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### State v. Davis Appellant's Brief Dckt. 46039

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46039
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-17-45765
v.	)	
	)	
JACE ALLAN DAVIS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Jace Davis pled guilty to possession of methamphetamine and was sentenced to a unified term of six and one-half years, with one and one-half years fixed. Mr. Davis asserts the district court abused its discretion by imposing an excessive sentence, in light of the mitigating factors that exist in his case.

## Statement of the Facts & Course of Proceedings

Jace Davis was riding his bike in the dark without a bike light. (PSI, p.1.)<sup>1</sup> Mr. Davis tried to elude the officers by riding away from them when they attempted to seize him, but he was arrested a short time later in a nearby trailer park. (PSI, p.1.) When Mr. Davis was taken to jail, deputies found a baggy containing methamphetamine in his jacket pocket. (PSI, pp.1-2.) The State filed a criminal complaint charging Mr. Davis with possession of methamphetamine, introduction of contraband into a correctional facility, resisting or obstructing an officer, and possession of drug paraphernalia. (R., pp.7-8.) Mr. Davis waived his right to a preliminary hearing, was bound over into the district court, and an information was filed charging him with the above crimes. (R., pp.13-18.)

Pursuant to an agreement with the State, Mr. Davis pled guilty to possession of methamphetamine and was free to argue for an appropriate sentence; in exchange, the State agreed to dismiss the remaining counts, agreed not to file a persistent violator allegation, and agreed to recommend the court impose a unified term of seven years, with two years fixed, to be served concurrently with other sentences that had been previously imposed and suspended in separate cases. (R., pp.27-31; Tr., p.5, L.18 – p.12, L.19.) During the sentencing hearing, the State asked the district court to impose a unified term of seven years, with two years fixed, to run concurrently with the sentences executed in Mr. Davis' other cases (Tr., p.19, L.9 – p.20, L.2), while Mr. Davis' counsel requested the court impose a concurrent term of five years, with one year fixed (Tr., p.21, Ls.19-21). The district court sentenced Mr. Davis to a unified term of six and one-half years, with one and one-half years fixed, to run concurrently with Mr. Davis' other

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<sup>1</sup> Citations to the Presentence Investigation Report and attached documents will use the designation "PSI" and the page number associated with the 224-page electronic file containing those documents.

sentences. (R., pp.35-39; Tr., p.28, Ls.14-19.) Mr. Davis filed a timely Notice of Appeal.<sup>2</sup>  
(R., pp.44-46.)

### ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Davis a unified sentence of six and one-half years, with one and one-half years fixed, in light of the mitigating factors that exist in this case?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed Upon Mr. Davis A Unified Sentence Of Six And One-Half Years, With One And One-Half Years Fixed, In Light Of The Mitigating Factors That Exist In This Case

Mr. Davis asserts that, given any view of the facts, his unified sentence of six and one-half years, with one and one-half 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.

Jace Davis has a substance abuse problem and he desires treatment. Mr. Davis' parents were constantly fighting with each other when he was young, and he suffered physical abuse from his father, whom Mr. Davis described as "an 'abusive drunk'" and "'not a nice person.'"

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<sup>2</sup> Mr. Davis also filed a timely Rule 35 motion seeking leniency, but did not provide any new or additional information, and the district court denied the motion. (R., pp.43, 49-52.) In light of the relevant standards of review, Mr. Davis does not challenge the denial of his Rule 35 motion in this appeal.

(PSI, pp.55-56.) Mr. Davis reported he has been diagnosed at various times with ADHD, Bipolar disorder, severe depression, Schizoaffective Social Disorder, and anxiety. (PSI, p.59.) Unfortunately, Mr. Davis self-medicated with various substances including alcohol, beginning at age 13, and methamphetamine, beginning at age 20. (PSI, pp.59-60.) Mr. Davis has also used marijuana, cocaine, and prescription drugs he obtained without a prescription. (PSI, pp.59-60.)

Mr. Davis recognizes that he has a substance abuse problem. In his PSI questionnaire, Mr. Davis stated, “Plain and simple, I am an addict. I am battling drug addiction. I need/needed help!!” (PSI, p.2 (underline in original).) During his sentencing hearing, Mr. Davis informed the court that he was there to take responsibility for his actions, told the court about the programming he was currently taking in prison, and recognized that it was his fault that he did not engage in the aftercare program when he was placed on probation after a previous rider. (Tr., p.24, L.11 – p.25, L.16.)

Idaho Courts recognized that a defendant’s willingness to engage in treatment for substance abuse issues, mental illness, and acceptance of responsibility, are all mitigating factors that should counsel a court to impose a more lenient sentence. *See State v. Nice*, 103 Idaho 89 (1982); *Hollon v. State*, 132 Idaho 573 (1999); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). Mr. Davis asserts that, in light of the mitigating factors that exist in his case, the district court imposed an excessive sentence.

CONCLUSION

Mr. Davis respectfully requests that this Court reduce his sentence to a unified term of six years, with one year fixed, or for any other relief the Court deems appropriate.

DATED this 26<sup>th</sup> 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 26<sup>th</sup> 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  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

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

JCP/eas