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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46872-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-18-21559
v.)	
)	
CAMRON DEAN BELCHER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Camron Dean Belcher pleaded guilty to felony harboring a wanted felon. The district court imposed a unified sentence of four years, with two years fixed, and retained jurisdiction. After Mr. Belcher was placed on a “rider,” the district court relinquished jurisdiction and executed the sentence. On appeal, Mr. Belcher asserts the district court abused its discretion when it imposed his sentence, and when it relinquished jurisdiction.

Statement of the Facts & Course of Proceedings

Garden City Police Department officers went to the home of Daniele Weekley, who had a confirmed failure to appear felony warrant. (Presentence Report (*hereinafter*, PSI), p.1.)¹ When the officers arrived, Mr. Belcher stated Ms. Weekley was not in the home, and he was watching her child. (PSI, p.1.) Also inside the home was Charzell Williams, a known felon, who initially lied to the police about his name and denied Ms. Weekley was in the home. (PSI, p.1.)

While officers were speaking with Mr. Belcher, neighbors told other officers that Ms. Weekley was in the home and had been seen walking inside. (PSI, p.1.) Officers conducted a safety sweep of the house and found Ms. Weekley hiding in a bedroom. (PSI, p.1.) The officers arrested Mr. Belcher and Mr. Williams for harboring a fugitive. (PSI, p.1.) After officers informed Mr. Belcher of the charges, he stated he was going to kill himself, started banging his head against a railing near the porch of the house, and continued banging his head on the cage of the patrol car. (PSI, pp.1-2.) Officers used a mandibular angle technique to keep Mr. Belcher from harming himself and took him to the Ada County Jail. (PSI, p.2.)

The State charged Mr. Belcher by Information with harboring a wanted felon, felony, I.C. § 18-205. (R., pp.25-26.) Pursuant to a plea agreement, Mr. Belcher agreed to plead guilty to harboring a wanted felon, and the State agreed to not file an Information Part II. (Tr., p.5, Ls.11-22; R., pp.29-34.) Sentencing recommendations would be open, and the sentence would run concurrently with any other holds or cases Mr. Belcher had.² (Tr., p.5, Ls.12-17.) The district court accepted Mr. Belcher's guilty plea. (Tr., p.14, L.16 – p.15, L.7.)

¹ All citations to the PSI refer to the 779-page PDF version of the File Review Presentence Report and its attachments.

² At the time of the incident here, Mr. Belcher was on parole in Ada County No. CRFE-16-4545, a possession of a controlled substance case. (*See* PSI, pp.2-3, 169.)

At the sentencing hearing, Mr. Belcher recommended the district court impose a unified sentence of three years, with one year fixed, and retain jurisdiction, with the sentence to run concurrently with anything else. (Tr., p.25, Ls.6-11.) The State recommended the district court impose a unified sentence of five years, with two and one-half years fixed, to run concurrently with Mr. Belcher's other felony holds. (Tr., p.19, L.22 – p.20, L.5.) The district court imposed a unified sentence of four years, with two years fixed, to run concurrently with any holds, and retained jurisdiction for evaluative purposes. (R., pp.44-47.)

The Idaho Department of Correction placed Mr. Belcher in an Advanced Practices "rider" at the Idaho State Correctional Institution (ISCI). (See PSI, pp.760-61.) However, "Mr. Belcher did not attend any classes in Advanced Practice[s] as he was in and out of unit 8 and secure status." (PSI, p.762.) The Addendum to the Presentence Report (APSI) recommended that the district court relinquish jurisdiction. (PSI, pp.760, 763.)

At the rider review hearing, Mr. Belcher recommended the district court consider "getting him out into the community again." (See Tr., p.47, Ls.10-17.) The State recommended that the district court relinquish jurisdiction and execute Mr. Belcher's sentence. (See Tr., p.40, L.20 – p.41, L.18.) The district court relinquished jurisdiction and executed the sentence, with recommendations that Mr. Belcher be allowed treatment and programming to enable him to be eligible for parole at the earliest possible time. (See R., pp.52-55.)

Mr. Belcher filed a Notice of Appeal timely from the district court's Order Relinquishing Jurisdiction and Commitment. (R., pp.56-58.)

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of four years, with two years fixed, upon Mr. Belcher following his plea of guilty to harboring a wanted felon?
- II. Did the district court abuse its discretion when it relinquished jurisdiction?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Four Years, With Two Years Fixed, Upon Mr. Belcher Following His Plea Of Guilty To Harboring A Wanted Felon

Mr. Belcher asserts the district court abused its discretion when it imposed a unified sentences of four years, with two years fixed, upon him following his plea of guilty to harboring a wanted felon. The district court should have instead followed Mr. Belcher's recommendation by imposing a unified sentence of three years, with one year fixed. (*See Tr.*, p.25, Ls.6-11.)

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 "due regard to the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Strand*, 137 Idaho 457, 460 (2002).

