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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45981
Plaintiff-Respondent,)	
)	CASSIA COUNTY NO. CR-2017-2963
v.)	
)	
FLORENCIO MARTINEZ)	APPELLANT’S BRIEF
AGUINAGA,)	
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Following his guilty plea to driving under the influence (“DUI”), the district court sentenced Florencio Aguinaga to eight years, with two years fixed. Mr. Aguinaga appeals, and he asserts the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State charged Mr. Aguinaga with a felony DUI and two misdemeanor offenses for driving without privileges and failure to show proof of insurance. (R., pp.39–41.) Pursuant to a plea agreement, Mr. Aguinaga pled guilty to the DUI, and the State agreed to dismiss the

remaining charges. (R., pp.81–83; Tr. Vol. I,¹ p.4, L.24–p.5, L.9, p.11, L.6–p.13, L.9.) The State also agreed to recommend a sentence of seven years, with two years fixed, and a period of retained jurisdiction. (R., pp.81–82.) Mr. Aguinaga subsequently applied for participation in DUI Court. (R., pp.90–92.) He was accepted into the program. (R., p.103.)

At sentencing, the State made a recommendation consistent with the plea agreement. (Tr. Vol. II, p.5, Ls.16–21.) Mr. Aguinaga requested a suspended sentence and probation so he could participate in DUI Court. (Tr. Vol. II, p.9, Ls.8–10.) The district court sentenced him to eight years, with two years fixed. (Tr. Vol. II, p.17, Ls.7–9.) The district court declined to retain jurisdiction or suspend the sentence. (*See* Tr. Vol. II, p.17, Ls.2–3.) Mr. Aguinaga timely appealed from the district court’s judgment of conviction. (R., pp.108–09, 116–17.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of eight years, with two years fixed, upon Mr. Aguinaga, following his DUI guilty plea?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Eight Years, With Two Years Fixed, Upon Mr. Aguinaga, Following His DUI Guilty Plea

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Aguinaga’s sentence does not exceed the statutory maximum. *See* I.C. § 18-8005(6)(a), (9) (ten year maximum). Accordingly, to show that the

¹ There are two transcripts on appeal. The first, cited as Volume I, contains the entry of plea hearing. The second, cited as Volume II, contains the sentencing hearing.

sentence imposed was unreasonable, Mr. Aguinaga “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

“The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant’s rehabilitative potential and suitability for probation.” *State v. Jones*, 141 Idaho 673, 676 (Ct. App. 2005). “[P]robation is the ultimate objective of a defendant who is on retained jurisdiction.” *Id.* at 677. The district court’s decision to retain jurisdiction is reviewed for an abuse of discretion. *Id.* “There can be no abuse of discretion in a trial court’s refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation.” *Id.* Similarly, “[t]he choice of probation, among available sentencing alternatives, is committed to the sound discretion of the trial court” *State v. Landreth*, 118 Idaho 613, 615 (Ct. App. 1990).

In this case, Mr. Aguinaga asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment, retained jurisdiction, or suspended his sentence in order for him to participate in DUI Court. The mitigating factors, including his pre-sentencing behavior, employment, support network, and commitment to his sobriety, supported a more lenient sentence for Mr. Aguinaga.

Since the instant offense, Mr. Aguinaga demonstrated to the district court that he was ready to get sober and become a productive member of society. Mr. Aguinaga had been released from custody for nine months prior to sentencing. (Tr. Vol. II, p.9, Ls.10–11.) During this time, he took random UA tests twice a week, and he never failed a test. (Tr. Vol. II, p.9, Ls.11–14.) He also obtained steady employment with Southern Field Welding. (R., p.106; Tr. Vol. II, p.11, Ls.17–18.) To stay busy, he volunteered to work extra hours and overtime. (Tr. Vol. II, p.10, Ls.14–18.) Southern Field Welding wrote a letter of support to the district court, stating that Mr. Aguinaga had “done a very good job since he started his employment.” (R., p.106.) They wrote that Mr. Aguinaga was “very prompt,” “never late to work,” “very responsible,” and “dedicated to his job.” (R., p.106.) They described him as “a great asset to our team” and “key to our success.” (R., p.106.) They were willing to work with his probation officer and the district court so he could continue to work while complying with any terms of supervision. (R., p.106.) They “strongly believe[d] that Florencio is genuinely trying to improve his life and wants to turn to a new chapter that doesn’t involve trouble with Law Enforcement and our Judicial System.” (R., p.106.) Mr. Aguinaga’s sobriety and employment stand in favor of mitigation.

In addition to his positive pre-sentencing behavior, Mr. Aguinaga had a strong support network and was motivated to change. Mr. Aguinaga regretted drinking alcohol. (PSI, p.4.) He

started drinking alcohol as a teenager, but he has had long periods of sobriety. (PSI, p.20.) He recognized that his alcohol consumption contributed to his criminal behavior. (PSI, p.22.) In describing the instant offense, he wrote, “I placed my life, health, and community at risk.” (PSI, p.4.) At sentencing, he characterized his arrest as “a blessing.” (Tr. Vol. II, p.11, Ls.9–10.) He stated that he had “a true desire, a genuine desire to stay clean and sober.” (Tr. Vol. II, p.14, Ls.3–4.) Similarly, the GAIN Evaluation found that his responses indicated a high motivation for treatment. (PSI, p.29.) His rationale for staying sober was not about avoiding jail time, but “about wanting to stay clean and keep it that way for my family, for society, for my job, and for everyone involved in my life.” (Tr. Vol. II, p.14, Ls.5–9.) He wanted to take advantage of the programming provided during a period of retained jurisdiction or in DUI Court. (Tr. Vol. II, p.12, Ls.7–12.) Additionally, Mr. Aguinaga had a great relationship with his parents. (PSI, p.16.) He lived with them since 2010. (PSI, pp.16–17.) A co-worker and friend also wrote a letter of support. (R., p.107.) He described Mr. Aguinaga as of “very good moral character,” “hardworking,” and “dedicated.” (R., p.107.) He wrote that Mr. Aguinaga was never late for work, never left a job unfinished, and volunteered to work on Sunday. (R., p.107.) This co-worker and friend had “no doubts about his abilities to succeed.” (R., p.107.) Mr. Aguinaga’s commitment to staying sober and his support network also supported a lesser sentence.

In conclusion, the mitigating factors in this case did not justify a prison sentence for Mr. Aguinaga. The district court should have retained jurisdiction or suspended Mr. Aguinaga’s sentence in order for him to participate in DUI Court. By failing to give adequate weight to the mitigating circumstances in this case, the district court did not exercise reason and thus abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Aguinaga respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he respectfully requests that this Court vacate the district court's judgment of conviction and remand his case for a new sentencing hearing.

DATED this 9th day of August, 2018.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of August, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, electronically as follows:

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
Delivered via e-mail to: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas