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### State v. Snow Appellant's Brief Dckt. 46489

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46489-2018
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR14-18-1404
v.	)	
	)	
TIMOTHY WILLIAM SNOW,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Timothy William Snow entered a plea of guilty to sexual abuse of a child under sixteen and the district court imposed a unified sentence of thirteen years, with one and one-half years fixed. On appeal, Mr. Snow asserts that the district court abused its discretion by imposing an excessive sentence upon him in light of the mitigating factors present in the case.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of thirteen years, with one and one-half years fixed, upon Mr. Snow, following his plea of guilty to sexual abuse of a child under sixteen?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Thirteen Years, With One And One-Half Years Fixed, Upon Mr. Snow, Following His Plea Of Guilty To Sexual Abuse Of A Child Under Sixteen

In January 2018, Mr. Snow was charged by Superceding Indictment with three counts of lewd conduct with a minor under sixteen. (R., pp.15-17.) The Superceding Indictment alleged conduct between Mr. Snow and a minor in August 2014, October 2016, and February 2017. (R., pp.15-17.) Mr. Snow entered into a plea agreement wherein he would plead guilty to sexual abuse of a child under sixteen as charged in an Amended Superceding Indictment. (R., pp.54-57.) Pursuant to the plea agreement, the State would agree to recommend that the district court retain jurisdiction in the event Mr. Snow's psychosexual evaluation came back as a low risk to reoffend. (Tr., p.6, Ls.6-12.) If Mr. Snow was evaluated by Dr. Johnston as having a moderate risk to reoffend, the State would recommend a prison sentence with one year fixed and an open indeterminate portion. (Tr., p.6, Ls.12-15.)

At sentencing, the State asked to the district court to impose a unified sentence of fifteen years, with one year fixed. (Tr., p.63, Ls.21-24.) Defense counsel for Mr. Snow asked the district court "to consider a 10-and-a-half month" fixed sentence with "a tail of nine years." (Tr., p.68, L.19 – p.69, L.24.) The district court imposed a unified sentence of thirteen years, with eighteen months fixed, upon Mr. Snow. (R., pp.94-95, 103-104.) Mr. Snow filed a Notice of Appeal timely from the district court's Judgment and Commitment. (R., pp.111-113.)

Mr. Snow asserts that, given any view of the facts, his unified sentence of thirteen years, with one and one-half 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. Snow does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Snow 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)).

Mr. Snow asserts the district court failed to adequately consider his illegal substance addictions and amenability to treatment. Mr. Snow began using marijuana at age 13, and progressed to methamphetamine at age 20, and admitted to binging on the substance. (Presentence Investigation Report “PSI,” p.71.) Mr. Snow received a DSM-5 diagnoses of severe substance use disorder for both marijuana and methamphetamine. (Psychosexual Eval., p.22.) In the PSI, Mr. Snow acknowledged that he was under the influence of methamphetamine “most of the time” when he committed the offending behavior. (PSI, p.5.) Most importantly, Mr. Snow acknowledges his substance abuse and believes he would benefit from a substance abuse treatment program. (PSI, p.12.) In fact, in his GAIN I evaluation, Mr. Snow’s responses

indicated a “high motivation for treatment” and he reported that he is 98% ready to remain abstinent. (GAIN I, p.5.)

In addition, Mr. Snow has accepted responsibility for his criminal conduct and has expressed willingness to undergo sex offender treatment. (Psychosexual Eval., p.17.) Mr. Snow admitted to committing the criminal conduct, “acknowledging he engaged in deviant sexual behavior,” and expressed his remorse for the victim. (Psychosexual Eval., p.20.) Mr. Snow also understands that this actions have the potential to cause psychological and emotional damage to the victim in this case. (Psychosexual Eval., p.6.) Mr. Snow comprehends the gravity of his conduct and believes he could benefit for sex offender treatment. (Psychosexual Eval., p.17.) Mr. Snow stated, “I think [sex offender treatment] would be beneficial to help give me the tools I need to prevent me from thinking about something like this in the future.” (Psychosexual Eval., p.17.) Dr. Johnston opined that Mr. Snow was moderately amenable to treatment and, if Mr. Snow participated in both substance abuse and sex offender treatment, he would fall within the moderate risk to reoffend. (Psychosexual Eval., p.38.)

Accordingly, in light of the foregoing, Mr. Snow asserts that the district court erred in imposing an excessive aggregate sentence upon him.

#### CONCLUSION

Mr. Snow 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 24<sup>th</sup> day of April, 2019.

/s/ Eric D. Fredericksen  
ERIC D. FREDERICKSEN  
State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24<sup>th</sup> day of April, 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](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

EDF/eas