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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46307-2018
Plaintiff-Respondent,)	
)	ELMORE COUNTY NO. CR-2017-3567
v.)	
)	
ROBERT E. KORATICH III,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Robert E. Koratich, III, appeals from the district court's Judgment of Conviction and Commitment. Mr. Koratich was sentenced to a unified sentence of life, with ten years fixed, for his lewd conduct conviction. He asserts that the district court abused its discretion in sentencing him to an excessive sentence without properly considering the mitigating factors that exist in this case.

Statement of the Facts & Course of Proceedings

On February 1, 2018, an Information was filed charging Mr. Koratich with two counts of lewd conduct with a minor under sixteen. (R., pp.25-26.) The charges were the result of a report

to police, by C.K.'s grandparent, that Mr. Koratich may have had sexual contact with his girlfriend's daughter, C.K. (PSI, p.5.)¹

Mr. Koratich entered a guilty plea to one count of lewd conduct. (R., p.32.) The remaining charge was dismissed. (R., p.40.) At sentencing, the prosecution requested a unified sentence of life, with fifteen years fixed. (Tr., p.30, Ls.6-10.) Defense counsel recommended a unified sentence of fifteen years, with five years fixed, and that the district court retain jurisdiction. (Tr., p.31, Ls.20-22.) The district court imposed a unified sentence of life, with ten years fixed. (R., pp.40-43.) Mr. Koratich filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.45-47.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Koratich, a unified sentence of life, with ten years fixed, following his plea of guilty to lewd conduct?

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Koratich, A Unified Sentence Of Life, With Ten Years Fixed, Following His Plea Of Guilty To Lewd Conduct

Mr. Koratich asserts that, given any view of the facts, his unified sentence of life, with ten 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).

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.

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. Koratich does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Koratich 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. Koratich 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, Mr. Koratich asserts that the district court did not give proper weight to his status as a first time felony offender and his rehabilitative potential. He has a very limited

criminal record, having been convicted of two misdemeanors prior to the case at hand. (PSI, pp.7-8.) The instant offense is his first felony conviction and his first conviction for a sexual offense. (PSI, pp.7-8.) “The courts have long recognized that the first offender should be accorded more lenient treatment than the habitual criminal. In addition to considerations of humanity, justice and mercy, the object is to encourage and foster the rehabilitation of one who has for the first time fallen into error, and whose character for crime has not become fixed.” *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971). Mr. Koratich is amenable to sex offender treatment and, with proper treatment, may be able to avoid reoffending. (PSI, p.104.) He noted that, “I am treatable, and I would like any and all treatment that is available.” (Tr., p.32, Ls.9-11.)

Additionally, Mr. Koratich suffers from addiction and is willing to participate in substance abuse 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. Koratich began using alcohol and marijuana as a teenager. (PSI, p.15.) Although his use of alcohol is only occasional, his use of marijuana has become problematic. (PSI, p.15.) He admits to using daily and described himself as a “functioning addict.” (PSI, p.15.) Mr. Koratich was diagnosed with Cannabis Use Disorder, Severe. (PSI, p.23.) It was recommended that he participate in Level 1 Outpatient Treatment. (PSI, p.31.)

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 (1999). Mr. Koratich has been previously diagnosed with Major Depressive Disorder, Single Episode, Mild – Provisional; Generalized Anxiety Disorder – Provisional; and

Posttraumatic Stress Disorder or Acute Stress Disorder or other disorder of extreme stress – Provisional. (PSI, pp.23, 34.) In 2012, he attempted suicide. (PSI, p.14.) He believes that he would benefit from counseling. (PSI, p.14.)

In *State v. Shideler*, 103 Idaho 593, 594, 651 P.2d 527, 528 (1982), the Idaho Supreme Court noted that family and friend support were factors that should be considered in the Court’s decision as to what is an appropriate sentence. *Id.* Mr. Koratich has the support of his mother. Ms. Neal wrote a letter of support for her son. (PSI, pp.39-41.) She noted that he is “very kind, loving, and respectful” and that she was willing to provide a home for him in Georgia upon his release. (PSI, p.41.)

Finally, Mr. Koratich 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. Koratich has expressed his remorse for committing the instant offense stating, “I feel absolutly [sic] terrible for what I have done.” (PSI, p.7.) He also noted that:

I accept what I have done is wrong! Never again will I commit such a crime! I am more than willing to do any and all treatment giving to me by the court. I want to be able to [r]econcile my wrong doing so I can be with my family again. I am terribly sorry for the damage I have caused my family!

(PSI, p.17.) He again expressed his remorse at the sentencing hearing stating, “I am just terribly sorry for what I have done, not only to my friends and family, but to my children.” (Tr., p.32, Ls.11-13.)

Based upon the above mitigating factors, Mr. Koratich 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 status as a first time felony offender, amenability for sexual

offender treatment, substance abuse and desire for treatment, mental health issues, family support, and remorse, it would have crafted a less severe sentence.

CONCLUSION

Mr. Koratich 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 21st day of December, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st 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
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

EAA/eas