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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45888
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-42208
v.)	
)	
LAUREN ASHLEY KILLEEN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Lauren Ashley Killeen pled guilty to one count of felony eluding. She received a unified sentence of five years, with two years fixed. Ms. Killeen contends that her sentence represents an abuse of the district court’s discretion, as it is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

At approximately one o’clock in the morning on September 16, 2017, officers stopped a car driven by Lauren Ashley Killeen for an equipment violation. (Presentence Investigation

Report (*hereinafter*, PSI),¹ p.3.) After giving the officer her vehicle registration, Ms. Killeen turned her car back on and rapidly drove away. (PSI, p.3.) In driving away, Ms. Killeen crossed into oncoming traffic and drove through multiple red lights. (PSI, p.3.) Ms. Killeen did not have her car's headlights on when she drove away from the officers. (PSI, p.3.)

Ms. Killeen was charged by information with felony eluding. (R., pp.24-25.) Pursuant to a plea agreement, Ms. Killeen pled guilty to felony eluding. (Tr., p.17, Ls.11-16; p.19, L.1 – p.20, L.8; R., pp.46-59.) According to the terms of the plea agreement, the State agreed not to file a persistent violator sentencing enhancement. (Tr., p.12, Ls.3-5; R., pp.49, 58-59.) The district court accepted Ms. Killeen's guilty plea and ordered a PSI and set the matter for sentencing. (Tr., p.31, L.22 – p.32, L.11.)

At sentencing, the State recommended a sentence of five years, with two years fixed. (Tr., p.36, Ls.5-10.) Ms. Killeen's counsel asked that she be referred to drug court, but if not, counsel recommended a unified sentence of three and one-half years, with one-half year fixed. (Tr., p.37, Ls.5-7; p.38, Ls.7-9.) The district court sentenced Ms. Killeen to five years, with two years fixed.² (Tr., p.43, Ls.14– 18; R., pp.63-66.)

Ms. Killeen appeals from the judgment of conviction. (R., pp.68-70.)

ISSUE

Did the district court abuse its discretion when it sentenced Ms. Killeen to a unified sentence of five years, with two years fixed, following her plea of guilty to felony eluding?

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, including the original PSI, the Addendums to the PSI, evaluations, and letters submitted in support of Ms. Killeen.

² Ms. Killeen also filed a motion for reconsideration of the sentence pursuant to I.C.R. 35, which was denied without a hearing because it contained no new information. (R., pp.67, 73-78.)

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Ms. Killeen To A Unified Sentence Of Five Years, With Two Years Fixed, Following Her Plea Of Guilty To Felony Eluding

Ms. Killeen asserts that, given any view of the facts, her unified sentence of five years, with two 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)). Ms. Killeen does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Killeen must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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.*

In light of Ms. Killeen’s rehabilitative potential, the district court abused its discretion in sentencing her excessively. The district court failed to consider the fact that Ms. Killeen has the support of her family, suffers from mental illness as well as addictions to heroin and methamphetamine, and was truly remorseful. Ms. Killeen has substantial support and, with programming, Ms. Killeen could likely be successful in the community.

Ms. Killeen has a supportive family. *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his

rehabilitation efforts); *see also State v. Carrasco*, 114 Idaho 348, 354-55 (Ct. App. 1988) (reducing sentence of first-time offender who had a family depending upon him for support and who accepted responsibility for the offense at issue), *overruled on other grounds*, 117 Idaho 295 (1990). Ms. Killeen's mother and grandmother were both in the courtroom at sentencing to show their support for her. (Tr., p.42, Ls.6-10.) Ms. Killeen's parents wrote a letter of support to the court for its consideration at sentencing. (Tr., p.42, Ls.6-10; PSI, pp.380-381.) Ms. Killeen's sister is a good source of support for her and wrote a letter to the court in which she describes Ms. Killeen as "intelligent, smart, open minded, creative, and hard working." (PSI, p.382.) Ms. Killeen also has a young child. (PSI, pp.9.) She values her family and one of her goals is to strengthen her relationship with her three-year-old son. (PSI, p.13.) Ms. Killeen also has a supportive friend who wrote a letter to the court for its consideration. (PSI, p.38.)

The Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). In *Nice*, the Idaho Supreme Court reduced a sentence based on Nice's lack of prior record and the fact that "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing the defendant to commit the crime and the suggested alternatives for treating the problem." *Id.* at 91. Additionally, the Idaho Supreme Court has ruled that ingestion of drugs and alcohol resulting in impaired capacity to appreciate criminality of conduct, could be a mitigating circumstance. *State v. Osborn*, 102 Idaho 405, 414 (1981). Ms. Killeen realizes that she is addicted to methamphetamine and heroin. (PSI, pp.12, 61.) In fact, Ms. Killeen was suffering from withdrawals when she was pulled over, and she believes she would not have committed the crime had she been sober. (PSI, pp.4, 60-64.) However, Ms. Killeen wants treatment and her goal is to stay sober. (PSI, pp.13-14.) At

sentencing, Ms. Killeen told the court that she wanted treatment for her drug addiction and mental health issues. (Tr., p.39, Ls.8-15.)

The Idaho Supreme Court has 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). Ms. Killeen reported a history of mental illness including Depression, Anxiety, and PTSD. (Tr., p.9, Ls.3-6; PSI, pp.11, 33.) She believes she would benefit from medication to manage her mental health conditions. (PSI, pp.11, 14.)

Further, Ms. Killeen expressed remorse and accepted responsibility for her acts. At sentencing, Ms. Killeen said:

I would like to take this moment to take full accountability for my poor decisions in committing this crime of eluding.

...

I would like to apologize to the community of Boise and truly I'm just thankful that no one was injured or hurt during this time – during the time this crime took place. By committing this crime, it is very clear to me and I need and would benefit from a very structured treatment program for my drug addiction and mental health issues. Also that I will have to continue helping myself for the rest of my life if I want to win this battle against my addiction and stop going back to prison by staying free, clear, and abstinent from all drugs and alcohol.

I still have not lost all hope and faith in myself to overcome this battle against myself. I would like to thank you for listening, and thank my mother and my grandmother for showing up and supporting me in my sentencing here today.

Thank you.

(Tr., p.38, L.24 – p.39, L.21.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991). For example, in *Alberts*, the Idaho Court of Appeals noted that some leniency is required when the defendant has expressed “remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Alberts*, 121 Idaho at 209. In *Shideler*,

Idaho Supreme Court ruled that the prospect of Shideler's recovery from his poor mental and physical health, which included mood swings, violent outbursts, and drug abuse, coupled with his remorse for his actions, was so compelling that it outweighed the gravity of the crimes of armed robbery, assault with a deadly weapon, and possession of a firearm during the commission of a crime. *Shideler*, 103 Idaho at 594-95. Therefore, the court reduced Shideler's sentence from an indeterminate term not to exceed twenty years to an indeterminate term not to exceed twelve years. *Id.* at 593. Ms. Killeen's circumstances are somewhat similar to the facts of both *Alberts* and *Shideler* in that she recognizes that she has an addiction to controlled substances, she wants treatment for her substance abuse, she has been diagnosed with mental health conditions, and she showed considerable remorse for her actions.

Based upon the above mitigating factors, Ms. Killeen asserts that the district court abused its discretion by imposing an excessive sentence upon her. She asserts that had the district court properly considered her mental health conditions, family support, controlled substances addictions, and her remorse, it would have imposed a less severe sentence.

CONCLUSION

Ms. Killeen respectfully requests that this Court reduce her sentence as it deems appropriate. Alternatively, she requests that her case be remanded to the district court for a new sentencing hearing.

DATED this 5th day of October, 2018.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 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
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

SJC/eas