, Following His Plea Of Guilty To Trafficking In Methamphetamine

Mr. Davis asserts that, given any view of the facts, his unified sentence of ten years, with three years fixed, is excessive. Where a defendant contends that the sentencing court imposed an

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.

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. Davis does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Davis 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. Davis 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 the district court did not give proper weight to his admitted substance abuse problem and desire for treatment. 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).

Unfortunately, Mr. Davis has a significant history of substance abuse beginning as a child. He began using Methamphetamine at the age of 10 and his father gave him a needle to use intravenously when he was only 12 years old. (PSI, p.16.) He was an IV user for almost 40 years. (PSI, p.16.) His drug use has caused him legal issues throughout his life. (PSI, p.16.) He has a strong desire to stop using and he “would like to have a good life.” (PSI, p.16.) He noted that he “can’t seem to stay clean” and he believes that participating in inpatient treatment would be very helpful. (PSI, p.17.) He has been diagnosed with Stimulant Use Disorder – Amphetamine Type, Severe – Early Remission in a Controlled Environment. (PSI, pp.24, 36.) It was recommended that he participate in Level II.1 Intensive Outpatient Treatment. (PSI, p.34.)

While Mr. Davis’ substance abuse began as a child, it was not the only negative experience of his childhood. He was also abused as a child, both physically and sexually. (PSI, p.11.) He noted that his father was physically abusive to both him and his mother. (PSI, p.11.) Mr. Davis was placed in foster care at the age of nine, but was returned to his mother when he was teenager. (PSI, p.12.) A defendant experiencing abuse as a child is a mitigating factor that should be considered by the district court. *State v. Smith*, 144 Idaho 687, 690-91 (Ct. App. 2007)

Further, health problems of the defendant are also a factor for the district court to consider in evaluating sentencing decisions. *State v. James*, 112 Idaho 239, 243-44 (Ct. App.

1986). Mr. Davis believes his health is “poor.” (PSI, p.15.) He suffers from chronic back pain, asthma, bone spurs, and plantar fasciitis. (PSI, p.15.)

Idaho courts have also 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. Davis has been previously diagnosed with bipolar disorder, ADHD, and PTSD. (PSI, p.15.) He has a history of one attempted suicide in the mid-1990s. (PSI, p.16.) More recently, he was diagnosed with Rule Out Major Depressive Disorder, Recurrent, Moderate. (PSI, pp.24, 36.) It was recommended that he participate in individual or group therapy. (PSI, p.37.)

Additionally, Mr. Davis 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. Mr. Davis has expressed his remorse for committing the instant offense stating, “I just want to say that I’m sorry to the courts . . . I also want you to know that I’m a 30+ year junky & I will do my best to change my life around.” (PSI, pp.17-18.)

Based upon the above mitigating factors, Mr. Davis 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 substance abuse and desire for treatment, abusive childhood, poor health, mental health issues, and remorse, it would have crafted a less severe sentence.

CONCLUSION

Mr. Davis 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 3rd day of August, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August, 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