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### State v. Adams Appellant's Brief Dckt. 46634

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46634-2018
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-18-2122
v.	)	
	)	
KYLE LEE ADAMS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Kyle Lee Adams pleaded guilty to felony operating a motor vehicle while under the influence of alcohol (one felony conviction within fifteen years). The district court imposed a unified sentence of ten years, with five years fixed, and retained jurisdiction. After Mr. Adams participated in a “rider,” rider program staff recommended the district court consider placing him on probation. The district court instead relinquished jurisdiction and executed a reduced unified sentence of ten years, with four and one-half years

fixed. On appeal, Mr. Adams asserts the district court abused its discretion when it imposed his initial underlying sentence, and when it relinquished jurisdiction.

### Statement of the Facts & Course of Proceedings

Boise Police Department officers responded to a reported problem with a drunk subject at a golf course. (See File Review Presentence Report (*hereinafter*, PSI), pp.2, 118.)<sup>1</sup> Employees at the golf course stated they had refused to serve the subject, Mr. Adams, any alcohol because they believed he was too intoxicated. (See PSI, p.2.) A responding officer could smell the strong odor of an alcoholic beverage coming from Mr. Adams' breath. (See PSI, p.2.) Mr. Adams admitted to consuming three beers and driving to the golf course after drinking. (See PSI, p.2.) Witnesses saw him driving to the golf course. (See PSI, p.2.) Mr. Adams met the decision points on all three administered standard field sobriety tests, and later provided two breath samples with results of .216/.218. (See PSI, p.2.)

The State charged Mr. Adams with operating a motor vehicle while under the influence of alcohol (one felony conviction within fifteen years), I.C. §§ 18-8004 and 18-8005(9). (R., pp.17-18.) Pursuant to a plea agreement, Mr. Adams entered a guilty plea to the charge. (See R., pp.22, 24-27.) The district court accepted Mr. Adams' plea. (See R., p.22.)

At the sentencing hearing, Mr. Adams recommended the district court impose a unified sentence of ten years, with three years fixed, and retain jurisdiction so he could go on a rider. (See Tr., June 13, 2018, p.9, Ls.5-9.) Mr. Adams indicated that he had a parole hold on him in

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<sup>1</sup> All citations to "PSI" refer to the 245-page PDF version of the abbreviated File Review Presentence Report and its attachments.

Camas County No. CR11-273,<sup>2</sup> but asserted that would not prevent him from going on a rider. (*See* Tr., June 13, 2018, p.12, Ls.17-19; PSI, pp.2-3.) The State recommended the district court impose a unified sentence of ten years, with five years fixed. (*See* Tr., June 13, 2018, p.7, Ls.3-6.) The district court then imposed a unified sentence of ten years, with five years fixed, and retained jurisdiction. (R., pp.33-37.) The district court told Mr. Adams it did not intend to place him on probation after the rider, but was sending him on the rider for evaluative purposes only, to get programming so he could figure out how to manage his alcoholism upon his release. (*See* Tr., June 13, 2018, p.19, L.12 – p.21, L.3.)

While on his rider, Mr. Adams completed the Cognitive-Behavioral Interventions for Substance Abuse (CBI-SA) and Thinking for a Change (T4C) programs. (*See* PSI, pp.231-32.) Although Mr. Adams also received a formal disciplinary sanction for receiving a stolen amount of Jpay media funds in the sum of \$593.04, based on his overall performance, rider program staff recommended the district court consider placing him on probation. (*See* PSI, pp.233-36.) Rider program staff concluded: “We believe Mr. Adams adequately demonstrated amenability to treatment as evidenced by completing all required programming, accepting constructive feedback, and demonstrating the skills and tools needed for his recovery. We therefore respectfully recommend that the court consider granting him probation.” (PSI, p.236.) In a separate letter, rider program staff informed the district court Mr. Adams was a dual status offender who was also serving time for a parole violation on another charge. (*See* PSI, p.245.)

At the rider review hearing, Mr. Adams recommended the district court place him on probation in this case, and leave the ultimate question of his release up to the parole board in

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<sup>2</sup> Camas County No. CR11-273 is a felony DUI case where Mr. Adams received a unified sentence of ten years, with four years fixed, and he had been released on parole about one and one-half years before the incident leading to the present case. (*See* PSI, pp.2-3.)

