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# State v. Carpenter Appellant's Brief Dckt. 45915

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO, | ) | |
| | ) | NO. 45915 |
| Plaintiff-Respondent, | ) | |
| | ) | KOOTENAI COUNTY NO. CR 2016-11389 |
| v. | ) | |
| | ) | |
| LUKE AARON CARPENTER, | ) | APPELLANT'S BRIEF |
| | ) | |
| Defendant-Appellant. | ) | |
| _____ | ) | |

## STATEMENT OF THE CASE

### Nature of the Case

Pursuant to a plea agreement, Luke Aaron Carpenter pleaded guilty to felony grand theft. The district court imposed a unified sentence of four years, with two years fixed, and retained jurisdiction. After Mr. Carpenter participated in a "rider," the district court relinquished jurisdiction and ordered into execution his sentence. Mr. Carpenter then filed an Idaho Criminal Rule 35 (Rule 35) motion for a reduction of sentence, which the district court denied. On appeal, Mr. Carpenter asserts the district court abused its discretion when it imposed his underlying unified sentence, when it relinquished jurisdiction, and when it denied his Rule 35 motion.

Statement of the Facts & Course of Proceedings

A Spirit Lake Police Department officer responded to a reported theft at a grocery store. (*See* Conf. Exs., p.7.)[1] An employee of the grocery store told the officer his debit card had been stolen from his wallet, which had been inside his jacket in the employee break room. (*See* Conf. Exs., p.7.) After a review of video surveillance, the suspect was identified as another employee, Mr. Carpenter. (*See* Conf. Exs., p.7.) Mr. Carpenter then arrived at the grocery store and was read his *Miranda* rights. (Conf. Exs., p.7.) Mr. Carpenter stated he was homeless and very hungry. (Conf. Exs., p.7.) He admitted to taking the debit card, and stated he felt bad for his actions and threw the card away without using it. (*See* Conf. Exs., p.7.) The bank confirmed the debit card had not been used. (*See* Conf. Exs., p.7.)

The State charged Mr. Carpenter by Information with one count of grand theft, felony, I.C. § 18-2407(1)(b)(3). (R., pp.39-40.)[2] Mr. Carpenter initially entered a not guilty plea. (R., p.54.) Pursuant to a plea agreement, Mr. Carpenter later pleaded guilty to grand theft. (R., p.59.) The district court accepted his guilty plea. (R., p.59.) The district court released Mr. Carpenter on his own recognizance, but later issued a bench warrant after he did not appear for his presentence investigation. (*See* R., pp.59-60, 63-65.)

At the sentencing hearing, Mr. Carpenter recommended the district court withhold judgment with a period of probation, or, if the district court were unwilling to withhold judgment, impose a unified sentence of three years, with one year fixed. (*See* Tr. May 11, 2017, p.10, Ls.3-25.) The State recommended the district court impose a unified sentence of six years, with two years fixed, and retain jurisdiction so Mr. Carpenter could go on a "rider." (*See*

[1] All citations to "Conf. Exs." refer to the 59-page PDF version of the Confidential Exhibits, including the Presentence Report and the Addendum to the Pre-Sentence Investigation (APSI).

Tr. May 11, 2017, p.7, Ls.11-13.) The district court imposed a unified sentence of four years, with two years fixed, and retained jurisdiction. (R., pp.69-70.)

While on his rider, Mr. Carpenter completed the Thinking for a Change (T4C) program. (*See* Conf. Exs., pp.41-42.) In the APSI, rider program staff recommended that the district court relinquish jurisdiction. (Conf. Exs., p.44.) After conducting a jurisdictional review hearing, the district court relinquished jurisdiction. (R., pp.76-78.)

Mr. Carpenter filed a Notice of Appeal timely from the district court's Judgment and Sentence relinquishing jurisdiction. (R., pp.83-88; *see* R., pp.94-100 (Amended Notice of Appeal).)

Mr. Carpenter also filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support. (R., pp.79-80.) Following a hearing on the Rule 35 motion where Mr. Carpenter testified, the district court denied the Rule 35 motion. (R., pp.108-11.)

## ISSUES

1. Did the district court abuse its discretion when it imposed a unified sentence of four years, with two years fixed, upon Mr. Carpenter following his plea of guilty to grand theft?

2. Did the district court abuse its discretion when it relinquished jurisdiction and ordered into execution Mr. Carpenter's sentence?

3. Did the district court abuse its discretion when it denied Mr. Carpenter's Idaho Criminal Rule 35 motion for a reduction of sentence?

[2] All citations to "R." refer to the 113-page PDF version of the Clerk's Record on Appeal. Please note that the page numbers in this brief refer to the electronic pages.

