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### State v. Bynum Appellant's Brief Dckt. 46686

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ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

JENNY C. SWINFORD  
Deputy State Appellate Public Defender  
I.S.B. #9263  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

|                         |   |                                 |
|-------------------------|---|---------------------------------|
| STATE OF IDAHO,         | ) |                                 |
|                         | ) | NO. 46686-2019                  |
| Plaintiff-Respondent,   | ) |                                 |
|                         | ) | BINGHAM COUNTY NO. CR-2018-3583 |
| v.                      | ) |                                 |
|                         | ) |                                 |
| CHRISTOPHER ADAM BYNUM, | ) | APPELLANT'S BRIEF               |
|                         | ) |                                 |
| Defendant-Appellant.    | ) |                                 |
| _____                   | ) |                                 |

STATEMENT OF THE CASE

Nature of the Case

After Christopher A. Bynum pled guilty to possession of a controlled substance, the district court sentenced him to seven years, with two years fixed. The district court declined to retain jurisdiction, even though the presentence investigation report, the State, and Mr. Bynum all recommended it. Mr. Bynum now appeals, and he argues the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State charged Mr. Bynum with possession of a controlled substance, methamphetamine, and possession of drug paraphernalia. (R., pp.28–29.) The State also charged

him with the persistent violator sentencing enhancement. (R., pp.30–31.) Pursuant to a plea agreement with the State, Mr. Bynum pled guilty to possession of a controlled substance. (R., p.46; Tr., p.8, Ls.6–11, p.14, L.15–p.15, L.13.) The State agreed to dismiss the other charge and the sentencing enhancement. (R., p.46.) The State also agreed to concur with the presentence investigation report’s (“PSI”)<sup>1</sup> sentencing recommendation. (Tr., p.8, Ls.11–12.)

The PSI recommended the district court retain jurisdiction (a “rider”). (PSI, p.24.) At sentencing, Mr. Bynum requested the district court follow the PSI’s recommendation. (Tr., p.21, Ls.2–5.) The State recommended a rider as well. (Tr., p.23, Ls.21–23.) The district court declined to follow these recommendations and sentenced Mr. Bynum to seven years, with two years fixed. (Tr., p.29, Ls.14–17.) The district court did not retain jurisdiction. (Tr., p.30, Ls.3–6.)

On November 21, 2018, the district court entered a judgment of conviction. (R., pp.66–68.) A few days prior, on November 19, Mr. Bynum moved for reconsideration of his sentence and requested the district court reduce his fixed time. (R., pp.71–72.) The district court denied the motion on December 14, 2018. (R., pp.75–79.) On January 14, 2019, Mr. Bynum filed a timely notice of appeal. (R., pp.81–82.)

### ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of seven years, with two years fixed, upon Mr. Bynum, following his guilty plea to possession of a controlled substance?

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<sup>1</sup> Citations to the PSI refer to the fifty-eight-page electronic document with the confidential exhibits.

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Two Years Fixed, Upon Mr. Bynum, Following His Guilty Plea To Possession 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)). Here, Mr. Bynum’s sentence does not exceed the statutory maximum. See I.C. § 37-2732(c). Accordingly, to show that the sentence imposed was unreasonable, Mr. Bynum “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).

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). “The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant’s rehabilitative potential and suitability for probation.” *Id.* at 676. “[P]robation is the ultimate objective of a defendant who is on retained jurisdiction.” *Id.* at 677. “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.*

“‘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. Bynum 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 a lesser term of imprisonment, including a rider, in light of the mitigating factors, including his substance abuse issues, acceptance of responsibility, amenability towards treatment, education level, stable housing, and family support.

