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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45929
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-9348
v.)	
)	
LANCE DEAN WARR,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Lance Warr pled guilty to robbery and the district court sentenced him to a unified term of life, with 15 years fixed. Mr. Warr asserts the district court abused its discretion by imposing an excessive sentence, in light of the mitigating factors that exist in this case.

Statement of the Facts & Course of Proceedings

After ingesting a substance he at the time believed was methamphetamine, but now believes was bath salts, Lance Warr went into a Fred Meyer store and stole various items,

including a machete. (PSI, pp.3-5.)¹ Mr. Warr then went into a TCBY store nearby, threatened the employees and patrons with the machete, and stole items from two of the customers. *Id.*

The State filed an Information charging Mr. Warr with two counts of robbery, one count of attempted robbery, two counts of aggravated assault, and one count of resisting and/or obstructing an officer. (R., pp.60-62.) Pursuant to a plea agreement, Mr. Warr entered an *Alford* guilty plea² to one count of robbery, agreed to participate in the PSI process, and was free to recommend any sentence he felt appropriate; in exchange, the State agreed to dismiss the remaining charges and to recommend a sentence of 15 years fixed, with up to life indeterminate. (R., pp.91-98; Tr., p.5, L.4 – p.25, L.5.) During the sentencing hearing, the State asked the district court to impose an indeterminate life term, with 15 years fixed (Tr., p.32, Ls.21-24), while counsel for Mr. Warr asked the court to impose a unified term of 20 years, with five years fixed (Tr., p.42, Ls.19-21). The district court followed the State’s recommendation and sentenced Mr. Warr to a term of life, with 15 years fixed. (R., pp.105-108; Tr., p.50, L.25 – p.51, L.5.) Mr. Warr filed a timely Notice of Appeal.³ (R., pp.112-114.)

¹ Citations to the Presentence Investigation Report and its attached materials will include the designation “PSI” and the page number associated with the 515-page electronic file containing those documents.

² See *North Carolina v. Alford*, 400 U.S. 25 (1970) (“An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.”)

³ Documents available via the iCourt Portal reveal that Mr. Warr filed a timely Rule 35 motion requesting the court reduce his sentence, which the district court denied upon finding Mr. Warr did not present any new or additional information in support of his motion. In light of the relevant standards of review, Mr. Warr does not raise the denial of his Rule 35 motion as an issue in this appeal.

ISSUE

Did the district court abuse its discretion by imposing an excessive sentence upon Mr. Warr, in light of the mitigating factors that exist in this case?

ARGUMENT

In Light Of The Mitigating Factors That Exist In This Case, The District Court Abused Its Discretion By Imposing An Excessive Sentence Upon Mr. Warr

Mr. Warr asserts that, given any view of the facts, his unified sentence of life, 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 considering 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.

Beginning when he was just 12 years old, Lance Warr's father gave him drugs, tied him up, and raped him repeatedly over a two-year period. (PSI, p.15.) These events led Mr. Warr to a life of drug addiction, mental illness, and crime. Mr. Warr started using methamphetamine and marijuana when he was 12, and by age 15, he was using heroin on a daily basis. (PSI, pp.20-21.) Over the years, Mr. Warr has also used cocaine, ecstasy, hallucinogens, inhalants, synthetic cannabinoids, and designer stimulants, in addition to alcohol. (PSI, pp.20-21.) Mr. Warr told the PSI writer that he was "tired of this, this is not what I set out to be," and that he believed "intense drug treatment or Mental Health Court," could help him live drug free in the future. (PSI, p.21.)

Mr. Warr also suffers from multiple mental health problems including, Schizophrenia, paranoid type; Post-traumatic Stress Disorder; Persistent Depressive Disorder (Dysthymia); and Cognitive Disorder, NOS (Provisional). (PSI, pp.502-512.) Mr. Warr described his mental

health as “cloudy, chance of rain,” and disclosed that has been taking anti-psychotic drugs “my whole life.” (PSI, p.19.) Mr. Warr believed the Effexor he was taking while awaiting sentencing made his head clearer. (PSI, p.19.) Mr. Warr running out of his prescription medications, and then making the poor choice to seek out and use illicit drugs, was a direct cause of his criminal activity in the present case. (PSI, p.4.)

When Mr. Warr is properly medicated, by all accounts he appears to be a friendly and helpful person. Mr. Warr was on parole when he committed the crimes in this case, and his parole officer stated that Mr. Warr “appears to do well when he is clean and sober surrounded by a good support system,” but recognized that when things go wrong, Mr. Warr chooses to use drugs, which contributes to his criminal activity. (PSI, p.14.) Mr. Warr’s girlfriend, Amber Fannesbeck, wrote a letter in support describing Mr. Warr as selfless, helpful, empathetic, and loving, but she recognizes he needs treatment to help him deal with his childhood traumas, and his substance abuse. (PSI, p.515.)

Mr. Warr was very sorry for his actions. He apologized for putting the victims through the traumatic events he was responsible for creating. (PSI, p.23.) During the sentencing hearing, Mr. Warr stated, “First and foremost I would like to address the people on the receiving end of this crime. I’m apologizing form my actions on that dreadful day ... If I had [the] power to take the incident away from you guys, I would in a heartbeat because none [of] you deserve that ever.” (Tr., p.44, Ls.18-23.)

Idaho Courts recognized that drug addiction and mental health problems coupled with the desire for treatment, in addition to remorse and community support, are all mitigating factors that should counsel a district court to impose a less-severe sentence. *See Hollon v. State*, 132 Idaho 573 (1999); *State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982); *State v.*

Alberts, 121 Idaho 204 (Ct. App. 1991). In light of the mitigating factors that exist in this case, Mr. Warr asserts the district court imposed an excessive sentence.

CONCLUSION

Mr. Warr respectfully requests that this Court reduce his sentence to a unified term of 20 years, with five years fixed, or for whatever other relief this Court deems appropriate.

DATED this 11th day of September, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCP/eas