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) (internal quotation marks omitted). Mr. Belcher does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Belcher must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. Belcher asserts the sentence imposed by the district court is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider Mr. Belcher’s remorse and acceptance of responsibility. During the presentence investigation, Mr. Belcher explained, “I [accept] my part of what I did.” (PSI, p.2.) He further stated, “I regret my choice it was compulsive of me and everything happened so fast.” (PSI, p.2.) Mr. Belcher “was medicated on [Percocet] 10 mg for my hand it impacted my choices as well.” (PSI, p.2.) He stated, “I’m very sorry” (PSI, p.2.) In his comments to the district court, Mr. Belcher stated: “I’m genuinely sorry I feel worthless and I’m struggling inside myself. I’m institutionalized I keep thinking [criminally] I want to stop. I want to overcome hearing voices, PTSD, [etc.] . . .” (PSI, p.2.) He also stated, “I want to break the chain please help me!” (PSI, p.2.)

At the sentencing hearing, Mr. Belcher’s counsel informed the district court that Mr. Belcher had been seriously injured in a car accident. (*See* Tr., p.24, L.4 – p.25, L.5.) Counsel stressed that Mr. Belcher was not culpable in that accident. (*See* Tr., p.24, Ls.23-25.) Moreover, defense counsel told the district court that Mr. Belcher “certainly had a defense, and I talked to him about that, but he was adamant that he wanted to take responsibility. He wanted to move forward with his life.” (Tr., p.25, Ls.14-17.) Mr. Belcher wanted the district court “to take into consideration that I was taking Percocet 10s for my hand from the accident. I was on

Percocet 10s and morphine 30s. When the police showed up, everything seemed to happen so fast, you know. And again, that prison mentality got the best of me.” (Tr., p.32, L.25 – p.33, L.5.) He further stated, “I just want to try to be better.” (Tr., p.33, Ls.7-8.)

Additionally, the district court did not adequately consider Mr. Belcher’s mental health issues. Mr. Belcher’s 2016 presentence report related that Mr. Belcher had stated he suffered a head injury after being attacked by another inmate in 2014, and since then he had been hearing voices. (*See* PSI, p.159.) Mr. Belcher reported he had been previously diagnosed with a traumatic brain injury, hearing voices, PTSD, ADD, ADHD, depression, and anxiety. (PSI, p.177.) He had also attempted suicide on at least two reported occasions. (*See* PSI, p.177.) Further, in 2016, Mr. Belcher was admitted to Intermountain Hospital after expressing suicidal thoughts. (*See* PSI, p.672.) While Mr. Belcher was released after stating he was not actually suicidal, his discharge diagnoses from Intermountain were posttraumatic stress disorder and a traumatic brain injury. (*See* PSI, p.672.)

Addressing the district court at the sentencing hearing, Mr. Belcher stated, “I have mental health issues from the TBI, so there’s times when I am in a shell by myself or whatever, when I’m hearing voices or anything like that.” (Tr., p.32, Ls.7-10.) Mr. Belcher’s counsel told the district court that he had spoken with Mr. Belcher about those issues, “and he takes his mental health very seriously. But it is something that he struggles with and again, the prison setting has been something that has been difficult to maintain good mental health at.” (Tr., p.27, L.18 – p.28, L.5.)

The district court also did not give adequate consideration to Mr. Belcher’s substance abuse problems. Mr. Belcher’s 2016 presentence report indicated he had been using marijuana in an attempt to stop the voices in his head, and after that did not work, he began injecting

methamphetamine regularly. (*See* PSI, p.179.) During the sentencing hearing in this case, Mr. Belcher's counsel stated there were "certainly some substance abuse and mental health issues that he suffers from." (Tr., p.27, Ls.18-19.) In his statement to the district court, Mr. Belcher stated: "I want to make it very clear that prison is not a place where people go to get better. It is a place that is still full of drugs." (Tr., p.31, Ls.7-10.)

Because the district court did not adequately consider the above mitigating factors, the sentence imposed is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed Mr. Belcher's sentence. The district court should have instead followed Mr. Belcher's recommendation by imposing a unified sentence of three years, with one year fixed.

II.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

Mr. Belcher asserts that the district court abused its discretion when it relinquished jurisdiction. An appellate court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). The district court's discretion in deciding whether to relinquish jurisdiction is not limitless. *State v. Rhoades*, 122 Idaho 837, 837 (Ct. App. 1992).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issues 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). The principal purpose of retained jurisdiction is to provide a period of evaluation of the offender's potential for rehabilitation and suitability for probation. *State v. Petersen*, 149 Idaho 808, 812 (Ct. App. 2010).

Here, the district court abused its discretion when it relinquished jurisdiction, in light of Mr. Belcher's potential for rehabilitation and suitability for probation. Mr. Belcher had hoped that the opportunity to go on a rider would allow him to escape the negative situation he had faced in prison. (*See Tr.*, p.31, L.7 – p.32, L.24.) During the sentencing hearing, Mr. Belcher told the district court that, if he could get into a setting without a criminal mentality or people judging him for trying to apply his programming, "maybe I can reflect more on myself and try to figure out what it is that keeps me going back." (*See Tr.*, p.32, Ls.16-24.)