Camas County No. CR11-273. (*See* Tr., Dec. 12, 2018, p.7, L.10 – p.15, L.4, p.16, Ls.6-11.) The State recommended the district court here relinquish jurisdiction. (Tr., Dec. 12, 2018, p.6, Ls.9-11.) The district court relinquished jurisdiction and executed a unified sentence, reduced pursuant to Idaho Criminal Rule 35, of ten years, with four and one-half years fixed. (R., pp.39-41; Tr., Dec. 12, 2018, p.19, L.10 – p.20, L.8.)

Mr. Adams filed a Notice of Appeal timely from the district court’s Order Relinquishing Jurisdiction and Reducing Sentence. (R., pp.42-44.)

### ISSUES

- I. Did the district court abuse its discretion when it imposed an underlying unified sentence of ten years, with five years fixed, upon Mr. Adams following his plea of guilty to felony operating a motor vehicle while under the influence of alcohol (one felony conviction within fifteen years)?
- II. Did the district court abuse its discretion when it relinquished jurisdiction?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Imposed An Underlying Unified Sentence Of Ten Years, With Five Years Fixed, Upon Mr. Adams Following His Plea Of Guilty To Felony Operating A Motor Vehicle While Under The Influence Of Alcohol (One Felony Conviction Within Fifteen Years)

Mr. Adams asserts that the district court abused its discretion when it imposed his underlying unified sentence of ten years, with five years fixed, because his sentence, considering any view of the facts, is excessive. The district court should have followed Mr. Adams’ recommendation by imposing an underlying unified sentence of ten years, with three years fixed. (*See* Tr., June 13, 2018, p.9, Ls.5-9.)

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 “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

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) (internal quotation marks omitted). Mr. Adams does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Adams must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. Adams asserts his underlying sentence is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider Mr. Adams’ desire to address his substance abuse problems through treatment. According to the presentence investigator, for about a year after Mr. Adams’ release on parole in Camas County No. CR11-273, he “appeared to have been doing everything asked of him. I saw notations of his appearing as directed for scheduled office visits, home visits during which officers found no violations, urine tests that were negative for alcohol,

and trip permits granted.” (See PSI, pp.2-3.) However, Mr. Adams related in a written admission that, about a month before the incident, his sobriety of six and one-half years ended because he “[b]ecame to[o] comfortable and complacent with my recovery.” (See PSI, p.3.)

Mr. Adams indicated that, to be successful on community supervision in the future, he believed he would need to fully engage in supervision and maintain “a continued desire to remain Sober.” (See PSI, p.3.) One of the things he identified as the most important to him in life was, “Learning to live forever without alcohol.” (PSI, p.3.) Mr. Adams’ GAIN-I Recommendation and Referral Summary (GRRS) recommended for him Level II.1 Intensive Outpatient Treatment. (See PSI, p.100.) At the sentencing hearing, Mr. Adams stated that alcohol was not acceptable to him: “It should have never been and it never has been. It is a way for me to escape my pains and what remorse[] I have.” (Tr., June 13, 2018, p.16, Ls.15-18.)

The district court also did not give adequate consideration to Mr. Adams’ remorse and acceptance of responsibility. At the sentencing hearing, Mr. Adams stated: “First I would like to apologize to every civilian in this courtroom. My behavior [a]ffects every one of you.” (Tr., June 13, 2018, p.16, Ls.5-7.) Mr. Adams also apologized to his friends and family who were there to support him, explaining, “After six-and-a-half years of sobriety I relapsed for a period of time and this is where I am at and this is what happens.” (See Tr., June 13, 2018, p.16, Ls.7-12.) He stated, “I do accept responsibility and I do apologize to all of you.” (Tr., June 13, 2018, p.16, Ls.18-20.) His comments at the sentencing hearing echoed those from the presentence investigation, where Mr. Adams stated, “I put the public in danger and also let my family and clients down.” (See PSI, p.2.)

Additionally, the district court did not adequately consider Mr. Adams’ support from the community. During the sentencing hearing, Mr. Adams’ counsel told the district court that

Mr. Adams “is someone who enjoys a lot of support in the community.” (*See Tr.*, June 13, 2018, p.12, L.25 – p.13, L.1.) Defense counsel noted Mr. Adams had supporters in the courtroom: “His good friend Carl is here. His good friend Allisa and her mom. Mark who is the Idaho Department of Corrections reentry coordinator is here and his pastor Tim are all in the courtroom today in support of Kyle.” (*Tr.*, June 13, 2018, p.13, Ls.1-8.) Mr. Adams’ counsel described Mr. Adams as “obviously someone who can function out there and have a good solid relationship[] with people. And obviously he enjoys support out in the community as well.” (*See Tr.*, June 13, 2018, p.13, Ls.7-12.)

