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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46250-2018
Plaintiff-Respondent,)	
)	WASHINGTON COUNTY NO. CR-2018-2530
v.)	
)	
CORY L. ALVARADO,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Cory L. Alvarado pleaded guilty to felony injuring jails. The district court imposed a unified sentence of five years, with three years fixed. On appeal, Mr. Alvarado asserts the district court abused its discretion when it imposed the fixed term of his sentence.

Statement of the Facts & Course of Proceedings

One day, Washington County Jail deputies noticed the television in a pod dayroom was broken on the floor, there was water all over the floor, and the pod bathroom had two shattered

porcelain sinks and water shooting out of the pipes. (Presentence Report (*hereinafter*, PSI), p.1.)¹ Before the incident, Mr. Alvarado had been acting up and throwing things, and after deputies moved him to a holding cell, other inmates reported he had started ripping things apart.² (*See* PSI, p.1.) Video surveillance footage showed that Mr. Alvarado had gone into the bathroom, and other inmates had looked in the direction of the bathroom as if watching him. (*See* PSI, p.1.) Mr. Alvarado then left the bathroom, pulled the dayroom television to the floor, grabbed the receiver and threw it at the television, and stomped on the television. (PSI, p.1.)

When deputies tried to search Mr. Alvarado to make sure he had not hidden a shard of porcelain from the broken sinks on his person, he refused to comply and physically resisted the deputies. (*See* PSI, p.1.) Deputies took him to the floor, detained him in handcuffs, and secured him in a restraint chair under surveillance for about an hour. (*See* PSI, p.1.)

The State charged Mr. Alvarado by Information with injuring jails, felony, I.C. § 18-7018, and resisting and/or obstructing an officer, misdemeanor, I.C. § 18-705. (R., pp.30-31.) Pursuant to a plea agreement, Mr. Alvarado agreed to plead guilty to injuring jails, and the State agreed to dismiss the resisting and/or obstructing an officer charge. (*See* Tr., p.20, L.15 – p.21, L.5.)³ The plea agreement did not contain sentencing recommendations. (*See* Tr., p.20, L.18.) The district court accepted Mr. Alvarado's guilty plea. (Tr., p.24, Ls.15-17.)

¹ All citations to "PSI" refer to the 150-page PDF version of the Presentence Report and its attachments.

² Mr. Alvarado had been arrested for disturbing the peace about two months before the incident here, and he submitted a urinalysis that tested positive for methamphetamine at the jail. (*See* PSI, p.4.) Mr. Alvarado had been on parole in Ada County No. CR-2004-269, on a lewd conduct case, and after the arrest the State submitted a report of parole violation in that case. (*See* PSI, pp.2-5, 38-39.)

³ All citations to "Tr." refer to the 47-page PDF version of the Reporter's Transcripts. Please note the transcripts are in reverse chronological order.

Mr. Alvarado declined to participate in the presentence process. (PSI, p.1.) At the sentencing hearing, Mr. Alvarado's counsel mentioned that Mr. Alvarado had a pending parole revocation hearing in Ada County No. CR-2004-269. (See Tr., p.9, Ls.11-12.) Addressing the district court, defense counsel stated: "I would ask the Court to tailor a sentence that gives him some impetus to comply with the rules in the prison. A longer tail would do that more than a shorter tail. So I am recommending an underlying sentence of two, plus three." (Tr., p.9, Ls.12-16.) The State recommended the district court impose a unified sentence of five years, with three years fixed. (Tr., p.8, Ls.20-21.) The district court imposed a unified sentence of five years, with three years fixed. (R., pp.48-50.)

Mr. Alvarado filed, pro se, a Notice of Appeal timely from the district court's Judgment and Commitment. (R., pp.52-56.)

ISSUE

Did the district court abuse its discretion when it imposed the fixed term of Mr. Alvarado's unified sentence of five years, with three years fixed, following his plea of guilty to injuring jails?

ARGUMENT

The District Court Abused Its Discretion When It Imposed The Fixed Term of Mr. Alvarado's Unified Sentence Of Five Years, With Three Years Fixed, Following His Plea Of Guilty To Injuring Jails

Mr. Alvarado asserts the district court abused its discretion when it imposed the fixed term of his unified sentence of five years, with three years fixed, following his plea of guilty to injuring jails. The district court should have instead followed Mr. Alvarado's recommendation by imposing a unified sentence of five years, with two years fixed. (See Tr., p.9, Ls.12-16.)

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 “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

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) (internal quotation marks omitted). Mr. Alvarado does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Alvarado 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. Alvarado asserts the fixed term of his sentence is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Between his initial release on parole in 2009, and his arrest and the subsequent incident at issue here, Mr. Alvarado had “remained consistently employed throughout his supervision.” (See PSI, p.4.) The presentence investigator also reported, “To his credit, there are no documented concerns regarding alcohol or drug use by the defendant throughout his years on supervision other than when [he was] arrested” (PSI, p.4.) Further, “Mr. Alvarado completed sex offender

treatment through SANE Solutions in April 2013 and then participated in aftercare treatment and received approval in April 2014 to have a ‘smart’ phone for business purposes.” (PSI, pp.4-5.) Moreover, as defense counsel indicated before the district court, a lower fixed term would encourage Mr. Alvarado to follow the rules in prison. (*See* Tr., p.9, Ls.12-16.)

Because the district court did not adequately consider the above mitigating factors, the fixed term of Mr. Alvarado’s sentence is excessive considering any view of the facts. Thus, the district court erred when it imposed the fixed term of Mr. Alvarado’s sentence. The district court should have instead followed Mr. Alvarado’s recommendation by imposing a unified sentence of five years, with two years fixed.

CONCLUSION

For the above reasons, Mr. Alvarado respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 10th day of January, 2019.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th 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

BPM/eas