██████████ Mr. Bynum started drinking alcohol at a very young age. (PSI, p.16) He grew up in a tumultuous household, and he began drinking “to impress people and feel accepted.” (PSI, p.16.) As a child, Mr. Bynum moved back and forth between his divorced parents’ homes. (PSI, pp.15–16.) His father was “distant” because he worked two to three jobs, and his stepmother was abusive. (PSI, pp.15–16.) His mother got remarried twice, but neither relationship worked out. (PSI, p.16.) The family was poor, and Mr. Bynum suffered “[l]ots of early physical discipline.” (PSI, p.16.) Due to this family instability, Mr. Bynum explained, “I struggled with alcohol and what my role would be in my family and society. Led to issues with friendships and relationships.” (PSI, p.16.) Along with alcohol, Mr. Bynum used marijuana, cocaine, mushrooms, and inhalants (gasoline) as a teenager. (PSI, pp.20–21.) At age twenty, he started using methamphetamine. (PSI, pp.20–21.) Although he has had periods of sobriety, Mr. Bynum has seriously struggled with alcohol and methamphetamine use. (PSI, pp.20–21.) He was diagnosed with severe substance abuse disorder. (PSI, pp.29, 41.) A sentencing court should give “proper consideration of the defendant’s alcoholic problem, the part it played in causing

defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho 89, 91 (1982). 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. Bynum’s substance abuse issues, and its impact on his criminal conduct, are strong factors in favor of mitigation.

In light of his substance abuse issues, and its negative effect on his life, Mr. Bynum was fully committed to his sobriety and treatment. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). Here, Mr. Bynum reported that he felt “[l]ike a failure” for relapsing. (PSI, p.4.) He understood that he disappointed himself and his family. (PSI, p.4.) He wrote,

I want to apologize to my family and community for the selfish way I have behaved and I take full responsibility for my actions. You all deserve a better son and father, neighbor and co-worker and I will work every single day to be better for you all as well as myself. [I’m] sorry I let you all down and I am better than [I’ve] shown thus far. I commit to be the person you feel good about having in your neighborhood, community, and lives and I appreciate the support and love of my family and friends and thank you all for believing in me.

(PSI, p.21.) His goals were to get sober and rebuild his family life. (PSI, p.21.) Similarly, Mr. Bynum stated at sentencing, “Obviously, I continue to struggle with addiction. It’s been an ongoing problem. I made poor choices.” (Tr., p.24, Ls.7–9.) He also accepted responsibility for his actions. (Tr., p.24, Ls.15–16.) Mr. Bynum was highly amenable to treatment and willing to try anything that might help him. (Tr., p.24, Ls.10–12, Ls.17–21.) He wanted to be sober “more than anything else.” (Tr., p.24, Ls.18–19.) To this end, Mr. Bynum wanted to complete the LDS 12 step program and rely on his probation officer, a sponsor, and his family for support. (PSI, p.21.) Mr. Bynum’s amenability towards treatment and acceptance of responsibility supported a lesser sentence.

Due to this information, the district court should have retained jurisdiction, as recommended by the PSI, the State, and Mr. Bynum. Although Mr. Bynum had completed riders in the past, he had not had the opportunity to complete the new Cincinnati program. (Tr., p.21, Ls.12–22; PSI, p.23.) Moreover, Mr. Bynum possessed other traits that demonstrated his ability to succeed on probation after a rider. In 2014, he obtained a bachelor’s degree in project management from Ashford University. (PSI, p.18.) He hoped to get a master’s degree. (PSI, p.18.) In addition to his education, he is able to maintain employment when sober. (PSI, p.19.) Most recently, he worked at a roofing company doing labor and advertising. (PSI, p.19.) He also had stable housing provided by his brother. (PSI, p.16.) Mr. Bynum and his brother have a “strong relationship.” (PSI, p.16.) These facts show Mr. Bynum would have immensely benefitted from a rider and would have been a suitable candidate for probation after completing the program.

These mitigating circumstances—substance abuse disorder, treatment amenability, acceptance of responsibility, education, housing, and family support—strongly favor a lesser sentence for Mr. Bynum, including a rider. By failing to give adequate weight to these factors, the district court did not exercise reason and thus abused its discretion by imposing an excessive sentence.

CONCLUSION

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

DATED this 29<sup>th</sup> day of May, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> 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

JCS/eas