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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45937-2018
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NO. CR 2017-8242
v.)	
)	
CHRISTOPHER MICHAEL)	
CLINGERMAN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Christopher Michael Clingerman appeals from the district court's Judgment of Conviction. Mr. Clingerman was sentenced to a unified sentence of twenty years, with two years fixed, for his child sexual abuse 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 21, 2017, a Prosecuting Attorney's Information was filed charging Mr. Clingerman with child sexual abuse of a minor under sixteen years of age. (R., pp.54-55.) The charges were the result of a report to police that Mr. Clingerman had been seen kissing a thirteen-year-old. (PSI, p.4.)¹

Mr. Clingerman entered an *Alford*² plea to the sex abuse charge. (R., pp.79-80.) At sentencing, the State requested the imposition of a unified sentence of fourteen years, with two years fixed. (Tr., p.22, Ls.12-20.) Defense counsel recommended that the district court retain jurisdiction and impose a unified sentence of seven or eight years, with two years fixed. (Tr., p.28, Ls.5-7.) The district court exceeded the recommendations and imposed a unified sentence of twenty years, with two years fixed. (R., pp.99-100.) Mr. Clingerman filed a Notice of Appeal timely from the district court's Judgment of Conviction. (R., pp.115-17.) He also filed a timely Motion to Reduce Sentence. (R., pp.107-08.) The motion was denied.³ (R., p.123.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Clingerman, a unified sentence of twenty years, with two years fixed, following his plea of guilty to child sexual abuse?

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.

² *North Carolina v. Alford*, 400 U.S. 25 (1970).

³ On appeal, Mr. Clingerman does not address the denial of his Motion to Reduce Sentence because he did not present new or additional information in support of the motion as is required by *State v. Huffman*, 144 Idaho 201, 203 (2007).

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Clingerman, A Unified Sentence Of Twenty Years, With Two Years Fixed, Following His Plea Of Guilty To Child Sexual Abuse

Mr. Clingerman asserts that, given any view of the facts, his unified sentence of twenty 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)). Mr. Clingerman does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Clingerman 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. Clingerman 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 that the district court failed to give proper consideration to his admitted substance abuse problem and willingness to participate in 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. Clingerman began using alcohol, marijuana, inhalants, and methamphetamine as a young boy. (PSI, p.12.) His drug use expanded to also include cocaine, heroin, other hallucinogens, and ecstasy as a young adult. (PSI, p.13.) He reported using illegal substances daily during the past year, noting he was “heavy into drugs.” (PSI, p.13.) He has been diagnosed with Alcohol Use Disorder, Mild - Early Remission in a Controlled Environment; Stimulant Use Disorder - Amphetamine Type, Severe - Early Remission in a Controlled Environment; and Cannabis Use Disorder, moderate - Early Remission in a Controlled Environment. (PSI, p.21.) It was recommended that he participate in Level Three Residential Treatment. (PSI, pp.14, 33.) Mr. Clingerman is not opposed to treatment. (PSI, p.13.)

Further, Mr. Clingerman suffered from an abusive and neglectful childhood. (PSI, p.8.) A difficult and abusive childhood is a mitigating factor for the sentencing court to consider. *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001), *see also State v. Gonzales*, 123 Idaho 92,

93-94 (Ct. App. 1993). He was placed in his grandmother's home after it was discovered he was still wearing diapers and drinking from a bottle at the age of five. (PSI, p.8.) After that, he lived in several different homes: with his grandmother, mother, and in foster care placements. (PSI, p.8.) He reported that he was physically abused by his step-father and sexually abused by a teenage girl while at his father's home. (PSI, p.8.)

Additionally, Mr. Clingerman suffers from several mental health diagnoses. 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. Clingerman has been previously diagnosed with ADHD, Depression, and Anxiety. (PSI, p.11.) As a juvenile, his diagnosis was debated and suggested possible diagnosis included: Major Depression, Bi-polar Disorder, PTSD, and Borderline Personality Disorder. (PSI, p.12) Recently he was diagnosed with Unspecified Intellectual Disability (Intellectual Developmental Disorder), Depressive Disorder (with Suicide Ideation), and Personality Disorder Not Otherwise Specified (NOS) with Borderline and Antisocial Traits. (PSI, pp.15, 94, 103-04.) He has had suicidal thoughts and attempted suicide, by cutting his wrists, twice in the past year. (PSI, p.11.)

Based upon the above mitigating factors, Mr. Clingerman 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, willingness to participate in treatment, difficult childhood, and mental health issues, it would have crafted a less severe sentence.

CONCLUSION

Mr. Clingerman 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 30th 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 30th day of August, 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