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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46140-2018
Plaintiff-Respondent,)	
)	IDAHO COUNTY NO. CR-2017-2433
v.)	
)	
CECIL MCATTY,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

A jury found Cecil McAtty guilty of felony driving under the influence (DUI) and the district court sentenced him to a six year term, with three years fixed. Mr. McAtty asserts that, in light of the mitigating factors that exist in his case, the district court imposed an excessive sentence.

Statement of the Facts & Course of Proceedings

Around 9:45 a.m. on a September morning in 2017, Mr. McAtty fell asleep at the wheel, drove his vehicle off of the highway, and struck a tree. (R., pp.15-17.) The State filed a criminal

complaint alleging that Mr. McAtty committed felony DUI by driving while under the influence of alcohol, and having a prior felony DUI conviction within the previous 15 years. (R., pp.11-17.) A preliminary hearing was held, Mr. McAtty was bound over into the district court, and an information was filed charging him with the above crime. (R., pp.21-25.) Mr. McAtty exercised his right to a jury trial, and the jury found him guilty. (R., pp.90-95, 129-34.)

During the sentencing hearing, the State asked the court to impose a unified term of 10 years, with five years fixed (Tr. 4/23/18, p.345, L.25 – p.346, L.2), while Mr. McAtty’s attorney asked the court to impose no more than a four years, with two years fixed, and/or to retain jurisdiction (Tr. 4/23/18, p.339, L.25 – p.340, L.5). The district court followed neither recommendation and instead imposed a unified term of six years, with three years fixed, without retaining jurisdiction. (R., pp.149-51, 170.) Mr. McAtty filed a timely Notice of Appeal. (R., pp.157-60.)

ISSUE

Did the district court abuse its discretion by imposing an excessive sentence upon Mr. McAtty, in light of the mitigating factors that exist in this case?

ARGUMENT

The District Court Abused Its Discretion By Imposing An Excessive Sentence Upon Mr. McAtty, In Light Of The Mitigating Factors That Exist In This Case

Mr. McAtty asserts that, given any view of the facts, his unified sentence of six years, with three years fixed, is excessive. Sentencing decisions are left to the sound discretion of the district court and will be overturned on appeal only where the defendant demonstrates the court abused its discretion. 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.

Although Mr. McAtty has struggled with alcohol for most of his life, the loss of his mother in April of 2017 was particularly hard on him, and it led to his increased drinking. Mr. McAtty's father passed away when he was just eight years-old, and his mother, Marlene, raised Mr. McAtty and his three siblings on her own, teaching them hard work and self-sufficiency. (PSI, p.7.)¹ Mr. McAtty first consumed alcohol at the age of 14 and he has had periods of his life where he was drinking too much, which contributed to his legal problems. (PSI, pp.10-11.) He took his mother's loss very hard, and he again turned to alcohol to cope with his loss. (PSI, pp.3, 11.) Mr. McAtty's sister described her brother as a good man, but noted that their mother meant "everything" to Mr. McAtty, and he began to drink more after she passed away. (PSI, p.8.) He knows that he needs treatment and he wants to quit drinking. (PSI, p.12.) Mr. McAtty's nieces were with him at the sentencing hearing, and the district court noted, "[y]ou clearly have a loving and supporting family." (Tr. 4/23/18, p.347, L.13-19; p.348, Ls.13-14.)

Mr. McAtty took the lessons his mother taught him to heart and is a very hard worker. His sister noted that Mr. McAtty had a good job at the Clearwater River Casino and his employer liked him. (PSI, p.8.) Indeed, his employer described him as "very reliable and always one to help and complete his job quickly." (PSI, p.10.) Although he had not been employed at the time due to his incarceration, at sentencing, Mr. McAtty provided the court with a letter he received from Nez Perce Tribal Enterprises containing a conditional offer of employment. (PSI, pp.10-13.)

Mr. McAtty was remorseful for his actions and how those actions affected others. (PSI, pp.4, 12.) During his sentencing hearing, Mr. McAtty twice told the district court that he was

¹ Citations to the Presentence Investigation Report and its attached documents will use the designation "PSI" and the page number associated with the 54-page electronic file containing those documents.

sorry for putting other people's lives in danger due to his drinking and driving. (Tr. 4/23/18, p.347, Ls.1-12.) Idaho Courts recognize that alcoholism and the desire for treatment, coupled with a strong work ethic, the support of family, and remorse for one's actions, are all mitigating factors that should counsel a district court to impose a less-severe sentence. *See State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). Mr. McAtty asserts that, in light of the mitigating factors that exist in this case, the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. McAtty respectfully requests that this Court reduce his sentence to a unified term of four years, with two year fixed, or for whatever relief this Court deems appropriate.

DATED this 1st day of April, 2019.

/s/ Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 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
EVAN A. SMITH
Administrative Assistant

JCP/eas