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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 46706-2019 & 46707-2019
)	
v.)	CANYON COUNTY NOS.
)	CR-2016-19808 & CR14-18-16360
LUKE RAY BAKER,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated case, Luke R. Baker appeals the district court's decisions to revoke his probation and, in a new case, to sentence him to ten years, with one year fixed, to be served consecutively. He asserts the district court abused its discretion by failing to give adequate weight to the mitigating factors.

Statement of Facts and Course of Proceedings

In April 2018, Mr. Baker pled guilty to one count of accessory to injury to a child. (No. 46706 R.,¹ pp.113–14.) In early August 2018, the district court sentenced him to probation for five years, with an underlying sentence of five years, with three years fixed. (No. 46706 R., pp.143–46.)

A few weeks later, on August 20, the State petitioned for a probation violation. (No. 46706 R., pp.158–62.) The State alleged Mr. Baker violated his probation by committing the new offenses of attempted strangulation and domestic battery with traumatic injury (“domestic battery”). (No. 46706 R., p.162.) In a new case, the State charged Mr. Baker with attempted strangulation, domestic battery, and false imprisonment. (No. 46707 R., pp.24–26.) Pursuant to a plea agreement with the State, Mr. Baker pled guilty to domestic battery. (Tr.,² pp.18, 20–21 (Vol. II, p.1, Ls.10–16, p.11, L.11–p.13, L.18).) The State agreed to recommend a sentence of ten years, with one year fixed. (Tr., p.18 (Vol. II, p.1, Ls.13–14).) Mr. Baker waived a new presentence investigation report. (Tr., p.21 (Vol. II, p.14, Ls.10–14).)

At a joint hearing in December 2018, Mr. Baker admitted to violating his probation by committing the new offense of domestic battery. (Tr., p.5 (Vol. I, p.4, Ls.15–23).) The district court proceeded directly with sentencing and disposition. (Tr., p.6 (Vol. I, p.5, L.21–p.8, L.3).)

¹ There are two clerk’s records in this consolidated appeal. Each clerk’s record will be cited by reference to its Supreme Court Docket Number.

² There are two transcripts on appeal, contained in one PDF. The first volume, Volume I, contains a joint hearing on the probation violation in No. 46709-2019 (CR-2016-19808) and sentencing in No. 46707-2019 (CR14-18-16360). The second, cited as Volume II, contains the entry of plea hearing in No. 46707-2019 (CR14-18-16360). Citations to the transcript will first refer to the overall page number of the entire document. The volume, page, and line numbers of each transcript will be cited parenthetically.

The State recommended the district court sentence Mr. Baker to ten years, with one year fixed, for the new offense and revoke his probation in the older case. (Tr., pp.7–8 (Vol. I, p.12, L.23–p.13, L.20).) Mr. Baker requested the district court suspend the sentence in the new case and reinstate his probation in the older case. (Tr., p.8 (Vol. I, p.16, Ls.3–7).) The district court revoked Mr. Baker’s probation and executed imposition of the five-year sentence, with three years fixed. (No. 46706 R., pp.167–68; Tr., p.14 (Vol. I, p.37, Ls.4–9).) For the new offense, the district court sentenced Mr. Baker to ten years, with one year fixed, to be served consecutively. (No. 46707 R., pp.65–66; Tr., p.14 (Vol. I, p.40, Ls.5–16).)

Mr. Baker timely appealed. (No. 46707 R., pp.67–69.) This Court consolidated the cases on appeal. (No. 46706 R., p.169; No. 46707 R., p.77.)

ISSUES

- I. Did the district court abuse its discretion by sentencing Mr. Baker to ten years, with one year fixed, for domestic battery?
- II. Did the district court abuse its discretion by revoking Mr. Baker’s probation?

ARGUMENT

I.

The District Court Abused Its Discretion By Sentencing Mr. Baker To Ten Years, With One Year Fixed, For Domestic Battery

“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. Baker’s sentence does not exceed the statutory maximum. *See* I.C. § 18-918(2)(b) (ten-year maximum). Accordingly, to show that the sentence

imposed was unreasonable, Mr. Baker “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). “The decision of whether to impose sentences concurrently or consecutively is within the sound discretion of the trial court.” *State v. Helms*, 130 Idaho 32, 35 (Ct. App. 1997); *see also* I.C. § 18-308. 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).

