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### State v. Burnside Appellant's Brief Dckt. 45901

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45901
Plaintiff-Respondent,	)	
	)	MADISON COUNTY NO. CR 2017-3211
v.	)	
	)	
ALEC JOE BURNSIDE,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Alec Joe Burnside appeals from the district court's Judgment and Commitment. Mr. Burnside was sentenced to a unified sentence of ten years, with six years fixed, for his aggravated driving while under the influence of intoxicating substances 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. Additionally, he asserts that the district court abused its discretion in denying his Rule 35 motion for a reduction of sentence.

## Statement of the Facts & Course of Proceedings

On December 8, 2017, a Prosecuting Attorney Information was filed charging Mr. Burnside with aggravated driving while under the influence of an intoxicating substance. (R., pp.20-21.) A Part II of the Prosecuting Attorney Information was also filed charging Mr. Burnside with a persistent violator enhancement. (R., pp.25-26.) The charges were the result of a report of an accident between a vehicle and a traffic light pole. (PSI, p.4.)<sup>1</sup> Tragically, Mr. Burnside had three passengers in his vehicle and some of them were very seriously injured. (PSI, p.4.)

Mr. Burnside entered a guilty plea to the aggravated driving while under the influence of an intoxicating substance and the persistent violator enhancement was dismissed. (R., pp.25-26.) At sentencing, the prosecutor requested imposition of a unified sentence of fifteen years, with eight years fixed, to be served consecutive to his other Madison County cases. (Tr., p.51, Ls.21-25, p.52, Ls.10-11.) Defense counsel recommended that Mr. Burnside be allowed to participate in a period of retained jurisdiction or, if the court would not consider a rider, a short consecutive sentence or concurrent sentence. (Tr., p.49, Ls.10-18, p.49, L.24 – p.50, L.3.) The district court imposed a unified sentence of ten years, with six years fixed, consecutive to Mr. Burnside's other Madison County cases. (R., pp.29-30.) Mr. Burnside filed a Notice of Appeal timely from the district court's Judgment and Commitment. (R., pp.37-39.) He also filed a timely Motion for Reduction of Sentence. (R., p.50.) Following a hearing on the motion, the motion was denied. (R, p.51.)

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<sup>1</sup> 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.

## ISSUES

- I. Did the district court abuse its discretion when it imposed, upon Mr. Burnside, a unified sentence of ten years, with six years fixed, following his plea of guilty to aggravated driving while under the influence of an intoxicating substance?
- II. Did the district court abuse its discretion when it denied Mr. Burnside's Motion for a Reduction of Sentence?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion When It Imposed, Upon Mr. Burnside, A Unified Sentence Of Ten Years, With Six Years Fixed, Following His Plea Of Guilty To Aggravated Driving While Under The Influence Of An Intoxicating Substance

Mr. Burnside asserts that, given any view of the facts, his unified sentence of ten years, with six 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. Burnside does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Burnside 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. Burnside 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, Mr. Burnside asserts that the district court failed to give proper weight and consideration 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), *see also State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Mr. Burnside began using alcohol at the age of 16, marijuana at the age of 17, methamphetamine at the age of 18, and inhalants at the age of 21. (PSI, p.11.) He admits that he has significant problems with the use and abuse of marijuana and methamphetamine. (PSI, p.11.) He was diagnosed with Stimulant Use Disorder – Amphetamine Type, Severe. (PSI, p.66.) Although he received treatment while on a prior period of retained jurisdiction and participated, for a brief time, in Drug Court, he has been unable to remain sober and will need

additional treatment to achieve lasting sobriety. (PSI, p.11.) It was recommended that he participate in Level 3.5 residential treatment due to his need for 24-hour support and structure. (PSI, pp.12-13.)

Idaho courts have 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. Burnside has been previously diagnosed with Major Depressive Disorder, Recurrent, With Psychotic Features and Generalized Anxiety Disorder. (PSI, p.66.) As a teenager he attempted suicide on two occasions. (PSI, p.10.) He has been prescribed Prozac, but he only used his medication for a couple months. (PSI, p.10.) Mr. Burnside is still struggling with depression and anxiety and will likely need additional assistance to deal with his mental health concerns. (PSI, p.10.)

In addition to dealing with substance abuse issues and mental health concerns, Mr. Burnside is still a young man. A defendant's youthful age is a mitigating factor. *State v. Caudill*, 109 Idaho 222, 224 (1985). Mr. Burnside was only 21 years old when he committed the instant offense. (PSI, p.3.)

Furthermore, 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. *Id.* Mr. Burnside has the support of his mother and has recently been improving his relationship with his father. (PSI, p.8.)

Finally, Mr. Burnside has expressed his remorse for committing the instant offense. In *State v. Alberts*, 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." *Alberts*, 121 Idaho at 209. Mr. Burnside

has expressed his remorse for committing the instant offense stating, “[‘]m sorry to the people I hurt and their families. The people I hurt I cared about they are my friends and this is going to be a life long [sic] sentence for me just knowing that I hurt others due to my choices.” (PSI, p.13.) He made a similar statement at the time of sentencing:

. . . I take full responsibility for it. I’ve got to live the rest of my life knowing that I did that to him. He was a friend of mine. That’s all. I’m sorry to the family, to him, to the other victims. My choices involved other people this time, and that’s the hardest part.

(Tr., p.52, L.24 – 53, L.4.)

Based upon the above mitigating factors, Mr. Burnside 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, desire for continued treatment, mental health issues, young age, family support, and remorse, it would have crafted a less severe sentence.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Burnside’s Rule 35 Motion For A Reduction Of Sentence

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citing *State v. Forde*, 113 Idaho 21 (Ct. App. 1987) and *State v. Lopez*, 106 Idaho 447 (Ct. App.1984)). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* (citing *Lopez*, 106 Idaho at 450). “When presenting a Rule 35 motion, the defendant must show that the

sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

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. Burnside supplied new or additional information in the form of testimony at the Rule 35 hearing. He asserts that the district court failed to give proper weight and consideration to the additional information provided in support of his Rule 35 motion and the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

Specifically, Mr. Burnside testified that:

I just wanted to state that I know what I did was extremely wrong and stupid, and I want to say that that’s one of my really good friends that is harmed very badly. My mother has been trying to get ahold of his parents. I don’t know how to get in touch with them. I don’t even know how he’s doing; and like I said, he’s one of my really good friends. So I know I’ve screwed his life up a lot, let alone my own and his family and the other victims. I know there’s no way I can make it right. I just wanted the Court to know that I understand fully what I’ve done. That’s it.

(Tr., p.74, Ls.4-14.)

Mr. Burnside asserts that in light of the above additional information and the mitigating factors mentioned in section I, which need not be repeated, but are incorporated by reference, the district court abused its discretion in denying his Rule 35 motion.

CONCLUSION

Mr. Burnside 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. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 16<sup>th</sup> day of October, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> 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

EAA/eas