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### State v. Derrick Appellant's Brief Dckt. 46199

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46199-2018
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-17-40750
v.	)	
	)	
CHRISTOPHER LEE DERRICK,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Christopher Lee Derrick appeals from the district court's Judgment of Conviction and Commitment. Mr. Derrick was sentenced to a unified sentence of fifteen years, with four year fixed, for his aggravated battery conviction. He asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On December 6, 2017, an Information was filed charging Mr. Derrick with aggravated battery. (R., pp.44-45.) The charges were the result of a physical altercation at the prison

involving two inmates, including Mr. Derrick, attacking another inmate. (PSI, p.3.)<sup>1</sup>  
Mr. Derrick entered a guilty plea the charge. (R., p.73.)

At the sentencing hearing, the prosecution requested the imposition of a unified sentence of fifteen years, with four years fixed. (Tr., p.14, Ls.16-20.) Defense counsel recommended a unified sentence of twelve years, with one year fixed. (Tr., p.26, Ls.5-14.) The district court imposed a unified sentence of fifteen years, with four years fixed. (R., pp.86-88.) Mr. Derrick filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.90-91.)

### ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Derrick, a unified sentence of fifteen years, with four years fixed, following his plea of guilty to aggravated battery?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed, Upon Mr. Derrick, A Unified Sentence Of Fifteen Years, With Four Years Fixed, Following His Plea Of Guilty To Aggravated Battery

Mr. Derrick asserts that, given any view of the facts, his unified sentence of fifteen 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

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<sup>1</sup> For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as “PSI” and referenced pages will correspond with the electronic page numbers contained in this file.

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. Derrick does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Derrick must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)).

Mr. Derrick asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason. Specifically, he asserts that the district court failed to give proper consideration to his admitted substance abuse problem and desire for treatment. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered

as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982).

Mr. Derrick began using alcohol, marijuana, and methamphetamine at the age of nine; cocaine, LSD, ecstasy, prescription drugs, and inhalants at the age of twelve; heroin at fifteen; and synthetic cannabinoids and designer stimulants in his mid-twenties. (PSI, pp.12-13.) His drugs of choice are methamphetamine and heroin. (PSI, p.14.) Mr. Derrick was diagnosed with Amphetamine Dependence and Opioid Dependence. (PSI, p.36.) He acknowledges that substance abuse has “ruined [his] life.” (PSI, p.14.) He believes that he needs treatment to help him stay drug free. (PSI, pp.14, 34.) It was recommended that he participate in Level 3.5 Inpatient treatment. (PSI, p.34.)

Further, Idaho courts have previously 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. Mr. Derrick has been previously diagnosed with bipolar. (PSI, p.12.) As a teenager, he saw a therapist for anger issues and experienced suicidal thoughts. (PSI, p.12.) More recently, he was diagnosed with several Rule Out diagnoses including: Mood Disorder NOS, Generalized Anxiety Disorder, and Attention Deficit Hyperactive Disorder – Combined Type. (PSI, p.36.)

Additionally, Mr. Derrick has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, “In light of Alberts’ expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Id.* 121 Idaho at 209. Mr. Derrick has expressed his remorse for committing the instant offense stating, “I apologize for being a problem.” (PSI, p.15.) At the sentencing hearing, he noted that:

I do want to apologize to, like, the victim, and to you, the Court, for my childish behavior and stupidity.

I did come to prison very angry, you know. And it's my fault. What I did, you know, I'm wrong. I'm a grown man. I take responsibility.

...

I do apologize. And I apologize to the victim. I just wanted that to be known. It's not like I don't sit here and think about it and it's all fun and games. It's not. I just feel more bad for the victim and my kids, you know. I did this to myself, and I just want you to know I accept whatever judgment you bestow on me.

(Tr., p.27, L.9 – p.28, L.23.)

Based upon the above mitigating factors, Mr. Derrick 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 substance abuse, desire for treatment, mental health issues, and remorse, it would have crafted a less severe sentence.

#### CONCLUSION

Mr. Derrick 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 29<sup>th</sup> day of November, 2018.

/s/ Elizabeth Ann Allred  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of November, 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

EAA/eas