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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46157-2018
Plaintiff-Respondent,)	
)	BANNOCK COUNTY NO. CR-2015-7995
v.)	
)	
REUBEN D. BLACKHORSE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Reuben Blackhorse pled guilty to one count of rape. He received a unified sentence of twenty years, with four years fixed. Mr. Blackhorse 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 May 25, 2015, during a regular check on a patient in the Behavioral Health Unit (BHU) of Portneuf Medical Center, the patient was observed sitting on the floor of the bathroom with her lower extremities unclothed and blood on the floor. (PSI, pp.67-68.) Another patient in

the BHU, Reuben Blackhorse, was observed standing behind the shower curtain and, when interviewed, said he and the patient had been kissing and had consensual sexual relations. (PSI, p.68.) The patient told law enforcement that two other incidences of sexual contact involving Mr. Blackhorse had occurred earlier that day and that none of the three incidents were consensual. (PSI, p.68.) Based on these facts, Mr. Blackhorse was charged with three counts of rape. (R., pp.15-16.)

On June 29, 2015, the magistrate court ordered a competency examination. (R., pp.93-94.) Mr. Blackhorse was deemed incompetent to proceed and committed to the custody of Idaho Department of Health & Welfare (IDHW). (R., pp.99, 103-105.) Mr. Blackhorse continued to be committed to IDHW for nearly two years. (R., pp.148, 218, 235.) Mr. Blackhorse was found competent in February of 2017. (R., p.259.)

Thereafter, Mr. Blackhorse was charged by Information with three counts of rape and the persistent violator sentencing enhancement. (R., pp.267-270.) A short time after a finding of probable cause at the preliminary hearing held on March 6, 2017, counsel continued to question Mr. Blackhorse's competency to stand trial and moved for a competency evaluation. (R., pp.264-265, 273-279, 303.) The district court ordered the evaluation. (R., pp.10, 303-305.) On September 11, 2017, Mr. Blackhorse was again found incompetent and was committed to the care and custody of IDHW. (R., pp.10, 306-313.) Two months later, his competency was deemed restored and he entered a guilty plea shortly thereafter. (R., pp.10, 318-320.)

Pursuant to a plea agreement, Mr. Blackhorse pled guilty to one count of rape. (11/27/17 Tr., p.12, Ls.20-22; R., pp.318-24.) Pursuant to the terms of the plea agreement, the State agreed to dismiss the persistent violator enhancement and the two other counts of rape, and agreed to make its recommendations consistent with the Presentence Investigator's recommendations.

(11/27/17 Tr., p.9, L.17 – p.10, L.16; R., p.320.) The district court accepted Mr. Blackhorse’s guilty plea and ordered a PSI and a psychosexual evaluation. (11/27/17 Tr., p.20, Ls.11-17; R., p.328.)

At sentencing, the State recommended probation and treatment in the community, consistent with the PSI recommendation. (6/25/18 Tr., p.11, Ls.7-11.) Mr. Blackhorse’s counsel reminded the court that Mr. Blackhorse had been incarcerated for over three years while the charges were pending. (6/25/18 Tr., p.12, Ls.10-14.) Counsel recommended a unified sentence of eight years, with four years fixed, and asked that he be placed on probation. (6/25/18 Tr., p.14, Ls.2-4.) The district court sentenced Mr. Blackhorse to twenty years, with four years fixed. (6/25/18 Tr., p.17, Ls.18-22; R., pp.370-373.)

Mr. Blackhorse appeals from the judgment of conviction.¹ (R., pp.379-382.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Blackhorse to a unified sentence of twenty years, with four years fixed, following his plea of guilty to rape?

¹ Mr. Blackhorse also filed a timely Rule 35 motion for leniency; however, no new information was submitted in support of the motion. (R., pp.375-376, 395-396; 8/6/18 Tr., p.20, L.1 – p.23, L.21.) The Idaho Supreme Court has held that “[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion. *State v. Huffman*, 144 Idaho 201, 203 (2007). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Mr. Blackhorse does not assert on appeal that the district court abused its discretion in denying the motion.

