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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	NO. 46660-2019
Plaintiff-Respondent,	KOOTENAI COUNTY NO. CR28-18-5631
v.	APPELLANT'S BRIEF
CHARLES CLIFFORD BROWN,	
Defendant-Appellant.	

STATEMENT OF THE CASE

Nature of the Case

The district court sentenced Charles C. Brown to fifteen years, with four years fixed, for delivery of a controlled substance. Mr. Brown appeals, and he argues the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

A grand jury indicted Mr. Brown on two counts of delivery of a controlled substance (methamphetamine and oxycodone), in violation of I.C. § 37-2732(a)(1). (R., pp.8–9.) Mr. Brown was charged with giving these substances to Misty Phelps, who, the next day, drowned with her two children by driving her car into a lake. (R., pp.8–9; Presentence

Investigation Report ("PSI"),[1] pp.2–3.) Mr. Brown had recently met Ms. Phelps, and he had no idea that she was a danger to herself or others. (PSI, pp.3–4.) Mr. Brown felt "horrible" about his crime. (PSI, p.4.)

Pursuant to a plea agreement with the State, Mr. Brown pled guilty to one count of delivery of a controlled substance (methamphetamine). (R., p.54; Tr., p.5, Ls.15–21, p.14, L.17–p.16, L.4.) The State agreed to dismiss the other count. (R., p.54; Tr., p.5, Ls.17–18; *see also* R., p.75 (order dismissing second count).) The State also agreed to recommend a sentence of fifteen years, with four years fixed. (R., p.54; Tr., p.7, Ls.2–6.) Mr. Brown was free to argue for less. (Tr., p.5, Ls.20–21.)

At sentencing, the State argued it was no longer bound by the plea agreement because Mr. Brown did not comply with a condition of his release. (Tr., p.25, L.19–p.26, L.4.) As such, the State recommended a sentence of eighteen years, with six years fixed. (Tr., p.26, Ls.23–25.) Mr. Brown requested the district court place him on probation or retain jurisdiction. (Tr., p.35, L.25–p.36, L.3, p.36, Ls.12–17.) Mr. Brown had been participating in the Good Samaritan program and wanted to continue with it. (*See* Tr., p.35, L.25–p.36, L.17.) The district court found there were not enough facts to "void the plea agreement." (Tr., p.45, Ls.20–21.) In accordance with the State's agreement, the district court sentenced Mr. Brown to fifteen years, with four years fixed. (Tr., p.45, Ls.21–24.)

Mr. Brown timely appealed from the district court's judgment of conviction. (R., pp.77–78 (judgment of conviction), 82–84 (notice of appeal).)

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[1] Citations to the PSI refer to the seventy-two page electronic document with the confidential documents.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fifteen years, with four years fixed, upon Mr. Brown, following his guilty plea to delivery of a controlled substance?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fifteen Years, With Four Years Fixed, Upon Mr. Brown, Following His Guilty Plea To Delivery Of A Controlled Substance

"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)). The district court's decision to retain jurisdiction is also reviewed for an abuse of discretion. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). "There can be no abuse of discretion in a trial court's refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation." *Id.* Similarly, "[t]he choice of probation, among available sentencing alternatives, is committed to the sound discretion of the trial court . . . ." *State v. Landreth*, 118 Idaho 613, 615 (Ct. App. 1990).

Here, Mr. Brown's sentence does not exceed the statutory maximum. *See* I.C. § 37-2732(a)(1)(A) (maximum of life). Accordingly, to show the sentence imposed was unreasonable, Mr. Brown "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).

"'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

In this case, Mr. Brown asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to probation or retained jurisdiction in light of the mitigating factors, including his remorse and acceptance of responsibility for the offense, amenability to treatment, mental health and physical condition, and substance abuse issues. The district court did not exercise reason by failing to give adequate weight to these mitigating circumstances.

Mr. Brown has drastically turned his life around since the instant offense. Prior to this offense, Mr. Brown was abusing methamphetamine, cocaine, and marijuana. (PSI, pp.15–16.) Mr. Brown had been using these substances, along with others and alcohol, on and off since he was a teenager. (PSI, pp.15–16.) Although he has had significant periods of sobriety, he struggled with substance abuse throughout his life. (PSI, p.16.) In fact, Mr. Brown was under the influence of methamphetamine and prescription pills at the time of the offense. (PSI, p.4.) The impact of substance abuse on the defendant's criminal conduct is "a proper consideration in mitigation of punishment upon sentencing." *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Mr. Brown's substance abuse and its influence on his criminal conduct stand in favor of mitigation.

