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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46691-2019
)	
v.)	TWIN FALLS COUNTY
)	NO. CR42-17-11519
)	
LEWIS CANTU,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Lewis Cantu pled guilty to possession of a controlled substance and the district court sentenced him to seven years, with three years fixed, without granting probation or retaining jurisdiction. On appeal, Mr. Cantu claims his sentence is excessive and unreasonable in light of the circumstances of his case, representing an abuse of the district court's sentencing discretion.

Statement of the Facts and Course of Proceedings

Pursuant to a plea agreement, Mr. Cantu pled guilty to one count of possessing a controlled substance, based on methamphetamine discovered in his pocket and a misdemeanor

count of resisting and obstructing; in exchange, the State agreed to dismiss the remaining charges in this case (as well as charges in another), and to recommend an aggregate sentence of seven years, with three years fixed. (R., pp.61-71; 10/1/18 Tr., p.9, Ls.7-11, p.11, Ls.11-24.) At sentencing, the prosecutor expressed frustration with Mr. Cantu and asked that the sentence be imposed. (12/3/18 Tr., p.8, L.20 – p.9, L.25.) Mr. Cantu asked for probation, or alternatively, the chance to complete a rider. (12/3/18 Tr., p.17, Ls.7.) The district court declined Mr. Cantu’s requests and, adhering the State’s recommendations, imposed a prison sentence of seven years, with three fixed, without probation or retained jurisdiction, and a concurrent sentence of one year for the misdemeanor. (R., pp.79, 80, 81; 12/3/18 Tr., p.16, L.7 – p.17, L.10.) Mr. Cantu filed a timely Notice of Appeal from the judgment and sentence. (R., p.99.)

ISSUE

Did the district court abuse its discretion by sentencing Mr. Cantu to seven years, with three years fixed, without probation or retained jurisdiction?

ARGUMENT

The District Court Abused Its Discretion By Sentencing Mr. Cantu To Seven Years, With Three Years Fixed, Without Probation Or Retained Jurisdiction

A. Introduction

Mr. Cantu’s sentence of seven years, with three years fixed, is excessive because it is unreasonable in light of the circumstances of his case. Additionally, the district court’s decision to impose a prison sentence, without even considering probation or retained jurisdiction, represents an abuse of discretion in light of the factors that favor probation. Mr. Cantu’s sentence should be vacated and his case remanded to the district court for resentencing.

B. Standard Of Review

A trial court's sentencing decisions are discretionary and reviewed for an abuse of discretion. *See State v. Toohill*, 103 Idaho 565, 566 (Ct. App. 1982). Whenever the appellate court reviews an alleged abuse of discretion by the district court, the sequence of the inquiry requires consideration of 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. *State v. Le Veque*, 164 Idaho 110, 112 (2018).

In this appeal, Mr. Cantu asserts the district court abused its discretion under the fourth, "reasonableness," prong of the standard, first, when it imposed an excessive sentence; and second, when it refused to place him on probation or retain jurisdiction.

C. The District Court Abused Its Discretion By Sentencing Mr. Cantu To An Excessive Term, Without Probation Or Retained Jurisdiction

The appellate court reviews the length of a defendant's sentence under the abuse of discretion standard. *State v. Oliver*, 144 Idaho 722, 724 (2007). A sentence is excessive, representing an abuse of discretion, if it is unreasonable "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). "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. Miller*, 151 Idaho 828, 834 (2011). Where a defendant challenges his sentence as excessively harsh, 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. *Miller*, 151 Idaho at 834.

In addition to these considerations, where a defendant's mental condition is a significant issue, "Idaho Code Section 19-2523 requires that the sentencing judge also weigh that mental condition as a sentencing consideration." *Miller*, 151 Idaho at 834. Although a defendant's mental health is only one of the factors that must be considered and weighed by the court at sentencing, the record must show the court adequately considered the substance of the factors when it imposed the sentence. *Miller*, 151 828, 836 (2011); *State v. Strand*, 137 Idaho 457, 461 (2002).

In determining whether to place a defendant on probation or to instead send him to prison, Idaho Code § 19-2521 requires that the district court *not* impose a prison sentence "unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, [the court] is of the opinion that imprisonment is appropriate for protection of the public..." I.C. § 19-2521 (emphasis added).

The district court also has the discretion to retain jurisdiction. *See* I.C. § 19-2601(4). The primary purpose of retaining jurisdiction is to afford the trial court additional time for evaluation of the defendant's rehabilitation potential and suitability for probation. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). The sentencing court's refusal to retain jurisdiction may represent an abuse of discretion if the court lacks sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *Id.*, at 677.

Mr. Cantu was forty-two years old at the time of sentencing. (PSI, p.89.) He admittedly had a rough time earlier, in his late twenties, accumulating a number of misdemeanor and several felony convictions. (PSI, pp.5-12; 12/3/18 Tr., p.11, Ls.15-18.) However, and despite of the fact he did not graduate from high school, and the roughness of his younger years, Mr. Cantu went

the College of Southern Idaho and graduated from his program, then worked hard as a technician and was doing quite well. (12/3/18 Tr., p.11, Ls.15-18.)

Unfortunately, after a period of approximately five and one-half years, Mr. Cantu experienced a year of personal trauma, including the death of his father and an injury from a car accident that left him with pain rendering him unable to work, and over-medicated. (PSI, pp.30, 34, 36.) These events triggered the end of what had until then been a very successful recovery, and marked the beginning of his relapse back into drug use. (PSI, p.36; 12/3/18 Tr., p.15, Ls.1-11.)

Mr. Cantu needs treatment, not incarceration. He suffers from major depression and drug addiction, and his GAIN assessment recommended intensive outpatient treatment for these dual diagnoses. (PSI, pp.91-93.) At the time of sentencing, Mr. Cantu had already set an appointment with the Walker Center for the following week, demonstrating his willingness and commitment to make needed changes. (*See* 12/3/18 Tr., p.13, Ls.7-12.)

Mr. Cantu also was fully employed at the time of sentencing, working even on the morning of sentencing, demonstrating that he again was focused and working hard – and a suitable candidate for probation. (PSI, p.18; 12/3/18 Tr., p.14, Ls.2-10.) The district court should have granted probation, and its failure to do so was unreasonable given these circumstances, representing an abuse of the district court's sentencing discretion.

In any event, the district court did *not* have enough information to determine that Mr. Cantu was *unsuitable* for probation, and therefore should have retained jurisdiction, in order to give Mr. Cantu the chance to demonstrate his rehabilitation potential. As Mr. Cantu explained to the sentencing court, he had never been through a treatment program. (12/3/18 Tr., p.15, Ls.7-12.) When he was twenty-five he did begin a rider, but he was unsuccessful and did not

complete it; the district court apparently relied on that past failure when it refused to consider retaining jurisdiction. (*See* PSI, p.12; 12/3/18 Tr., p.14, Ls.2-20, p.17, Ls.9-14.) However, seventeen years later, at the age of forty-two, Mr. Cantu had gained maturity, education, work discipline, and insight, and was clearly far better equipped to do the work needed to overcome his addiction. Given these facts, the district court's refusal to consider retaining jurisdiction was unreasonable and an abuse of discretion.

CONCLUSION

Mr. Cantu respectfully requests that this Court vacate his sentence and remand his case for resentencing, with instructions that the district court impose a less severe, reasonable term, and that it grant him probation or else retain jurisdiction.

DATED this 16th day of May, 2019.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th 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
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

KAC/eas