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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46127
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-3795
v.)	
)	
JUSTIN JAMES LOERA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Justin James Loera pled guilty to operating a motor vehicle without the owner's consent, the district court sentenced him to a unified term of five years, with three years fixed, and retained jurisdiction. The district court later relinquished jurisdiction on the Idaho Department of Correction's recommendation. Mr. Loera appeals from his judgment of conviction and the order relinquishing jurisdiction, and argues that the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

Mr. Loera took a car, which was left running with the keys in the ignition, because it was cold out and he was homeless at the time. (PSI, p.4.) He later pled guilty to operating a motor vehicle without the owner's consent. (R., pp.88–89; *see generally* 8/9/17 Tr.)

At sentencing, the prosecutor discussed Mr. Loera's criminal history, that he relapsed on heroin just after being released from prison and chose homelessness rather than a halfway house, and then committed this crime five weeks later. (10/4/17 Tr., p.8, L.12–p.10, L.16.) It then recommended that the court impose a unified term of five years, with three years fixed. (10/4/17 Tr., p.11, Ls.5–9.)

Defense counsel recommended a unified term of four years, with one year fixed, and a period of retained jurisdiction. (10/4/17 Tr., p.10, Ls.14–17.) Defense counsel pointed out that this was only Mr. Loera's second felony, but acknowledged that Mr. Loera certainly made some very poor choices during his incarceration and following his release. (10/4/17 Tr., p.11, L.19–p.12, L.2.) He also discussed the many calls Mr. Loera made to his mother from jail, which show that he hit rock bottom and that he is not the tough guy the State tried to make him out to be. (10/4/17 Tr., p.13, L.1–p.14, L.6.) Defense counsel worried, however, that the more time Mr. Loera spent in custody the more he would play that part, especially considering he was only twenty-seven. (10/4/17 Tr., p.14, L.7–p.15, L.15.) Because Mr. Loera was having his parole revoked in his other case, defense counsel suggested that a period of retained jurisdiction would get him the treatment he needs and put him in a more positive environment. (10/4/17 Tr., p.15, L.22–p.16, L.14.)

The court sentenced Mr. Loera to a unified term of five years, with three years fixed, and retained jurisdiction. (R., pp.93–95.) The court explained that Mr. Loera needed to learn to

make the right choices for himself, independently of what anyone else thought, and if he made the right choices during his rider he may be able to earn a chance at probation. (10/4/17 Tr., p.21, L.21–p.25, L.24.)

The IDOC later recommended that the court relinquish jurisdiction. It explained that Mr. Loera was not able to participate in a normal rider because he did not meet the criteria for placement in one of the rider facilities, and so he was housed in the Idaho State Correctional Center and “referred for programming.” (PSI, p.1257.) It also noted that Mr. Loera received two disciplinary offense reports, one for tattooing or piercing and one for possessing drugs or alcohol in the facility. (PSI, p.1257.) The district court relinquished jurisdiction after a hearing, explaining that it did not have the ability to tell the IDOC where to house Mr. Loera and had no choice but to relinquish jurisdiction. (5/9/18 Tr., p.26, L.1–p.28, L.1; R., pp.103–04.)

Mr. Loera timely appealed. (R., pp.107–08.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Loera to five years, with three years fixed, for operating a motor vehicle without the owner’s consent?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Loera To Five Years, With Three Years Fixed, For Operating A Motor Vehicle Without The Owner’s Consent

When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive,

“under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834.

Mr. Loera’s sentence is excessive considering the mitigating evidence in this case, which include his background, the circumstances of this crime, and his goals going forward. First, Mr. Loera’s background stands in mitigation. Although Mr. Loera remembers his childhood as a “great” one—he told the PSI investigator that he was raised in a positive house with goals and morals—it was also marked by the loss of his father to suicide when Mr. Loera was just five years old. (PSI, pp.7–8.) Mr. Loera would later learn that his father was an alcoholic with undiagnosed mental health problems. (PSI, p.402.) Mr. Loera has faced similar struggles with his mental health and substance abuse. He was diagnosed with bipolar disorder and ADHD as a child, and has taken a number of different medications over the years. (PSI, pp.10, 16.) He started drinking and using drugs as a teenager, and has struggled to maintain his sobriety ever since. (PSI, pp.11, 409.) His longest period of sobriety was between 2014 and 2016. (PSI, p.11.)

Second, the circumstances of this crime favor a lower sentence. Just a few weeks before, Mr. Loera had been paroled from prison on his first felony conviction. (PSI, pp.4, 7.) He made the poor decision not to check in to the halfway house where he was supposed to live, and relapsed on methamphetamine. (*Id.*) Cold and homeless, he took a car that was left running. (PSI, p.4.) In hindsight, Mr. Loera regrets his actions. (*Id.*) He also fully acknowledges that he put himself in the situation that led him to commit this crime. (*Id.*)

Finally, Mr. Loera's plans for the future stand in mitigation. The most important things in his life going forward are "family, recovery, health, life, and to be a good father." (PSI, p.12.) His main goal is not to spend his life in prison. (*Id.*) To that end, Mr. Loera is willing to participate in treatment, but acknowledges that he has a hard time asking for help and thus he lacks confidence in his ability to stay sober. (PSI, p.11.) Fortunately, he has the support of his mother, with whom he is very close. (PSI, p.8.)

Considering these mitigating factors, Mr. Loera's sentence of five years, with three years fixed, for operating a vehicle without the owner's consent was not necessary to the protection of society, or to the related goals of deterrence, rehabilitation, and retribution. The district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Loera respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 8th day of January, 2019.

/s/ Maya P. Waldron
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 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

MPW/eas