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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46040
)	
v.)	ADA COUNTY NO. CR01-17-53351
)	
TROY MATTHEW DAVENPORT,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Troy Matthew Davenport pled guilty to possession of a controlled substance and the district court sentenced him to prison for seven years, with two fixed. On appeal, Mr. Davenport asserts that the district court abused its discretion by declining to place him on probation.

Statement of the Facts and Course of Proceedings

Mr. Davenport was approached by an officer while parked at a gas pump of a Jackson's Store, in Meridian; he had fallen asleep while refueling his pickup. (PSI, pp.1, 22.)¹ After he informed the officer he was on probation and gave consent to search his person and his pickup, the police found methamphetamine, amphetamine, syringes and a pipe. (PSI, p.1.) The State charged Mr. Davenport with two counts of possessing a controlled substance and one count of possessing drug paraphernalia. (R., p.22.) Pursuant to a plea agreement, Mr. Davenport pled guilty to possession of a controlled substance; in exchange, the State dismissed the remaining counts and capped its sentencing recommendation at seven years, with three years fixed, to run concurrently with his sentence in his probation case.² (1/31/18 Tr., p.1, Ls.11 – 3, L.17; R., pp.27-30.) Mr. Davenport requested an underlying sentence of seven years, with two years fixed. (4/10/18 Tr., p.15, Ls.7-10). However, he also asked for the chance of treatment in the community and informed the district court he had been accepted into two different programs, Ascent Behavioral Health and Celebrate Recovery. (4/10/18 Tr., p.21, L.16 – p.23, L.14; PSI, pp.20-21.)

The district court imposed a seven-year term, with two years fixed, as requested by Mr. Davenport, but declined his request for probation. (4/10/18 Tr., p.29, L.3 – p.31, L.14.) Mr. Davenport filed a timely Notice of Appeal. (R., p.51.)

¹ Citations to the Presentence Investigation Report use the designation "PSI" and will include the page numbers associated with the 469-page electronic file containing those documents.

² The order revoking Mr. Davenport's probation in Canyon County Case CR-15-13853 is not part of this appeal.

ISSUE

Did the district court abuse its discretion when it declined to place Mr. Davenport on probation?

ARGUMENT

The District Court Abused Its Sentencing Discretion When It Declined To Place Mr. Davenport On Probation

A. Introduction

Mr. Davenport does not challenge the length of his sentence as excessive, as he requested a term of seven years, with two years fixed. (*See* 4/10/18 Tr., p.15, Ls.7-10.) However, he claims that given his history of drug addiction and his strong potential to overcome that addiction, and in light of his family support, work ethic, and business success, the district court's refusal to place him on probation to allow community treatment represents an abuse of discretion.

B. Standard Of Review

When the appellate court reviews an alleged abuse of discretion by the district court, the sequence of inquiry requires consideration of four essentials: whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018) (citing *Hull v. Giesler*, 163 Idaho 247, 250 (2018)).

In this appeal, Mr. Davenport asserts the district court abused its discretion under the fourth, "reasonableness," prong of the standard.

C. The District Court's Decision To Decline Probation, And To Sentence Mr. Davenport To Prison Instead, Was Unreasonable Under The Circumstances

Idaho Code § 19-2521 *requires* that the district court *not* impose a prison sentence unless it finds that specific criteria are met. Specifically,

[t]he court shall deal with a person who has been convicted of a crime “*without* imposing sentence of imprisonment *unless*,” having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

- (a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
- (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- (c) A lesser sentence will depreciate the seriousness of the defendant's crime; or
- (d) Imprisonment will provide appropriate punishment and deterrent to the defendant; or
- (e) Imprisonment will provide an appropriate deterrent for other persons in the community; or
- (f) The defendant is a multiple offender or professional criminal.

I.C. § 19-2521(1) (emphasis added).

Based on an independent examination of the record and the application of the statutory criteria, this Court should conclude the district court’s refusal to place Mr. Davenport on probation, and to send him to prison instead, was unreasonable, representing an abuse of discretion.

Mr. Davenport is in his forties and he has battled drug addiction for years. (PSI, pp.5, 319-29.) He has four prior felony drug convictions, which are his only felonies. (PSI, pp.36-41; 4/10/18 Tr., p.10, Ls.8-10.) Despite his addiction, Mr. Davenport has achieved substantial, highly productive periods of sobriety, running a successful construction business that provided regular work to others. (PSI, pp.5, 319-29; Aug.PSI, pp.2-4.) He has shown success in structured treatment programs, successfully performing on his previous riders in 2005 and 2011, and in his drug court programs in 2013 and 2017. (PSI, pp.5, 319-29; Aug.PSI, pp.2, 3, 47.) He

had been doing well on supervision after graduating drug court, but he relapsed into drug use following the news of his father's cancer diagnosis. (PSI, p.2; Aug.PSI, p.4.)

Mr. Davenport needs continued help to prevent relapses; he performs exceptionally well in structured community programs, and imprisonment is unnecessary. (*See* PSI, pp.41-42.) His most recent GAIN assessment indicates that he still lacks the skills for coping with stress and managing his thoughts and behaviors, and cognitive-behavior therapy will be useful to develop those skills. (PSI, p.9.) According to the GAIN assessment, Mr. Davenport "requires structured therapy and a programmatic milieu to promote treatment progress and recovery because motivational interventions in the past have failed." (PSI, p.9.) That assessment also concluded that Mr. Davenport's recovery environment in the community was sufficiently stable and that with structure and support he can cope. (PSI, p.11.) Indeed, Mr. Davenport has strong support from his mother, whom he called every day, as he had promised his late father that he would take care of her. (Aug.PSI, p.2.) Mr. Davenport also has the support of his fiancé, who believes in and relies on Mr. Davenport's caring, capable, and hard-working character to build a life for herself and their young daughter. (Aug.PSI, pp.4-5.)

Mr. Davenport knows he is an addict and that sobriety takes hard work. Although recovery has been elusive for Mr. Davenport, he is motivated to take control of his addiction; he understands the toll his drug use takes not only on himself, but on his family and his business, and Mr. Davenport has not given up on changing his life. As he explained at sentencing,

I am an addict. I freely admit that. I understand that. The prosecution says I have been given all these opportunities at programs and drug court and riders and getting nothing out of them, which isn't true. I have gained a lot out of them. And unfortunately, I am an addict. I would give my left hand to get rid of that. If my addiction was just in my left hand I would have it amputated to be done with it, because it has costed me – it's cost me a lot in life, and it continues to cost me a lot in life. I talk to my mom and fiancé on a daily basis, both of which are struggling financially because I am not able to be out there to do what I need to do

to help them out. I have clients that are put in positions where they have to find other people to do their work.

...

I hope you give me an opportunity to continue to get out there in society and be somewhat of a productive member of society. This last time I was out I lived in a three-bedroom house, I paid \$900 a month rent every month. I paid \$550 back child support trying to pay what I owed in arrears. I paid my taxes, I paid my insurances for my business, I paid insurances for my vehicles, I paid my car payments, I did all the stuff that normal people do. I was making a real crack at an honest life and then my addiction got the better of me. So I hope I can return back to continue making progress.

(Tr., p.22, L.21 – p.26, L.16.)

Mr. Davenport asserts that, in light of his addiction and his strong potential for overcoming that addiction, the district court's decision to send him to prison rather than place him on probation was unreasonable, representing an abuse of discretion.

CONCLUSION

Mr. Davenport asks this Court to vacate his sentence and remand his case to the district court with instructions that it place Mr. Davenport on probation.

DATED this 19th day of November, 2018.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of November, 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

KAC/eas