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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46444-2018
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY NO. CR42-18-3326
v.)	
)	
SAMUEL JOSIAH SMITH,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Samuel Josiah Smith appeals from the district court's Judgment of Conviction. Mr. Smith was sentenced to a unified sentence of eight years, with three years fixed for his aggravated driving under the influence conviction. He asserts that the district court abused its discretion in sentencing him to an excessive sentence without giving proper weight and consideration to the mitigating factors that exist in his case.

Statement of the Facts & Course of Proceedings

On June 4, 2018, an Information was filed charging Mr. Smith with aggravated driving under the influence of alcohol. (R., pp.31-32.) The charges were the result of an injury accident in which Mr. Smith's vehicle collided with another vehicle. (PSI, pp.3-4.)¹

Mr. Smith entered a guilty plea to the aggravated driving under the influence charge. (R., p.36.) At sentencing, the prosecutor requested a unified sentence of twenty years, with ten years fixed.² (Tr. 8/31/18, p.26, Ls.12-14.) Defense counsel recommended that the district court follow the recommendation of the presentence investigator and sentence Mr. Smith to a period of retained jurisdiction. (Tr. 8/31/18, p.30, Ls.7-9; PSI, p.21.) The district court sentenced Mr. Smith to a unified sentence of eight years, with three years fixed. (R., pp.62-64.) Mr. Smith filed a Motion for Reconsideration of Sentence Under Rule 35. (R., p.69.) The motion was denied.³ (R., pp.75-78.) Mr. Smith also filed a Notice of Appeal timely from the district court's Judgment and Commitment. (R., pp.82-85.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Smith, a unified sentence of eight years, with three years fixed, following his plea of guilty to aggravated driving under the influence of alcohol?

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.

² The State's recommendation exceeded the maximum sentence for aggravated driving under the influence. The maximum sentence is fifteen years. *See* I.C. 18-8006(1)(a).

³ On appeal, Mr. Smith does not challenge the denial of his Rule 35 motion because he did not supply new or additional information as required by *State v. Huffman*, 144 Idaho 201, 203 (2007).

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Smith, A Unified Sentence Of Eight Years, With Three Years Fixed, Following His Plea Of Guilty To Aggravated Driving Under The Influence Of Alcohol

Mr. Smith asserts that, given any view of the facts, his unified sentence of eight years, with three 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).

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. Smith does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Smith 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 four-part test for determining whether a district court abused its discretion: Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards

applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

Mr. Smith 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. Smith began using alcohol and marijuana at the age of 15, hallucinogens at the age of 19, methamphetamine and inhalants at the age of 20, cocaine at the age of 21, and synthetic cannabinoids at the age of 22. (PSI, p.16.) Although he has been able to abstain from illegal drugs, he has continued to use alcohol. (PSI, pp.16-17.) Mr. Smith now realizes that he has a problem with alcohol. (PSI, p.16.) He wants to remain sober and believes that “AA groups, self help classes, and supportive people, such as family and friends” will help him stay alcohol free. (PSI, p.16.) However, he also believes treatment will be necessary. (PSI, p.16.)

Mr. Smith was diagnosed with Alcohol Use Disorder, Severe – Early Remission in a Controlled Environment. (PSI, p.24.) It was recommended that he participate in Level 2.1 Intensive Outpatient Treatment. (PSI, pp.19, 29.) Prior to sentencing, he began attending treatment. (PSI, p.39.) His treatment provider noted that Mr. Smith “has been engaged in treatment and is prepared for all sessions and completed all of his homework.” (PSI, p.39.)

Furthermore, in *State v. Shideler*, 103 Idaho 593, 594 (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. Smith has the support of his family. Two of Mr. Smith's sisters wrote letters of support. (R., pp.57-58.) Kerianne Smith wrote that her brother is "caring, honest, and hardworking" and has "sincere remorse." (R., p.57.) She noted that she will continue to support him in any way she can. (R., p.57.) Rebecca Smith wanted the district court to know that her brother is "such an amazing person" and that he has numerous people in his life "who can and will support him and give him the help and encouragement he needs." (R., p.58.)

Idaho courts have previously found that a defendant's good employment history is a mitigating factor that should be considered when crafting a sentence. *See State v. Hagedorn*, 129 Idaho 155, 161 (Ct. App. 1996). Prior to his arrest, Mr. Smith was working at Falls Brand Independent Meats as "Labeler/Laborer." (PSI, p.14.) He was considered to be a good employee and Falls Brand indicated that they would rehire him after he was released. (PSI, p.14.)

Additionally, Mr. Smith 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. Smith has expressed his remorse for committing the instant offense stating, "I regret what has happened and feel terrible about the accident I've caused and I'm not sure of how I could ever make it up to the people that were involved, and I hope to someday maybe be forgiven for what I've done." (PSI, p.5.)

He reiterated his remorse at the sentencing hearing:

Yes, Your Honor. I would like to say that I know I've ruined these guys' lives, and there's really not a whole lot that I can do about it. But I'd like to apologize and say how sorry I am for doing what I did.

I feel terrible about what has happened, and there's really no excuse for what I have done. If given the opportunity to change what I've done, I would appreciate any chance to make any difference towards this case.

(Tr. 8/31/18, p.30, Ls.14-21.) In completing the PSI, he also noted that he is taking every opportunity to better himself:

I've now been incarcerated for about 3 1/2 months now, and since then [I] have signed up in the group classes that they offer. I feel that Recovery Unanimous is a very helpful and very insightful way towards the help of the Lord Jesus, and what to do in order to get a step in the right direction. I also go to AA and church throughout the week and it is helping me [with] the change I am seeking in life. I know that I have made a huge mistake and I would like to keep seeking the help I need in order to change my life around. I . . . would appreciate the opportunity to show that through hard work and determination I can improve myself and change the course of some of the circumstances that I've been through in my life.

(PSI, p.19.)

Based upon the above mitigating factors, Mr. Smith 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 substance abuse, desire for treatment, employment history, family support, and remorse, it would have allowed him to participate in a period of retained jurisdiction or crafted a less severe sentence.

CONCLUSION

Mr. Smith 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 1st day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 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