Unfortunately, the Idaho Department of Correction returned Mr. Belcher to that negative prison situation, by placing him in an Advanced Practices rider at ICSI. (*See PSI*, p.760.) The APSI reported that, while Mr. Belcher was at ICSI for the rider, he incurred multiple formal and informal disciplinary sanctions, and did not attend any Advanced Practices classes. (*See PSI*, pp.761-62.) However, during the rider review hearing, Mr. Belcher explained that the APSI did not tell the whole story.

For example, Mr. Belcher's counsel told the district court that Mr. Belcher agreed with the Class B DOR where he had covered his window and would not uncover it, but explained: "He indicates that when they had the team come in and extract him from the cell was when he was having some problems [when] he found out that his brother was in the hospital. . . . He asked to be able to use the phone to be able to contact his brother and was not allowed to do so at that time." (*Tr.*, p.42, Ls.1-11; *see PSI*, p.762.) Mr. Belcher had told counsel, "he just sort of

lost it a little bit at that time. And that was sort of the impetus of what happened there.” (Tr., p.42, Ls.11-13.)

Mr. Belcher’s counsel also informed the district court that Mr. Belcher disagreed with the DOR talking about Mr. Belcher threatening a correctional officer, and stated it “was investigated and dismissed.” (Tr., p.42, Ls.14-17; *see* PSI, p.762.) Mr. Belcher likewise told the district court: “That DOR was dismissed. It shouldn’t even be on the paper because that is not what I told him.” (Tr., p.50, L.24 – p.51, L.2.)

As for the DOR showing that Mr. Belcher had tested positive for methamphetamines or amphetamines, defense counsel told the district court Mr. Belcher had been placed on a tier “with a lot of hostility,” and people on that tier were forced to take methamphetamines; Mr. Belcher had seen drugs the entire time on his rider, including drugs being passed from correctional officers to inmates; and Mr. Belcher “indicated that he was in fear for his life that he would receive physical repercussions if he didn’t comply with some of the things that were asked of him during this time.” (*See* Tr., p.43, Ls.1-15; PSI, pp.671-72.) That took Mr. Belcher “back to 2014 where he was in custody as well and he again was involved in an altercation that he suffered a TBI. So all in all, he said it was kind of a traumatic experience” (Tr., p.43, Ls.16-20.) Mr. Belcher stated: “Everybody in that tier had to get high, period, or get smashed off the tier. That’s a messed up choice, you know what I mean? And that’s how it is.” (Tr., p.51, Ls.16-19.)

Mr. Belcher had also spoken with counsel “about his mental health,” and “[h]e felt like that was never really addressed when he was there.” (Tr., p.43, Ls.20-22.) The mental health discharge summary attached to the APSI stated that Mr. Belcher was receiving psychotropic medication, but he had a history of not following through with clinical recommendations. (*See*

PSI, pp.765-66.) However, Mr. Belcher told the district court: “As soon as I went to ISCI, I have concern forms this high trying to get into the BHU, trying to get mental health help, and they were[] doing nothing for me. I called my attorney and tried to get him to talk to them and still they wouldn’t do anything for me.” (Tr., p.51, Ls.9-14.) Later, he stated: “And warehousing people, especially me with my mental health problems, I am not getting any help, you know what I am saying? I am getting worse and worse and worse being where I am at.” (Tr., p.54, Ls.17-21.)

Additionally, defense counsel told the district court that Mr. Belcher “[d]oesn’t feel like he had ever really been given a chance to do this rider because of the situation he’s been forced to do the rider in. He understands, you know, that is up to IDOC where he is going to do the rider. But he feels he has a lot of resentment at this point.” (Tr., p.45, Ls.9-14.) Mr. Belcher stated, “I was constantly trying to program, constantly trying to get into BHU, trying to get into a system where I can actually do a program, you know what I mean? And prison, I always have problems there.” (Tr., p.52, Ls.1-6.)

Mr. Belcher had been able to escape some of the “chaos” that he was involved by being placed in protective custody. (*See* Tr., p.44, L.23 – p.45, L.4.) But Mr. Belcher’s counsel notified the district court that Mr. Belcher “feels at this point that is really being institutionalized.” (Tr., p.45, Ls.4-6.) Mr. Belcher stated: “[B]eing in prison is not the answer. It is not going to help me.” (Tr., p.54, L.25 – p.55, L.2.) He wanted to “go to the Walker Center on a bracelet,” or “go to the 19-month program at the River of Life,” which would slowly reintegrate him back into the community. (*See* Tr., p.55, Ls.2-6.)

Thus, during the rider review hearing, Mr. Belcher explained that the APSI did not tell the whole story of his experiences on the rider. In light of the above, Mr. Belcher submits that the district court abused its discretion when it relinquished jurisdiction.

CONCLUSION

For the above reasons, Mr. Belcher respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 23rd day of September, 2019.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2019, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

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

BPM/eas