Because the district court did not adequately consider the above mitigating factors, Mr. Adams’ underlying sentence is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed his underlying unified sentence of ten years, with five years fixed.

## II.

### The District Court Abused Its Discretion When It Relinquished Jurisdiction

Mr. Adams asserts that the district court abused its discretion when it relinquished jurisdiction. An appellate court reviews a district court’s decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). The district court’s discretion in deciding whether to relinquish jurisdiction is not limitless. *State v. Rhoades*, 122 Idaho 837, 837 (Ct. App. 1992).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issues 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). The principal purpose of retained jurisdiction is to provide a period of evaluation of the offender's potential for rehabilitation and suitability for probation. *State v. Petersen*, 149 Idaho 808, 812 (Ct. App. 2010).

Here, the district court abused its discretion when it relinquished jurisdiction, because Mr. Adams' performance on the rider demonstrated his high potential for rehabilitation and suitability for probation. Apart from his formal disciplinary sanction for receiving stolen Jpay media funds (*see* PSI, p.233), Mr. Adams performed well on his rider. During the rider review hearing, Mr. Adams explained that the rider "was an opportunity for me to figure out that I am capable of making those correct decisions when I evaluate the decision and not just process through it." (*See* Tr., Dec. 12, 2018, p.15, Ls.18-21.) He now had "some skills, I could call them, to stop and think and evaluate what's going on." (Tr., Dec. 12, 2018, p.15, L.24 – p.16, L.1.)

Rider program staff wrote that they recommended placing Mr. Adams on probation because he "successfully completed his IDOC class consisting [of] Cognitive Behavioral Intervention for Substance Abuse (CBI-SA) as well as Thinking for a [C]hange." (PSI, p.234.) "The facilitators noted that Mr. Adams gained insight into his risky thinking and is able to identify how this thinking puts him into risky situations. Mr. Adams could replace risky thoughts as well as identify self-control strategies for when he is having those risky thoughts." (PSI, p.235.)

Additionally, rider program staff wrote, "Mr. Adams has successfully learned social skills and has practiced them throughout the duration of the class." (PSI, p.235.) Further, "ISCI facilitators noted he maintained a good attitude and a willingness to learn while participating in programming." (PSI, p.235.) Rider program staff summarized Mr. Adams' performance on his

rider as follows: “We believe Mr. Adams adequately demonstrated amenability to treatment as evidenced by completing all required programming, accepting constructive feedback, and demonstrating the skills and tools needed for his recovery. We therefore respectfully recommend that the court consider granting him probation.” (PSI, p.236.)

Moreover, at the rider review hearing, Mr. Adams’ counsel informed the district court, “He also indicated to me that he has been involved in the dog program out there, that he has been training animals while he has been spending some time.” (Tr., Dec. 12, 2018, p.10, Ls.6-9.) Mr. Adams told the district court: “It has been a blessing to work with the dogs. And sometimes they rescue us and we don’t rescue them. It’s been a privilege.” (Tr., Dec. 12, 2018, p.16, Ls.13-16.)

As for his continued treatment and recovery following the rider, in his comments to rider program staff, Mr. Adams stated: “At this point in my life and recovery, I’ll need to remain vigilant in all areas of my recovery. My relationship with God and my continued recovery within Alcoholics Anonymous is going to allow me to build a foundation on bedrock.” (PSI, p.236.) Mr. Adams also related that he planned to reside at Bethel Ministries upon his release, and he had already been accepted into that program. (*See* PSI, pp.235-36.) During the rider review hearing, Mr. Adams informed the district court: “My AA program, I am on step six, again, working [through] it one at a time. Today is my 11-month birthday.” (Tr., Dec. 12, 2018, p.16, Ls.3-5.)

Considering Mr. Adams’ performance on the rider demonstrated his high potential and rehabilitation and suitability for probation, and in light of the other information above, the district court abused its discretion when it relinquished jurisdiction.

CONCLUSION

For the above reasons, Mr. Adams respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 11<sup>th</sup> day of April, 2019.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<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

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

BPM/eas