

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

1-11-2019

### State v. Abdulhamza Appellant's Brief Dckt. 46254

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Abdulhamza Appellant's Brief Dckt. 46254" (2019). *Not Reported*. 5391.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/5391](https://digitalcommons.law.uidaho.edu/not_reported/5391)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

BEN P. MCGREEVY  
Deputy State Appellate Public Defender  
I.S.B. #8712  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46254-2018
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-17-53347
v.	)	
	)	
AHMED MAJED ABDULHAMZA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, eighteen-year-old Ahmed Majed Abdulhamza pleaded guilty to felony robbery. The district court imposed a unified sentence of fifteen years, with five years fixed. On appeal, Mr. Abdulhamza asserts the district court abused its discretion when it imposed his sentence.

Statement of the Facts & Course of Proceedings

Boise Police Department officers responded to a report from E.W. that Mr. Abdulhamza intentionally pointed a handgun at him. (See Presentence Report (*hereinafter*, PSI), pp.3, 73-74,

84.)<sup>1</sup> Abdullah Abdulmajeed then reportedly choked E.W. from behind and stole his phone and money from his person. (See PSI, pp.3-4.) Venecia L. was also present and allegedly filmed the robbery. (See PSI, pp.3, 72.)

Officers located a car matching the description of the car the suspects from the robbery were in, and stopped the car. (See PSI, p.73.) Venecia L. fled from the traffic stop on foot and was caught. (See PSI, p.3.) She was a confirmed runaway out of Ada County. (See PSI, p.3.) Mr. Abdulhamza was the driver of the car, and Mr. Abdulmajeed was in the back seat. (See PSI, p.73.) Officers found E.W.'s phone, and five baggies with a green residue, on the driver's seat of the car. (See PSI, p.3.) The residue tested presumptively positive for marijuana. (PSI, p.3.) Officers also found a pellet handgun in the car. (See PSI, p.3.) Mr. Abdulmajeed had \$50.00 in U.S. currency on his person. (See PSI, pp.3-4.) An officer brought E.W. to the scene, and E.W. positively identified Mr. Abdulhamza as the one who held the gun and Mr. Abdulmajeed as the one who choked him during the robbery. (See PSI, pp.3-4.)

The State charged Mr. Abdulhamza (who was still seventeen years old at the time) by Information with robbery, felony, I.C. §§ 18-6501, 18-6502, and 18-204, and possession of a controlled substance with the intent to deliver, felony, I.C. §§ 37-2732(a) and 18-204. (R., pp.33-34.) Mr. Abdulhamza had posted bond, but the district court revoked and increased his bond after his subsequent arrest for robbery with a use of a deadly weapon sentencing enhancement in another case, Ada County No. CR01-18-7429.<sup>2</sup> (See R., pp.26, 32, 36-37, 45.) Mr. Abdulhamza entered a not guilty plea in this case. (R., p.48.)

---

<sup>1</sup> All citations to "PSI" refer to the 479-page PDF version of the Presentence Report and its attachments.

<sup>2</sup> No. CR01-18-7429 involved charges of felony robbery with a use of a deadly weapon sentencing enhancement, and misdemeanor possession of a controlled substance. (See R., p.68.)

Pursuant to a global plea agreement covering this case, No. CR01-18-7429, and a third pending case, Ada County No. CR01-18-7666,<sup>3</sup> Mr. Abdulhamza agreed to plead guilty to the robbery charges in this case and in No. CR01-18-7429. (*See R.*, pp.59-70.) The State agreed to dismiss the possession of a controlled substance charge in this case, as well as the other charges in No. CR01-18-7429. (*See R.*, p.69.) The State also agreed to entirely dismiss No. CR01-18-7666. (*See R.*, pp.59, 70.) In this case, the State would recommend imposing a unified sentence of fifteen years, with five years fixed, and Mr. Abdulhamza would be free to ask for a lesser sentence. (*See R.*, p.59.) The district court accepted Mr. Abdulhamza's guilty plea in this case. (*See R.*, p.59.)

