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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 46278-2018 & 46279-2018
Plaintiff-Respondent,)	
)	ADA COUNTY NOS. CR01-18-15605 &
v.)	CR01-18-22016
)	
JERRICK JAMES ENGLER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jerrick James Engler appeals from his Judgments of Conviction. In CR01-18-15605, Mr. Engler was sentenced to unified sentences of ten years, with three years fixed, for his grand theft conviction, and five years, with three years fixed, for his aggravated assault conviction. In CR01-18-22016, he was sentenced to fourteen years, with three years fixed, for his grand theft conviction, and ten years, with three years fixed, for his burglary conviction. Mr. Engler asserts that the district court abused its discretion in sentencing him to excessive sentences without properly considering the mitigating factors that exists in his cases.

Statement of the Facts & Course of Proceedings

In CR01-18-15605, an Information was filed charging Mr. Engler with two counts of grand theft, aggravated assault, use of a deadly weapon, and misdemeanor battery. (R., pp.30-31.) The charges were filed after Mr. Engler was detained by citizens because he allegedly stole a woman's purse from her cart, ran off, and then threatened another individual with a knife. (PSI, pp.3-4.)¹ Mr. Engler entered a guilty plea to one count of grand theft and aggravated assault. (R., pp.41-42.) The remaining charges were dismissed. (R., p.60.)

In CR01-18-22016, an Information was filed charging Mr. Engler with six counts of grand theft and two counts of burglary. (R., pp.98-100.) The charges were filed after Mr. Engler was identified as the individual who had taken a woman's purse from a cart and used her credit cards to make purchases later that same day. (PSI, p.4.) He entered a guilty plea to one count of grand theft and one count of burglary. (R., p.102.) Pursuant to plea negotiations, the remaining charges were dismissed. (R., p.121.)

The cases were consolidated. (R., pp.56, 114.) At sentencing, the State recommended unified sentences of ten years, with three years fixed, for the grand theft charge; five years, with three years fixed, for the aggravated assault charge; fourteen years, with three years fixed, for the other grand theft charge; and ten years, with three years fixed for the burglary charge. (Tr. 8/2/18, p.32, Ls.7-15.) Defense counsel requested that Mr. Engler be allowed to participate in a period of retained jurisdiction. (Tr. 8/2/18, p.38, Ls.2-3.) The district court imposed unified sentences of ten years, with three years fixed, for his grand theft conviction; five years, with three years fixed, for his aggravated assault conviction; fourteen years, with three years fixed, for

¹ 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.

his other grand theft conviction; and ten years, with three years fixed, for his burglary conviction. (R., pp.60-62, 121-123.) Mr. Engler filed Notices of Appeal timely from each of his Judgments of Conviction. (R., pp.68-69, 129-130.)

ISSUE

Did the district court abuse its sentencing discretion?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Excessive Sentences Upon Mr. Engler

Mr. Engler asserts that, given any view of the facts, his unified sentences of ten years, with three years fixed, for his grand theft conviction; five years, with three years fixed, for his aggravated assault conviction; fourteen years, with three years fixed, for his other grand theft conviction; and ten years, with three years fixed, for his burglary conviction years, are 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. Engler does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Engler 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. Engler 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. Engler began using illegal substances as a child, using alcohol at the age of eight, prescription drugs at the age of eleven, marijuana at the age of twelve, heroin at the age of fifteen, cocaine and designer stimulants at the age of sixteen, and methamphetamine at the age of eighteen. (PSI, pp.16-17, 24.) He wants to stop using because he misses his “family and loved ones” and does not want to continue to hurt them through his substance abuse. (PSI, p.17.) He

recognizes that drug treatment is necessary. (PSI, p.17.) He has a series of diagnoses related to his substance abuse including: Stimulant Use Disorder – Amphetamine Type, Severe – In a Controlled Environment; Opioid Use Disorder, Severe, In a Controlled Environment; Alcohol Use Disorder, Severe – Early Remission in a Controlled Environment; Cannabis Use Disorder, Severe – Early Remission in a Controlled Environment; Stimulant Use Disorder - Cocaine Type, Severe – Early Remission in a Controlled Environment; and Sedative, Hypnotic, or Anxiolytic Use Disorder, Severe – Early Remission in a Controlled Environment. (PSI, pp.25, 40.) It was recommended that he participate in Level II.1 Intensive Outpatient Treatment. (PSI, p.38.)

Additionally, 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 (1999). Mr. Engler has been previously diagnosed with “ACHD, OCD, bipolar disorder, and anxiety.” (PSI, p.16.) He has a history of attempting suicide and engaging in cutting. (PSI, p.16.) Recently, he was diagnosed with Rule Out Unspecified Anxiety Disorder – Provisional, Rule Out Attention-Deficit/Hyperactivity Disorder – Combined presentation, and Rule Out Conduct Disorder. (PSI, pp.26, 40.)

Furthermore, Mr. Engler 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. Engler has expressed his remorse for committing the instant offense stating, “I apologize to those who had to suffer due to my cowardence [sic] and weakness. You shouldn[’]t have been hurt. I ask the courts to see that this time I want to help myself so this doesn[’]t happen again.” (PSI, p.18.) At the sentencing hearing, he noted:

Your Honor, I'd just like to say that I do recognize what I did was wrong and I want to be able to pay her -- both my victims back any way I can.

I understand that the last couple of years for me have been rough with my drug use and I've made a lot of decisions that I shouldn't have. I do regret those decisions now, and I look forward to the opportunity to try to figure out more about myself and why I've done what I did so I don't do it again.

(Tr. 8/2/18, p.40, L.24 – p.41, L.7.)

Based upon the above mitigating factors, Mr. Engler asserts that the district court abused its discretion by imposing excessive sentences 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 and allowed him an opportunity to participate in a period of retained jurisdiction.

CONCLUSION

Mr. Engler respectfully requests that this Court enter orders retaining jurisdiction or reduce his sentence in any other way it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 11th day of February, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 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

EAA/eas