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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|-----------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 46315-2018 |
| Plaintiff-Respondent, |) | |
| |) | OWYHEE COUNTY NO. CR37-18-9 |
| v. |) | |
| |) | |
| DAVID BRIAN BLOCKER, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

David Brian Blocker appeals from his judgment of conviction for aggravated assault and mayhem. Mr. Blocker pleaded guilty and the district court imposed a unified sentence of five years, with one year fixed, and fourteen years, with ten years fixed, respectively. Mr. Blocker appeals, and he asserts that the district court abused its discretion by imposing excessive sentences.

Statement of the Facts & Course of Proceedings

On December 8, 2017, officers with the Homedale Police Department stopped a vehicle driven by Mr. Blocker; an officer was familiar with the passenger, who was a minor, and the passenger was detained for a curfew violation. (Presentence Investigation Report (*hereinafter*, PSI), pp.3-4.) Officers noticed a machete in the vehicle. (PSI, p.4.) Mr. Blocker gave consent to search the vehicle and found methamphetamine in the passenger's side. (PSI, p.4.) The passenger was released to his grandmother and was given the machete back. (PSI, p.4.)

While speaking with an officer, Mr. Blocker stated that he had gotten into a fight while he was tattooing another person. (PSI, p.4.) When the officer asked if Mr. Blocker knew anything about tattooing "I suck dick" on another man's forehead, Mr. Blocker stated that he did not, but that he might know who did. (PSI, p.4) Mr. Blocker apparently matched the description in an earlier Caldwell police report regarding the tattooing, and the officer told him that he would follow up if the victim pressed charges. (PSI, p.4.)

Several days later, officers made contact with Zachary Jerome, who was the owner of the vehicle Mr. Blocker had been driving. (PSI, p.4.) Mr. Jerome told the officers that he had picked up Robert Hurles and was driving him around when Mr. Blocker called and stated that he wanted to buy drugs from Mr. Hurles. (PSI, p.4.) According to Mr. Jerome, they went to Mr. Blocker's residence where Mr. Blocker threatened to either beat up Mr. Hurles or give him a tattoo. (PSI, pp.4-5.) Mr. Blocker then sat Mr. Hurles down and tattooed his forehead. (PSI, p.5.) He then threatened Mr. Hurles if he called the police. (PSI, p.5.) Mr. Hurles was then driven out to Greenleaf, Idaho and left at a gas station. (PSI, p.5.) Mr. Blocker explained that he had heard that Mr. Hurles had taken advantage of a mentally challenged individual and was angry and on drugs at the time. (PSI, p.5.)

Mr. Blocker was charged with aggravated assault, kidnapping in the second degree, and mayhem. (R., p.39.) He pleaded guilty to aggravated assault and mayhem and the State dismissed the kidnapping charge.¹ (See generally, 2/23/18 Tr.; R., p.56) The district court imposed sentences of five years, with one year fixed, and fourteen years, with ten years fixed. (R., pp.63, 66.) Mr. Blocker appealed. (R., p.71.) He asserts that the district court abused its discretion by imposing excessive sentences.

ISSUE

Did the district court abuse its discretion when it imposed unified sentences of five years, with one year fixed, and fourteen years, with ten years fixed, upon Mr. Blocker following his plea of guilty to aggravated assault and mayhem?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Unified Sentences Of Five Years, With One Year Fixed, And Fourteen Years, With Ten Years Fixed, Upon Mr. Blocker Following His Plea Of Guilty To Aggravated Assault And Mayhem

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Blocker’s sentences do not exceed the statutory maximum. Accordingly, to show that the sentences imposed were unreasonable, Mr. Blocker “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

¹ The judgment of conviction contains a clerical error. Mr. Blocker pleaded guilty to aggravated assault, but the judgment states that the conviction is for aggravated battery. (R., p.63.)

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Mr. Blocker addressed the district court at the sentencing hearing. He stated, “first off, I want – you know, I understand what I did was wrong. And I understand, you know, I need to deal with whatever I got coming for it.” (Sent Tr., p.23, Ls.1-3.) He acknowledged that he had been on drugs. (Sent. Tr., p.23, Ls.4-7.) Mr. Blocker explained that, at age 42, he had spent over 25 years in prison and acknowledged that, “the way I think isn’t normal to what most people think.” (Sent. Tr., p.23, Ls.8-11.) He acknowledged that he was angry with Mr. Hurles because Mr. Hurles was taking advantage of someone who was mentally disabled, but stated, “I understand that, you know, I should have just left it alone and let the courts deal with it. And I wish I did.” (Sent. Tr., p.25, Ls.4-6.) Mr. Blocker acknowledged that, “in my twisted way of thinking, I thought what I could do that would just teach him, you know what I mean?” (Sent. Tr., p.25, Ls.11-13.) Mr. Blocker informed the court, “[a]s you know, my whole life since I was 13, in and out of foster homes, group homes, boys ranches. I’ve been fighting a battle with addiction forever. I know that, you know with the courts and me, it’s two different paths, you know.” (Sent. Tr., p.26, Ls.6-11.) Mr. Blocker explained that he wanted an opportunity for

treatment: “All I can do is give you my word as a man that if you will give me the opportunity to get some treatment that I’ve never had, I’ll give it my best foot forward. But I’ve never been in trouble here in Idaho. And like I said, all I can do is tell you, you know, as a man, if I get the opportunity for treatment, I’ll give it my best foot forward.” (Sent. Tr., p.26, Ls.12-18.)

Counsel for Mr. Blocker emphasized that Mr. Blocker’s issues stemmed from his substance abuse addiction and therefore requested that the court retain jurisdiction “to give him finally the chance to do the drug treatment that he desperately needs.” (Sent. Tr. p.22, Ls.4-7). Mr. Blocker had no history of substance abuse treatment. (Sent. Tr., pp.14-19.)

Considering that Mr. Blocker accepted responsibility for his actions, acknowledged that he should have involved the courts rather than taken matters into his own hands, and acknowledged his substance abuse addiction and wanted treatment that he had never had, Mr. Blocker submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Blocker respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 22nd day of May, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 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

JMC/eas