The presentence investigator here concluded, "Mr. Abdulhamza appears to be a viable candidate for an order of retained jurisdiction as it would provide him a period of time in a structured environment and an opportunity to make the best of that time, focusing solely on his betterment, if he chooses." (PSI, p.18.) At the sentencing hearing, Mr. Abdulhamza recommended the district court impose a unified sentence of fifteen years, with three years fixed, and retain jurisdiction. (*See R.*, p.76; Tr., p.36, Ls.5-23.) The State recommended the district court impose a unified sentence of fifteen years, with five years fixed. (*See R.*, p.76.) The district court imposed a unified sentence of fifteen years, with five years fixed. (*R.*, pp.77-80.)

---

<sup>3</sup> No. CR01-18-7666 involved charges of felony robbery with a use of a deadly weapon sentencing enhancement, and felony possession of a controlled substance. (*See R.*, p.68.) At the sentencing hearing, the State told the district court the three cases all involved Mr. Abdulhamza robbing the alleged victims after arranging to purchase marijuana from them. (*See Tr.*, p.19, L.10 – p.26, L.8.)

Mr. Abdulhamza filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment.<sup>4</sup> (R., pp.87-89.)

### ISSUE

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

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fifteen Years, With Five Years Fixed, Upon Mr. Abdulhamza Following His Plea Of Guilty To Robbery

Mr. Abdulhamza asserts the district court abused its discretion when it imposed a unified sentence of fifteen years, with five years fixed, upon him following his plea of guilty to robbery. The district court should have instead followed Mr. Abdulhamza's recommendation by imposing a unified sentence of fifteen years, with three years fixed, and retaining jurisdiction. (*See* R., p.76.)

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. Abdulhamza does not assert that his sentence exceeds the statutory maximum. Accordingly,

---

<sup>4</sup> Mr. Abdulhamza also filed an Idaho Criminal Rule 35 (Rule 35) motion for a reduction of sentence (R., pp.84-86), which the district court denied (R., pp.104-07). On appeal, Mr. Abdulhamza does not challenge the district court's denial of his Rule 35 motion.

in order to show an abuse of discretion, Mr. Abdulhamza 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.*

Retained jurisdiction is designed “to allow the trial court additional time to evaluate the defendant’s rehabilitation potential and suitability for probation.” *State v. Chapel*, 107 Idaho 193, 194 (Ct. App. 1984). “Probation is the ultimate objective sought by a defendant who asks a court to retain jurisdiction.” *Id.* (citing *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982)). Whether to place a defendant on probation is a choice “committed to the sound discretion of the trial court.” *Id.* Because probation is at issue, the standard of review for a district court decision on whether to retain jurisdiction is the “clear abuse of discretion” standard, with a focus on the criteria set forth in I.C. § 19-2521. *Id.* “Refusal to retain jurisdiction will not be deemed a ‘clear abuse of discretion’ if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521.” *Id.*

Mr. Abdulhamza asserts his sentence is excessive considering any view of the facts, and there is insufficient information in the record to determine that a suspended sentence and probation would be inappropriate, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider Mr. Abdulhamza’s difficult childhood. In the presentence investigation questionnaire, Mr. Abdulhamza reported

that his father was killed by United States troops in Iraq in 2003, when Mr. Abdulhamza was about three years old. (*See* PSI, p.9.) He, his brother, and his mother then moved to Jordan, where he was picked on for being from Iraq. (PSI, p.9.) His mother married a man who used to beat Mr. Abdulhamza and his brother. (*See* PSI, p.9.) His family moved to the United States when he was nine years old. (PSI, p.9.) Mr. Abdulhamza stated that when he was living in St. Louis, Missouri, he and his family were the victims of frequent robberies, and he and his brother were shot at a lot. (*See* PSI, pp.9-10.)