In this case, Mr. Baker 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 or probation in light of the mitigating factors, including his difficult childhood, brain injury as a teenager, remorse and acceptance of responsibility, employment history, and amenability towards treatment.

First, Mr. Baker's traumatic childhood and brain injury stand in favor of mitigation. The Court of Appeals has recognized that a defendant's "extremely troubled childhood is a factor that bears consideration at sentencing." *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). Mr. Baker grew up poor, and his parents were drug addicts. (Presentence Investigation Report ("PSI"),³ p.14.) His mother eventually got clean, but his father still uses drugs. (PSI, pp.14, 89.) Because his parents were drug addicts, Mr. Baker first used drugs after finding them in his parents' room. (PSI, p.18.) At just eight years old, he injected his parents' methamphetamine. (PSI, p.18.) He did not like it and stopped using until age twelve. (PSI, p.18.) Then, he started smoking methamphetamine. (PSI, p.18.) For many years, he was addicted to methamphetamine, heroin, opiates, and any other drug he could get. (PSI, p.18.) Along with the drug addiction, Mr. Baker's father would not allow his mother to work, and his father was verbally and physically abusive to Mr. Baker, his mother, and his sister. (PSI, p.14.) Mr. Baker saw his father choke and hit his mother, among other violent acts. (PSI, p.89.) His sister, who was four years older, tried to take care of him, such as making sure he had food, went to school, and bathed. (PSI, pp.14, 89.) For example, his sister "stole" change out of his grandmother's car and bought Top Ramen noodles so Mr. Baker could eat. (PSI, p.14.) Mr. Baker also remembered her not eating so he could. (Tr., p.10 (Vol. I, p.24, L.9).) His parents separated when he was sixteen years old, and Mr. Baker left home. (PSI, p.14.) At age eighteen, Mr. Baker was hit in the head with a hammer at a party. (PSI, pp.14, 18.) He reported that he suffers from a traumatic brain injury and memory loss from the hammer. (PSI, p.18.) Around nineteen or twenty years old, Mr. Baker quit methamphetamine and heroin "cold turkey." (PSI, pp.18–19.)

³ Citations to the PSI refer to the ninety-four page electronic document with the PSI and other confidential exhibits in No. 46706.

Tragically, the cycle of abuse continued, and Mr. Baker expressed regret and remorse for the harm to the victim, his ex-girlfriend. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). Mr. Baker stated that his father's abuse "made for a life-altering misconception. I used to escape that reality with drugs. Little did I know it would haunt me in my own future relationships. By seeing my mother treated terribly and abused I was horribly misled." (Tr., p.10 (Vol. I, p.23, Ls.2–6).) Mr. Baker explained:

I thought for the longest time that it was okay to be this way and act this way. For way too long I have been in denial, and I've tried everything to control my anger, to change it, to mask it, but it's harder than I had ever imagined. I feel great shame for neglecting my disabilities for this long. I have been neglecting the simple truth that I was becoming more and more like the person I hate, my father. My ego and pride has prevented me from getting help medically. I now realize how corrupt my thoughts were.

(Tr., p.10 (Vol. I, p.23, Ls.15–25).) He recognized that his actions were "unacceptable and disrespectful." (Tr., p.11 (Vol. I, p.28, Ls.1–2).) He said, "I am truly sorry and regretful of the entire situation," and later, "Once again I am truly sorry for this terrible mistake and putting you through such terrible pain. You deserve better." (Tr., p.11 (Vol. I, p.28, Ls.2–3, 10–12).) He understood that "no amount of apologies can take away the pain I put [her] through." (Tr., p.11 (Vol. I, p.27, Ls.15–16).) These statements of remorse and acceptance of responsibility support a more lenient sentence.

