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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46224-2018
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-15173
v.)	
)	
CHAD WAYNE ATCHLEY,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Chad Wayne Atchley pled guilty to one count of possession of methamphetamine. He received a unified sentence of seven years, with two years fixed. Mr. Atchley 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

Mr. Atchley was arrested on federal distribution charges and held in federal custody. (PSI, p.3.) While he was in federal custody, Mr. Atchley's uncle called the police and reported

that Mr. Atchley's drugs were in his bedroom at his grandmother's house. (PSI, p.3.) The bedroom was searched and officers found 28.13 grams of methamphetamine. (PSI, pp.3, 62.) Officers also located a stolen bicycle in the garage. (PSI, p.3.)

Mr. Atchley was charged by information with felony grand theft by possession and possession of methamphetamine with intent to deliver. (R., pp.44-45.) Pursuant to a plea agreement, Mr. Atchley pled guilty to an amended information charging him with possession of methamphetamine. (Tr., p.7, Ls.4-22; p.15, Ls.17-20; R., pp.52-53, 55-63.) According to the terms of the plea agreement, the State agreed to recommend a sentence of seven years, with two years fixed, concurrent with his federal sentence in CR 17-0031-SBLW. (Tr., p.8, Ls.12-18; R., pp.57, 62-63.) The district court accepted Mr. Atchley's guilty plea and ordered a PSI and set the matter for sentencing. (Tr., p.15, L.21 – p.16, L.16; R., p.54.)

At sentencing, the State recommended a sentence of seven years, with two years fixed. (Tr., p.23, Ls.3-6.) Mr. Atchley's counsel asked that he be sentenced to a small amount of fixed time, but placed on probation. (Tr., p.28, L.12 – p.29, L.5.) The district court sentenced Mr. Atchley to seven years, with two years fixed. (Tr., p.32, Ls.22– p.33, L.10; R., pp.76-79.)

Mr. Atchley appeals from the judgment of conviction. (R., pp.80-82.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Atchley to a unified sentence of seven years, with two years fixed, following his plea of guilty to possession of methamphetamine?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Atchley To A Unified Sentence Of Seven Years, With Two Years Fixed, Following His Plea Of Guilty To Possession Of Methamphetamine

Mr. Atchley asserts that, given any view of the facts, his unified sentence of seven years, with two 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)). In reviewing a trial court’s decision for an abuse of discretion, the relevant inquiry regards four factors:

Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018).

Mr. Atchley does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Atchley 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. Atchley's rehabilitative potential, the district court abused its discretion in sentencing him excessively. The district court failed to consider the fact that Mr. Atchley has the support of his family, suffers from mental illness as well as an addiction to methamphetamine, and was truly remorseful. Mr. Atchley has substantial support and, with the programming that he is already receiving from the federal prison in which he is presently incarcerated, Mr. Atchley could likely be successful in the community. (PSI, p.10.) The presentence investigator suggested that, in light of the programming Mr. Atchley would receive and would graduate from while in federal custody, "the Court *may* want to consider fashioning a sentence that allows Mr. Atchley to "graduate" his federal substance abuse program and complete the program by being allowed to transfer to a half-way house. Arguably that plan gives the defendant the best opportunity to continue with his positive course correction and meet the goal of living successfully drug-free in the community." (PSI, p.12) (emphasis in original.)

Mr. Atchley was enrolled in a 500 Hour Residential Drug Abuse Program; for 10 months, he attended classes while in federal prison. (PSI, p.14.) At the end of the 10 months, Mr. Atchley was required to transition into 4 months in a halfway house to complete his treatment; however, he was not eligible for placement in the halfway house if he had holds or pending charges. (PSI, p.14.) The district court was aware that Mr. Atchley was participating in an intensive substance abuse treatment program through the federal prison. Federal defense counsel wrote a letter indicating that if Mr. Atchley was unable to transition to the half-way house after 10 months of treatment, he would be denied the opportunity for early release. (PSI, pp.19-27.) Additionally, Mr. Atchley may have to serve the entire 33-month federal sentence because he will not be eligible to complete the final transition portion of the federal, 500-hour substance abuse treatment program. (PSI, p.19.) By requiring Mr. Atchley to go back to prison,

after completing substance abuse programming in federal prison including a “graduation”, the district court abused its discretion by failing to reach its decision by the exercise of reason. Further, defense counsel advised the district court that the weight of the drugs found in this case was an aggravating factor used to increase Mr. Atchley’s federal sentence:

Specific to the contraband alleged in the state case, please be aware that the ‘weight’ was included in the ‘relevant conduct’ calculation for the prison sentence in the federal case. It significantly affected the potential sentence given it was tested and measured as ‘actual’ methamphetamine (rather than mixture). The judge specifically relied upon that contraband to increase the high range of the potential sentence.

