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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|------------------------|---|------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 46899-2019 |
| Plaintiff-Respondent, |) | |
| |) | ADA COUNTY NO. CR01-18-52429 |
| v. |) | |
| |) | |
| MIGUEL ANGEL CARRILLO, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Miguel Angel Carrillo pled guilty to one count of possession of methamphetamine. He received a unified sentence of seven years, with two and a half years fixed. Mr. Carrillo contends that his sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

On October 30, 2018, law enforcement was surveilling a blue Saturn vehicle. (Presentence Investigation Report (*hereinafter*, PSI),¹ pp.69, 169.) Miguel Angel Carrillo and another man parked next to the Saturn in a red Lexus car. (PSI, pp.69, 169.) The two men began moving items from the Saturn to the Lexus. (PSI, p.169.) Law enforcement confronted Mr. Carrillo and asked him his connection to the car. (PSI, pp.69, 169.) Upon learning that Mr. Carrillo was on probation and had executed a waiver of his Fourth Amendment rights, the officers searched the Lexus. (PSI, pp.69, 98, 169.) In the locked glove compartment, a white crystalline substance was found. (PSI, pp.69, 169.) The substance tested presumptively positive for methamphetamine. (PSI, p.39.) In the backseat of the car, officers located items of drug paraphernalia including a pipe. (PSI, pp.70, 169-170.) Based on these facts, Mr. Carrillo was charged by Information with one count of possession of methamphetamine with intent to deliver and one count possession of drug paraphernalia. (R., pp.20-21.)

Pursuant to a plea agreement, Mr. Carrillo pled guilty to an amended information charging him with possessing methamphetamine.² (1/8/19 Tr., p.6, L.7 – p.8, L.8; p.16, L.24 – p.17, L.19; R., pp.20-21, 26-37.) In exchange, the State agreed to dismiss the misdemeanor, not to file a persistent violator sentencing enhancement, and to recommend a sentence of seven years, with four years fixed. (1/8/19 Tr., p.6, L.7 – p.8, L.8; R., p.25.)

At the sentencing hearing, the State asked the district court to sentence Mr. Carrillo to a unified sentence of seven years, with four years fixed. (3/11/19 Tr., p.8, Ls.16-21.)

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

Mr. Carrillo's counsel asked the district court to retain jurisdiction or sentence him to a one to two years fixed term. (3/11/19 Tr., p.10, Ls.5-11.) However, Mr. Carrillo was sentenced to seven years, with two and one-half years fixed.³ (3/11/19 Tr., p.13, Ls.19-24; R., pp.45-47.)

Mr. Carrillo then filed a timely Rule 35 motion asking the district court to reconsider the sentence. (R., pp.51-54.) The State filed an objection to Mr. Carrillo's Rule 35 motion for leniency, claiming that the sentence imposed was reasonable.⁴ (R., pp.56-59.) Mr. Carrillo filed a notice of appeal timely from the judgment of conviction. (R., pp.48-50.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of seven years, with two and one-half years fixed, upon Mr. Carrillo following his plea of guilty to possessing methamphetamine?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Two And One-Half Years Fixed, Upon Mr. Carrillo Following His Plea Of Guilty To Possessing Methamphetamine

Mr. Carrillo asserts that, given any view of the facts, his unified sentence of seven years, with two 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. *See State v. Reinke*, 103 Idaho 771 (Ct. App.

² Mr. Carrillo also had a pending probation violation in Ada County case number CR-FE-2015-17831 based, in part, on the new charges. (1/8/19 Tr., p.19, L.17 – p.20, L.24.) The two cases were consolidated for sentencing. (PSI, p.214.)

³ At disposition, the district court commuted the sentences in Mr. Carrillo's probation violation case and gave him credit for time served. (3/11/19 Tr., p.13, Ls.19-21.)

⁴ As of the date of this Appellant's Brief, the district court had not yet ruled on Mr. Carrillo's Rule 35 motion.

1982). In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

Mr. Carrillo does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by the exercise of reason, Mr. Carrillo must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997). 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.*

In light of the mitigating factors present in this case, Mr. Carrillo's sentence is excessive considering any view of the facts.

Mr. Carrillo has been diagnosed with major depressive disorder and provisionally diagnosed with generalized anxiety disorder. (PSI, pp.116-117, 128, 178-179, 188, 200; 1/8/19 Tr., p.10, L.10 – p.11, p.4.) He has engaged therapy, including hypnosis and weekly counseling sessions. (PSI, p.117.) He believes the hypnosis calmed him down and that he would benefit from further counseling. (PSI, pp.117, 179.) He reports that he was able to function better while in therapy. (PSI, p.117.) Mr. Carrillo also takes medication for his depression. (PSI, pp.178-179, 192.) The Idaho Supreme Court has held that the trial court must consider a defendant's mental illness as a factor at sentencing. *Hollon v. State*, 132 Idaho 573, 581 (1999).

The Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). In *Nice*, the Idaho Supreme Court reduced a sentence based on Nice's lack of prior record and the fact that "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing the defendant to commit the crime and the suggested alternatives for treating the problem." *Id.* at 91. Additionally, the Idaho Supreme Court has ruled that ingestion of drugs and alcohol resulting in impaired capacity to appreciate criminality of conduct, could be a mitigating circumstance. *State v. Osborn*, 102 Idaho 405, 414 (1981). Although Mr. Carrillo first tried methamphetamine at age fifteen, he did not begin using it intravenously until 2015, when he was thirty years old. (PSI, pp.117-118, 129.) Mr. Carrillo recognizes that he is addicted to methamphetamine—he uses it as a coping mechanism and to help him forget. (PSI, pp.118-120.) Mr. Carrillo has engaged in substance abuse treatment and once stayed clean for a five year period of time, but when he lost his job, got behind on his bills and became depressed, he isolated himself and relapsed back on methamphetamine. (PSI, pp.118, 129-130, 180.) Mr. Carrillo is aware of this pattern, and he has asked his friends and family to call him on it when he isolates himself so that he does not end up using methamphetamine again. (PSI, pp.118-120.) He is willing to do anything to stop using methamphetamine. (PSI, p.181.)

Mr. Carrillo does have a supportive family to assist him in his rehabilitation. (PSI, pp.114, 122, 174-175.) Mr. Carrillo has a good relationship with his mother and father. (PSI, pp.122, 175.) He has a seven year old son whom he loves very much, and Mr. Carrillo wants to be a good role model for him. (PSI, pp.114, 122.) Mr. Carrillo has custody of his son, who is in the care of his parents while he is incarcerated. (PSI, pp.175-176.) He coached his son's T-ball

team when Mr. Carrillo was not incarcerated. (PSI, p.175.) Mr. Carrillo speaks to his son on the phone every day and they video chat at least three times a week. (PSI, p.114.) One of Mr. Carrillo's goals is "See[ing] my son grow up to be a better man than I was." (PSI, p.119.) *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts).

Further, Mr. Carrillo expressed considerable remorse and accepted responsibility for his actions. (3/11/19 Tr., p.10, Ls.20-22; PSI, pp.122, 171.) At his sentencing hearing, Mr. Carrillo expressed regret and told the court that he recognized he had a pattern which led to his use of controlled substances. (3/11/19 Tr., p.1, Ls.5-10.) He told the court:

Your Honor, I take full responsibility for my actions that day and for my prior actions before that.

To speak about the rider the last time and the amount of time I was out, I completed my rider. I did good. I completed aftercare, and -- but during that time, a month and a half prior to me being released, I was injured. It kind of threw a wrench in everything that I had planned and set out for when I first got out.

And it seems to me that my pattern is something happens or something drastically [changes] where I start to get down on myself and I start to get anxiety and depressed, I tend to medicate through my drug use. And once I do use, it tends to turn into a larger amount real quick and real fast.

Um, and I do feel like I tried to reach out for help. I did receive some help, but for me, it was just too late then. I checked into the Allumbaugh house on my own. I was there for about ten days -- on the second time that I relapsed, and I admitted to my PO that I was under the influence at that time.

I do ask -- I do feel like I need treatment. One of the biggest things I haven't done is outpatient or intensive inpatient -- or whatever it's called -- treatment. I would like to do one of those. I do need programming. I don't really think a four-year sentence would do me that much greater. It's not really addressing the problem.

Thank you for your time.

(3/11/19 Tr., p.10, L.20 – p.12, L.1.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

The issue of reducing a sentence because a defendant expresses remorse has been addressed in several cases. For example, in *Alberts*, the Idaho Court of Appeals noted that some leniency is required when the defendant has expressed “remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Alberts*, 124 Idaho at 209.

The Idaho Supreme Court has also reduced a defendant’s term of imprisonment because the defendant expressed regret for what he had done. *Shideler*, 103 Idaho at 595. In *Shideler*, the Idaho Supreme Court ruled that the prospect of Shideler’s recovery from his poor mental and physical health, which included mood swings, violent outbursts, and drug abuse, coupled with his remorse for his actions, was so compelling that it outweighed the gravity of the crimes of armed robbery, assault with a deadly weapon, and possession of a firearm during the commission of a crime. *Id.* at 594-95. Therefore, the Court reduced Shideler’s sentence from an indeterminate term not to exceed twenty years to an indeterminate term not to exceed twelve years. *Id.* at 593.

Based upon the above mitigating factors, Mr. Carillo 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 remorse, mental health condition, substance abuse, and his family support, it would have imposed a less severe sentence.

CONCLUSION

Mr. Carrillo 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 24th day of September, 2019.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th 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
E-Service: ecf@ag.idaho.gov

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

SJC/eas