## ARGUMENT

### I.

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Four Years, With Two Years Fixed, Upon Mr. Carpenter Following His Plea Of Guilty To Grand Theft

Mr. Carpenter asserts that the district court abused its discretion when it imposed his unified sentence of four years, with two years fixed, because his sentence, given any view of the facts, is excessive. The district court should have followed Mr. Carpenter's recommendations by withholding judgment with a period of probation, or, alternatively, imposing a unified sentence of three years, with one year fixed. (*See* Tr., May 11, 2017, p.10, Ls.3-25.)

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. Carpenter does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Carpenter 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.*

"After a person has been convicted of a crime, a district court may, in its discretion, withhold judgment." *State v. Edghill*, 134 Idaho 218, 219 (Ct. App. 2000) (citing I.C. § 19-2601(3); *State v. Trejo*, 132 Idaho 872, 880 (Ct. App. 1999)). "Refusal to grant a withheld judgment will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a withheld judgment would be inappropriate." *State v. Geier*, 109 Idaho 963, 965 (Ct. App. 1985).

Mr. Carpenter asserts his sentence 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. Carpenter's plan for probation. As Mr. Carpenter's counsel explained during the sentencing hearing, a jail chaplain had been assisting Mr. Carpenter in putting together a plan for probation. (*See* Tr. May 11, 2017, p.9, Ls.5-10.) Mr. Carpenter's plan for probation included housing at a motel, and a job at a precision machine shop. (*See* Tr. May 11, 2017, p.9, Ls.11-15.) If that job did not work out, there were a number of restaurants where Mr. Carpenter could apply for employment. (*See* Tr. May 11, 2017, p.9, Ls.15-20.) Additionally, Mr. Carpenter informed the district court that, if he were allowed out on probation, he would be going through a program at his church to teach young people Bible study. (*See* Tr. May 11, 2017, p.11, L.24 – p.12, L.4.)

The district court also did not adequately consider that the instant offense is Mr. Carpenter's first felony conviction. The Idaho Supreme Court has "recognized that the first offender should be accorded more lenient treatment than the habitual criminal." *E.g.*, *State v. Shideler*, 103 Idaho 593, 595 (1982) (quoting *State v. Owen*, 73 Idaho 394, 402 (1953)) (internal

quotation marks omitted). At the sentencing hearing, Mr. Carpenter's counsel explained: "Mr. Carpenter is only 21 years old and his criminal history does not indicate that he is super familiar with the criminal justice system. He does have, by my count, three prior misdemeanor convictions. This is the first felony charge that he has ever received and certainly the first felony conviction that he will have on his record." (Tr. May 11, 2017, p.9, L.21 – p.10, L.2; *see* Conf. Exs., pp.8-9.)

The district court also did not adequately consider Mr. Carpenter's mental health issues. Mr. Carpenter reported that "he was previously diagnosed with Bipolar Disorder, Schizophrenia, Depression, Anxiety, ADHD and Epilepsy." (Conf. Exs., p.13.) He was "concerned about schizophrenia due to hearing voices and talking to his grandfather and Uncle Jim, both of whom are deceased." (Conf. Exs., p.13.) Mr. Carpenter also stated he had considered and attempted suicide several times, and his mother was bipolar and psychotic. (Conf. Exs., p.13.) His GAIN-I Recommendation and Referral Summary (GRRS) diagnosed him with "Unspecified Personality Disorder – Provisional" and "Moderate Risk Only – History of hurting self." (Conf. Exs., p.19.) He reported he thought about hanging himself the day after he pleaded guilty. (*See* Conf. Exs., p.22.) However, Mr. Carpenter's § 19-2524 DHW Mental Health Examination Report determined he did not currently present to be suffering from a serious mental illness. (*See* Conf. Exs., p.33.)

Moreover, the district court did not give adequate consideration to Mr. Carpenter's remorse and acceptance of responsibility. In the presentence investigation questionnaire, Mr. Carpenter wrote he was "ashamed with myself still and I think I've deserved being in jail." (Conf. Exs., p.8.) At the sentencing hearing, Mr. Carpenter acknowledged he had not done what he was supposed to do after being released on his own recognizance, but also told the district

court, "I'm not trying to use it as an excuse." (*See* Tr. May 11, 2017, p.11, Ls.3-7.) He reported that the aunt he had been allowed to go and help had passed away, and stated "it was hard for me and it brought me down. She was the only person I had over here in [the] Idaho and Washington area." (*See* Tr. May 11, 2017, p.11, Ls.7-14.) He also stated, "my uncle that was over here with her did go back to Kentucky, and I chose to stay here. I could have went back, but I didn't." (Tr. May 11, 2017, p.11, Ls.14-16.) Rather, Mr. Carpenter "chose to stay out, tell my friends that I'm going back to jail, and I want to come and fix this." (Tr. May 11, 2017, p.11, Ls.17-19.) He asked the district court for "one last chance to prove to you, but not only you, to myself, that I can do something in my life, productive and successful." (*See* Tr. May 11, 2017, p.11, Ls.19-23.)