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Blackhorse To A Unified Sentence Of Twenty Years, With Four Years Fixed, Following His Plea Of Guilty To Rape

Mr. Blackhorse asserts that, given any view of the facts, his unified sentence of twenty years, with four 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. 1982).

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) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Blackhorse does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Blackhorse 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.*

In light of Mr. Blackhorse’s rehabilitative potential, the district court abused its discretion in sentencing him excessively. The district court failed to consider the fact that Mr. Blackhorse has mental health conditions, but that, with programming, Mr. Blackhorse could likely be successful in the community. (PSI, p.80.)

Mr. Blackhorse has not had an easy life. He was born a native of the Northern Cheyenne tribe in Montana. (PSI, p.16.) Mr. Blackhorse was placed in the foster care system, and he

suffered neglect and abuse. (PSI, pp.16, 42, 73.) He began drinking alcohol at age 14 and smoking marijuana beginning at age 9. (PSI, pp.43, 78.)

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). Mr. Blackhorse has been drinking alcohol since he was 14. (PSI, pp.43, 78.) Mr. Blackhorse smokes marijuana daily. (PSI, p.78.) However, he knows he needs substance abuse treatment, and he tried to obtain an evaluation before sentencing. (PSI, p.79.)

The Idaho Supreme Court has recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Blackhorse reported a history of mental illness including Depression, ADHD, Schizoaffective Disorder, Generalized Anxiety Disorder, Paranoid Personality Disorder, Antisocial Personality Disorder, and Schizophrenia.² (PSI, pp.4-5, 7, 35, 77, 135.) At the time of his evaluations, Mr. Blackhorse was taking medication to manage his mental illness. (PSI, pp.22, 43, 76-77, 118.) Mr. Blackhorse has a history of suicide attempts. (PSI, pp.5, 118.) He

² One evaluator believes Mr. Blackhorse does not truly suffer from delusions or hallucinations but is "naïvely suggestable" meaning that the combination of his low cognitive IQ and other factors, including his extensive exposure to mental health facilities and persons with mental illness, have resulted in Mr. Blackhorse believing that his normative internal monologue is an auditory hallucination and that the shadows he sees are visual hallucinations. (PSI, pp.35-36.)

has multiple hospitalizations for inpatient psychiatric treatment for his mental health conditions. (PSI, pp.42, 77, 117-18.) Mr. Blackhorse has been diagnosed with fetal alcohol syndrome. (PSI, pp.148, 77, 150.) He was in special education classes throughout most of his school years and suffers from mild overall cognitive processing deficits.³ (PSI, pp.26-28, 75, 135.) In fact, Mr. Blackhorse meets criteria to be eligible for Developmental Disability services.⁴ (PSI, p.34.) Mr. Blackhorse quit school in ninth grade and is frequently homeless. (PSI, pp.4, 16-17, 75, 135.) He also has vision problems. (PSI, p.42.) He is nearly blind in one eye due to cataracts, and has a detached retina which will require corneal surgery. (PSI, pp.41-42.)

Based upon the above mitigating factors, Mr. Blackhorse 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 cognitive issues, his mental health conditions, and his substance abuse, it would have imposed a less severe sentence.

CONCLUSION

Mr. Blackhorse 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 4th day of December, 2018.

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

³ One competency evaluator concluded that Mr. Blackhorse has a developmental disability. (PSI, p.31.)

⁴ Mr. Blackhorse applied for the Aspire program which provides sex offender treatment to developmentally disabled individuals in the community. (6/25/18 Tr., p.11, L.20 – p.12, L.6; R., pp.347-358.) However, he was determined ineligible for the program because he lacked documentation that his developmental disability was diagnosed prior to age twenty-two. (6/25/18 Tr., p.8, L.24 – p.10, L.21.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 2018, 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