The district court also did not adequately consider Mr. Abdulhamza's substance abuse issues. In the questionnaire, he wrote, "Being high and on drugs ever since I was 11 years old makes me wish I can start my life over." (PSI, p.9.) He reported starting the use of marijuana at the age of eleven, Xanax at the age of twelve, and methamphetamine and MDMA at the age of seventeen. (*See* PSI, pp.13-14.) Mr. Abdulhamza acknowledged, "Every bad situation in the USA I've put myself in always goes back to drugs." (PSI, p.14.) He also wrote, "I always wanted to get high. It was all about getting high. I worked, framing, but I always had debt to pay and my check was going to pay those drug debts within two days." (PSI, p.5.) He spent about ninety percent of his income on drugs, and sold drugs to support his habit. (*See* PSI, p.14.) Mr. Abdulhamza noted he was under the influence of Xanax, methamphetamine, marijuana, and MDMA at the time of the instant offense. (*See* PSI, pp.5-6.) He further stated, "I love the feeling of being sober," denied he had ever been afforded a treatment opportunity, and affirmed a drug treatment program was necessary for him at this time. (PSI, p.14.)

Additionally, the district court did not adequately consider Mr. Abdulhamza's remorse and acceptance of responsibility. In the questionnaire, Mr. Abdulhamza stated: "Being a drug addict does not justify my actions of what I've done. I really regret doing it. But at the same

time I am [grateful] for being held back from that lifestyle.” (PSI, p.5.) He recognized that he made a similar mistake “by doing almost the exact same thing” after he posted bond, and expressed further regret. (See PSI, p.5.)

At the time of the presentence investigation, Mr. Abdulhamza had recently become a father. (See PSI, p.11.) He wrote in the questionnaire: “I want to be a father to my son. I don’t want to go back to getting high. I made so many bad choices. I regret everything [and feel] saddened [as] to what I did to my victims.” (PSI, p.5.) For his future goals, Mr. Abdulhamza noted, “I want to own my own business in framing so I can take care of my son.” (PSI, p.15.)

In further written comments to the district court, Mr. Abdulhamza related: “I really do regret all of my actions. Now that I’ve been through a period of sobriety I realize how [reckless] my drug habit caused me to be [and] I apologize sincerely to my victims. My heart is broken by the decisions I’ve made that wronged them.” (PSI, p.15.) He continued: “I hope the court will help me with substance abuse problems classes counseling and education would greatly [benefit] my life going forward and help me to take care of my new born son. But I am completely at the [court’s] mercy and I accept any consequences for my actions and I take full responsibility.” (PSI, p.15.)

During the sentencing hearing, Mr. Abdulhamza told the district court, “To be honest, your Honor, I hate to try to make a justification for what I’ve done, because it was wrong.” (Tr., p.39, Ls.12-15.) He stated, “I think about it every day and wish I could take it back, but I’ve already messed up,” and “all I can do is learn from my mistakes.” (Tr., p.39, Ls.14-15.) Mr. Abdulhamza also stated: “I have to make myself a better man for my family, community, and most importantly, my son. He was just born two months ago.” (Tr., p.39, Ls.18-20.) Moreover, “I apologize to my victims and the people I’ve hurt. I understand what my actions



have caused, and it really fills my mind with regret. It's better to be a man with remorse and wisdom than a man without it." (Tr., p.39, L.24 – p.40, L.3.)

Mr. Abdulhamza informed the district court, "I want my son to grow up and be proud of dad, and I want him to be able to talk positively about me, not about the times I was in prison or drugged up." (Tr., p.40, Ls.7-10.) He stated that would "always motivate me to make better decisions and support my family." (Tr., p.40, Ls.11-12.) Mr. Abdulhamza asked the district court "to have mercy on me and put me through programming and maybe thinking and self-help classes so I can get out and be a better young man for my son." (Tr., p.40, Ls.16-19.)

Because the district court did not adequately consider the above mitigating factors, Mr. Abdulhamza's sentence is excessive considering any view of the facts, and there is insufficient information in the record to determine that a suspended sentence and probation would be inappropriate. Thus, the district court abused its discretion when it imposed a unified sentence of fifteen years, with five years fixed. The district court should have instead followed Mr. Abdulhamza's recommendation by imposing a unified sentence of fifteen years, with three years fixed, and retaining jurisdiction.

#### CONCLUSION

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

DATED this 11<sup>th</sup> 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 11<sup>th</sup> 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