In light of the above mitigating factors, Mr. Carpenter submits the sentence imposed by the district court is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed Mr. Carpenter's sentence.

II.

The District Court Abused Its Discretion When It Relinquished Jurisdiction And Ordered Into Execution Mr. Carpenter's Sentence

Mr. Carpenter asserts that the district court abused its discretion when it relinquished jurisdiction and ordered into execution his sentence.

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 an exercise of discretion is reviewed on appeal, the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is (1) whether the

> lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.

*State v. Hedger*, 115 Idaho 598, 600 (1989) (internal quotation marks omitted).

At the jurisdictional review hearing, Mr. Carpenter's counsel recognized that the APSI recommended relinquishment, and that it "indicates there's some issues here with recidivism and the maladaptive personality disorder." (*See* Tr. Jan. 12, 2018, p.19, Ls.16-25.) Counsel also stated it was not uncommon for a person charged with criminal offenses "to show issues of deceitfulness," as mentioned in the evaluation. (*See* Tr. Jan. 12, 2018, p.19, L.25 – p.20, L.4.) Mr. Carpenter's counsel nonetheless asked the district court to give Mr. Carpenter "an opportunity for another retained jurisdiction," because "there's something here Mr. Carpenter needs to work on, and I think simply sending him down to Boise or wherever he would end up after the diagnostic unit for an imposed sentence isn't necessarily going to address that issue." (*See* Tr. Jan. 12, 2018, p.20, Ls.5-10.) Counsel asserted that Mr. Carpenter "is a young person, and I would ask that you give him that opportunity one last time. It's not uncommon that an individual gets a second opportunity at a rider or even a third, and I would ask that you give that to him." (Tr. Jan. 12, 2018, p.20, Ls.11-15.)

Mr. Carpenter apologized to the district court "for taking up so much of your time," and also told the district court "I do want to do better, and I take a chance and run with it." (Tr. Jan. 12, 2018, p.20, L.22 – p.21, L.1.)

Further, while the APSI's assessment of Mr. Carpenter's participation in the Thinking for a Change program was negative (*see* Conf. Exs., p.43), the APSI also included a mental health discharge summary. The mental health discharge summary reflected that Mr. Carpenter had been diagnosed with schizophrenia after starting his rider. (*See* Conf. Exs., p.45.) He initially

"presented with the following symptoms: audible hallucinations, paranoia, mood swings, depression, and anxiety." (Conf. Exs., p.45.) "Mr. Carpenter entered the Behavioral Health Unit (BHU) struggling with how to cope with his mental health symptoms. While incarcerated, he was open and engaged in working with his assigned clinician; however, [he] declined to attend the psycho-social groups." (Conf. Exs., p.45.) Further, Mr. Carpenter "maintained mental health medication compliance and learned to cope with his mental health symptoms, seeking help when needed." (Conf. Exs., p.45.) Within three months, he moved out of the BHU to live in general population with continued mental health support. (*See* Conf. Exs., p.45.)

In light of the above, Mr. Carpenter asserts the district court when it relinquished jurisdiction and ordered into execution his sentence.

## III.

## The District Court Abused Its Discretion When It Denied Mr. Carpenter's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

Mr. Carpenter asserts that the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence, in view of new and additional information presented to the district court. "A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe." *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citation omitted). "The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion." *Id.* "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* "If the sentence was not excessive when

pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction." *Id.*

The district court abused its discretion when it denied Mr. Carpenter's Rule 35 motion, in view of new and additional information presented to the district court. At the Rule 35 motion hearing, Mr. Carpenter clarified what he meant by his statement that he could avoid trouble by absconding. (*See* Conf. Exs., p.43; Tr. June 4, 2018, p.7, Ls.14-25.) He told the district court that, as part of the Thinking for a Change program, he had to provide examples of negative and positive thinking. (*See* Tr. June 4, 2018, p.7, Ls.17-25.) He stated: "in the negative quotes for the negative thinking, I put in maybe I just should skip back to Kentucky, forget about if I got out. And under the positive thinking, I said why don't I stick it out, do what I need to do, get in a halfway house and do good for my life." (Tr. June 4, 2018, p.7, Ls.20-25.)

Additionally, Mr. Carpenter informed the district court that, if he could not get back to Kentucky after leaving prison, he was set up to live in a halfway house in Meridian. (*See* Tr. June 4, 2018, p.8, Ls.1-15.) He stated, "I've got the application done, and they accepted my application, and they will pay up for the first two or three months, and they will help me find a job, so I can get on my feet." (Tr. June 4, 2018, p.8, Ls.16-19.)

In view of the above new and additional information presented to the district court, Mr. Carpenter asserts that the district court abused its discretion when it denied his Rule 35 motion for a reduction of sentence.

## CONCLUSION

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

DATED this 3rd day of January, 2019.

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

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
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Administrative Assistant

BPM/eas