In addition to his substance abuse issues, Mr. Brown has some physical limitations and mental health issues. (PSI, p.14.) He receives disability, and he has been diagnosed with gout and degenerative arthritis. (PSI, p.14.) He also reported his mental health was not "in the best of condition." (PSI, p.14.) Idaho Code § 19-2523 requires the sentencing court to consider the defendant's mental health condition if it is a significant factor, and the record must show that the sentencing court adequately considered this factor when imposing a sentence. I.C. § 19-2523; *State v. Delling*, 152 Idaho 122, 132–33 (2011). Here, Mr. Brown has been diagnosed with schizophrenia, and he believes he suffers from depression and anxiety as well. (PSI, p.15.) Mr. Brown's mental health condition and physical condition also warrant a lesser sentence.

Despite these challenges, Mr. Brown was committed to his sobriety and changing his life. At the time of sentencing, he resided at the Good Samaritan House and participated in the inpatient program. (PSI, p.12.) He was also involved in church activities. (PSI, p.11.) Mr. Brown wanted to remain sober and continue the Good Samaritan treatment. (PSI, pp.16–17.) He reported he reached his goal of sobriety and hoped to stay in the program. (PSI, p.16.) His success and commitment to the program is significant because he has never engaged in substance abuse treatment before. (PSI, p.16.) He reported his circle of friends "changed dramatically over the past two years and his current associates are focused on sobriety." (PSI, p.11.) He also enjoyed spending time with his family and reading the Bible. (PSI, p.11.) Mr. Brown made similar remarks at sentencing that demonstrated his renewed focus on his sobriety. He stated the Good Samaritan program "changed my life a lot" because, in part, he "found Jesus." (Tr., p.38, Ls.21–23.) He recognized "counseling and therapy would be a huge thing for me." (Tr., p.39, Ls.13–14.) Mr. Brown's success in the Good Samaritan program and amenability to treatment should have been given more weight by the district court at sentencing.

Finally, Mr. Brown's acceptance of responsibility and remorse for his role in this tragic event stand in favor of mitigation. *See State v. Mitchell*, 77 Idaho 115, 118 (1955) (lack of criminal intent as a mitigating factor). Mr. Brown had only known Ms. Phelps for about ten days. (PSI, p.3.) He admitted to giving methamphetamine to her the day before her death. (PSI, p.3.) But, as argued by his attorney, although Ms. Phelps was under the influence of methamphetamine at the time of her death, there was no evidence that this was the methamphetamine provided by Mr. Brown. (Tr., p.33, Ls.12–19, p.37, Ls.5–8.) Ultimately, the facts surrounding these heartbreaking events indicated a suicide. (Tr., p.33, L.20–p.35, L.13, p.37, Ls.7–17.) Ms. Phelps had significant substance abuse issues, problems at work and with her ex-husband, and was living in poverty. (*See* Tr., p.33, L.20–p.35, L.13, p.37, Ls.7–17.) Mr. Brown had no idea of her intention to hurt herself and her children. (PSI, p.4.) He wished he had known what was really going on so he could have done something. (PSI, p.4.) Clearly, he would have never given her methamphetamine had he known of her intentions. (PSI, pp.3–4.)

Although Mr. Brown's involvement this tragedy was limited and completely unintentional, he accepted full responsibility for his actions. At sentencing, he apologized to Ms. Phelps's family and friends. (Tr., p.38, Ls.6–8.) He recognized "there's no turning back," and stated, "I'm sincerely and deeply – just about every day I cry over this for her." (Tr., p.38, Ls.16–19.) Mr. Brown came close to taking his own life because he "felt so horribly wrong about this" and "didn't know what else to do." (Tr., p.39, L.21–p.30, L.2.) He explained:

> I just want to say that I'm sorry for their loss. I truly am. And if I can take this back and take – and give my life for theirs, I certainly would, because I just would. I know that I would. I mean, because there was two young souls in her. They were lost and she was lost. Those two babies didn't deserve to -- you know, what happened to them, by any means, and I can't control what happened after she left my house, you know. And it was some hours, the next day that this actually took place. So, you know, yeah, that's all I have, your Honor.

(Tr., p.40, Ls.7–17.) Mr. Brown also admitted he was an alcoholic and a drug addict. (Tr., p.39, Ls.7–8.) He was "truly sorry for what has happened." (Tr., p.39, Ls.6–7.)

In summary, these mitigating factors—Mr. Brown's substance abuse issues, mental health condition, physical limitations, amenability to treatment, acceptance of responsibility, and remorse—support a more lenient sentence, including probation or a period of retained jurisdiction. By failing to give adequate weight to these mitigators, the district court did not exercise reason at sentencing. The district court therefore abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Brown respectfully requests this Court reduce his sentence as it deems appropriate. Alternatively, he respectfully requests this Court vacate the district court's judgment of conviction and remand this case for a new sentencing hearing.

DATED this 19th day of April, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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