Mr. Baker was also amenable to treatment, and he had other skills to succeed in the community. He acknowledged that he had anger issues since a child. (Tr., p.10 (Vol. I, p.23, Ls.12–13).) He was "determined" to change and admitted that he needed medication "to calm me down." (Tr., pp.10–11 (Vol. I, p.24, L.25–p.25, L.3).) Mr. Baker had taken forty-eight classes in jail on core values, domestic violence, and personal relationships. (Tr., p.9 (Vol. I, p.17, Ls.18–

22.) He stated that he “learned so much” from the classes. (Tr., p.11 (Vol. I, p.25, Ls.6–7).) In addition, Mr. Baker’s mother was working with BPA for funding to address his mental health issues. (Tr., p.9 (Vol. I, p.19, Ls.12–17).) Mr. Baker’s short-term goals were to get back on his medications, get an updated mental health evaluation, find a job, obtain his GED, and pay all his fines, child support, and fees. (Tr., p.11 (Vol. I, p.25, Ls.14–19).) With respect to his employment goal, Mr. Baker previously worked at a heating and cooling company. (PSI, p.17; Tr., p.9 (Vol. I, p.20, Ls.3–5).) He reported no issues and maintained a steady job. (PSI, p.17; Tr., p.9 (Vol. I, p.20, L.3, Ls.5–7).) *See State v. Mitchell*, 77 Idaho 115, 118 (1955) (recognizing gainful employment as a mitigating factor); *see also Shideler*, 103 Idaho at 594–95 (employment and desire to advance within company were mitigating circumstances). Mr. Baker also wanted to continue with domestic violence classes and counseling. (Tr., p.11 (Vol. I, p.25, Ls.18–21).) His long-term goals were to attend the College of Western Idaho and obtain a culinary arts degree. (Tr., p.11 (Vol. I, p.26, Ls.6–10).) He also wanted to mentor young adults. (Tr., p.11 (Vol. I, p.26, Ls.11–21).) He summarized that he was “dedicated to break this cycle of violence I have witnessed and been a part of.” (Tr., p.12 (Vol. I, p.29, Ls.17–18).) Mr. Baker’s amenability towards treatment for his anger issues and his gainful employment also stand in favor of a lesser sentence or probation.

In summary, these mitigating factors of Mr. Baker’s difficult childhood, brain injury as a teenager, remorse and acceptance of responsibility, employment, and amenability towards treatment warrant a more lenient sentence than ten years, with one year fixed, to be served consecutively. Mr. Baker asserts the district court did not exercise reason and thus abused its discretion by failing to give adequate weight to these mitigators. He maintains the district court imposed an excessive sentence.

II.

The District Court Abused Its Discretion When It Revoked Mr. Baker's Probation And Executed His Underlying Sentence Of Five Years, With Three Years Fixed

The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines "whether the defendant violated the terms of his probation." *Id.* Second, "[i]f it is determined that the defendant has in fact violated the terms of his probation," the Court examines "what should be the consequences of that violation." *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Baker does not challenge his admission to violating his probation. (Tr., p.5 (Vol. I, p.4, Ls.15–23).) "When a probationer admits to a direct violation of her probation agreement, no further inquiry into the question is required." *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Baker submits the district court abused its discretion by revoking his probation.

"After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court." *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). "A judge cannot revoke probation arbitrarily," however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). "The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision." *State v. Mummert*, 98 Idaho 452, 454 (1977). "In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society." *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant's conduct before and during probation. *Roy*, 113 Idaho at 392.

In this case, Mr. Baker submits the district court erred by revoking his probation because his probation was achieving its rehabilitative objective. Although Mr. Baker committed the new offense about one week after being placed on probation, he was ready for treatment and felt remorse for the crime, as discussed in Part I. Mr. Baker explained he “broke down” and “admitted” he had a problem. (Tr., p.12 (Vol. I, p.29, Ls.12–13).) He wanted medical help and “the chance to get on my medication and show society that I can do this.” (Tr., p.12 (Vol. I, p.30, Ls.7–9).) Mr. Baker incorporates the mitigating factors discussed in Part I in support of his ability to succeed in the community under proper control and supervision. In light of these facts, Mr. Baker submits the district court did not exercise reason and thus abused its discretion by revoking his probation.

CONCLUSION

In No. 46707-2019, Mr. Baker respectfully requests this Court reduce his sentence as it deems appropriate. In the alternative, he respectfully requests this Court vacate the district court’s judgment of conviction and remand his case for a new sentencing hearing. In No. 46706-2019, he respectfully requests this Court reverse or vacate the district court’s order revoking his probation and remand his case for further proceedings.

DATED this 20th day of June, 2019.

/s/ Jenny C. Swinford

JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 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/ Teal M. Vosburgh
TEAL M. VOSBURGH
Administrative Assistant

JCS/tmv