(PSI, pp.11-12.) Nonetheless, the district court determined that it was necessary to further punish Mr. Atchley with incarceration in the state prison, even after having been made aware that the federal judge considered the weight of the drugs found in Mr. Atchley’s grandmother’s house and of the importance of the transition portion of Mr. Atchley’s federal programming. (See PSI, pp.11-12, 19, 21.) In so determining that Mr. Atchley’s conduct in possessing methamphetamine warranted incarceration by the Idaho Department of Correction, the district court failed to reach its decision by the exercise of reason.

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. Atchley realizes that he is addicted to methamphetamine. (PSI, p.3.) However,

Mr. Atchley wants treatment and his goal is to stay sober. (PSI, pp.3, 11.) At sentencing, Mr. Atchley told the court that he needed and wanted treatment for his drug addiction. (Tr., p.29, L.15 – p.31, L.1.)

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). At the time of sentencing, Mr. Atchley was taking medication for Depression and Anxiety. (PSI, p.9.)

Further, Mr. Atchley expressed remorse and accepted responsibility for his acts. At sentencing, Mr. Atchley said:

Your Honor, I'd like the Court to know that I can say being sentenced to prison has saved my life from certain death from alcohol and drugs. As a result, I've gained a relationship with Jesus, one that I've never known before. I know now that I have a new life through Jesus and that his life is an example that I'll follow throughout the rest of my life. Secondly, the opportunity to participate in a ten-month residential drug abuse program is truly a blessing and a privilege that has caused an immediate impact in my life. I've been able to see issues in my life that are due to my drug addiction and from my negative thoughts, beliefs, and attitudes. I have learned how important it is for me to perceive my problems with the right attitudes and recognize my deficiencies thereof, then I'm able to make positive choices towards my goals.

I have learned that by identifying thinking errors and rationally evaluating my beliefs about obstacles in my life, I can continue making progress towards my recovery. Now I've been taught a few basics on how to begin to change my outlook and attitudes that are conducive to living without addiction and criminal behavior. I practice these skills in the group setting and in the community I'm living in. My communication skills have improved tremendously, which has absolutely had a positive effect on my relationships. I know I still have much more to learn about my addictions, belief, attitudes, and the way I may irrationally process information that leads me to making poor choices. But I know if I continue to be honest and willing to give 100 percent, my recovery will be successful.

(Tr., p.29, L.15 – p.31, L.1.) Mr. Atchley went on to express his remorse and regret for what his drug addiction and lifestyle has done to his community, and his desire to help others whom may have gone down a path similar to his:

Another thing I've gained from this program is understanding of the ripple effect my drug addiction and my lifestyle has victimized others and my community as well. I have been a resident in the Boise area all my life. I love the city, and I never intended to be a negative influence. And it brings great shame that I've done so.

I'm eager to get back to Boise and begin making amendments and asking forgiveness from the family members and others who I've harmed by my addiction. My goal is to get involved in church and the community so I can assist these who may feel like they've lost control of where their lives are heading.

(Tr., p.31, Ls.10-24.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991). For example, in *Alberts*, the Idaho Court of Appeals noted that some leniency is required when the defendant has expressed “remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Alberts*, 121 Idaho at 209. In *Shideler*, Idaho Supreme Court ruled that the prospect of Shideler’s recovery from his poor mental and physical health, which included mood swings, violent outbursts, and drug abuse, coupled with his remorse for his actions, was so compelling that it outweighed the gravity of the crimes of armed robbery, assault with a deadly weapon, and possession of a firearm during the commission of a crime. *Shideler*, 103 Idaho at 594-95. Therefore, the Court reduced Shideler’s sentence from an indeterminate term not to exceed twenty years to an indeterminate term not to exceed twelve years. *Id.* at 593. Mr. Atchley’s circumstances are somewhat similar to the facts of both *Alberts* and *Shideler* in that he recognizes that he has an addiction to a controlled substance, he

wants treatment for his substance abuse, he has been diagnosed with mental health conditions, and he showed considerable remorse for his actions.

Based upon the above mitigating factors, Mr. Atchley asserts that the district court abused its discretion. He asserts that had the district court properly considered his mental health conditions, controlled substances addiction, his remorse, and his onerous federal programming with a transition phase, it would have imposed a less severe sentence.

CONCLUSION

Mr. Atchley 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 31st day of December, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st 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