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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45899
Plaintiff-Respondent,)	
)	BINGHAM COUNTY NO. CR-2017-1259
v.)	
)	
JESUS ADAN CASTILLO,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jesus Castillo pled guilty to first degree murder and was sentenced to a unified term of 45 years, with 15 years fixed. In light of the mitigating factors that exist in this case, Mr. Castillo asserts the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

After a night of drinking with his girlfriend, 22-year-old Jesus Castillo lost control of his emotions and battered his girlfriend's son, 18-month-old Z.T., resulting in Z.T.'s death. (PSI,

pp.1-5.)¹ After a preliminary hearing, the State filed an Information charging Mr. Castillo with first degree murder by aggravated battery of a child under the age of 12. (R., pp.9-10, 50-52, 55-58.) Pursuant to an agreement with the State, Mr. Castillo pled guilty as charged and was free to argue for an appropriate sentence; in exchange, the State agreed to limit its sentencing recommendation to a unified term of life, with 15 years fixed. (R., pp.93-96, 104-106; Tr., p.5, L.7 – p.15, L.12.)²

During the sentencing hearing, the State asked the district court to impose a unified term of life, with 15 years fixed (Tr., p.28, Ls.4-7), while counsel for Mr. Castillo requested the court impose a unified term of 20 years, with 10 years fixed (Tr., p.40, Ls.16-19). The district court sentenced Mr. Castillo to a unified term of 45 years, with 15 years fixed. (R., pp.119-122; Tr., p.51, Ls.4-8.) Mr. Castillo filed a timely Notice of Appeal.³ (R., pp.138-140.)

ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Castillo a unified sentence of 45 years, with 15 years fixed, in light of the mitigating factors that exist in this case?

¹ Citations to the Presentence Investigation Report and its attached documents will include the designation “PSI” and the page number associated with the 155-page electronic file containing those documents.

² All references to transcripts in this brief will be to the 55-page transcript memorializing the entry of plea and sentencing hearings.

³ Mr. Castillo also filed a timely Rule 35 motion, which was denied by the district court. (R., pp.136-137, 152-155.) In light of the relevant standards of review, Mr. Castillo does not raise the denial of his Rule 35 motion as an issue in this appeal.

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Mr. Castillo A Unified Sentence Of 45 Years, With 15 Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Castillo asserts that, given any view of the facts, his unified sentence of 45 years, with 15 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. 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.

After initially claiming that Z.T.'s injuries were accidental, Mr. Castillo admitted that he lost control over his emotions while he was intoxicated, and he caused the injuries that led to Z.T.'s death. (PSI, pp.3-5.) Mr. Castillo's use of alcohol has been the main problem area in his life. He first started drinking at age 13, and he was drinking heavily in the months prior to his arrest. (PSI, pp.11-12, 18.) Mr. Castillo recognizes that he is sometimes unable to control his anger when he drinks too much, and that his alcohol addiction was a major contributing factor to his causing the death of Z.T. (PSI, pp.12, 18, 24.) Mr. Castillo has tried to stop drinking on his own in the past but he now realizes that he needs treatment to remain sober. (PSI, pp.12, 18.)

Mr. Castillo's actions were out of character for him. This crime is Mr. Castillo's only felony offense, and his prior criminal history consisted primarily of driving related offenses. (PSI, pp.5-7.) The people who know him best describe him as a kind and helpful person, and a doting father. (PSI, pp.140-148.) Earl and Patricia Johnson, grandparents to Mr. Castillo's ex-wife, wrote a letter in support informing the court that Mr. Castillo became a loving father to

their great-grandson, A.J., even though Mr. Castillo was not A.J.'s biological father. (PSI, p.140.) In fact, even after Mr. Castillo and the Johnsons' granddaughter divorced, Mr. Castillo made sure to spend time with A.J., as he was the only father A.J. knew. (PSI, p.140.) Nelda Velasco, Mr. Castillo's mother, wrote a letter describing her son's upbringing and his desire to be a good father. (PSI, pp.141-142.) She wrote, "[t]his was so out of character for Jesus and has left me shocked and shattered. I grieve for my son and I grieve for the child's life that was lost." (PSI, p.142.) Mr. Castillo's older sister, Rocio Rojo, also wrote a letter in support describing herself as in "shock and disbelief" upon hearing the news that Mr. Castillo caused Z.T.'s death, and that his actions that night were simply out of character for her little brother. (PSI, pp.143-145.) The court also received letters from Estella Flores, Carmella Flores, and Ray and Wendy Sanchez, attesting to Mr. Castillo's kindness and helpfulness. (PSI, pp.146-148.)

Mr. Castillo's remorse is profound. Dr. Linda Hatzenbuehler, Ph.D., observed that Mr. Castillo "experienced significant remorse and guilt, and he became acutely suicidal." (PSI, pp.149-155.) Jail staff prescribed Mr. Castillo anti-depressants due to his mental condition. (PSI, pp.11, 155.) Mr. Castillo's comments to the court reflect his remorse. In his PSI, Mr. Castillo stated the following:

I[']m truly sorry for the tragic life changing mistake that [I] have made. I know that nothing that [I] can do will ever change the fact that no matter how sorry that [I] am it won[']t change what has happened. All [I] can do is hope and pray for forgiveness and understanding from the Tendoy family. In addition to being sorry for putting the Tendoy family as well as my own through all this pain [and] hurt as well as this horrible experience[,] [I] am sorry that [I] let everyone that [I] love and care about down, especially my step son [Z.T.] who will forever be in my heart and prayers as well as his loving mother [D]ominique Tendoy. I[']m willing to accept any sentence the Judge will be handing down to me. I will always carry this mistake with me in my heart and soul for the rest of my life.

(PSI, p.12.) During his sentencing hearing, Mr. Castillo stated the following:

I would just like to apologize to the Tendoy family for what I have done. I know that nothing I can say or do will ever change what has happened. I know that it will always be with them as well as myself. I never meant to put their family as well as my own through any -- any sort of thing like this. If anything, I just hope that, one day, they can all forgive me for my mistake.

(Tr., p.43, Ls.10-18.)

Idaho Courts recognize that a youthful, first-time felon, with strong family support, who desires treatment for alcoholism, and who shows remorse, should be accorded a more lenient treatment. *See State v. Hoskins*, 131 Idaho 670 (1998); *State v. Shideler*, 103 Idaho 593 (1982); *State v. Nice*, 103 Idaho 89 (1982); *State v. Adams*, 99 Idaho 75 (1978). Mr. Castillo asserts that, in light of the mitigating factors that exist in his case, the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Castillo respectfully requests that this Court reduce the fixed portion of his sentence from 15 years to 10 years, or for whatever other relief this Court deems appropriate.

DATED this 16th day of October, 2018.

/s/ Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th 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

JCP/eas