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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46865-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-18-33803
v.)	
)	
ALIJA ADRIAN BURNS)	APPELLANT'S BRIEF
AKA BURAZ,)	
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Alija A. Burns pled guilty to grand theft, the district court sentenced him to five years, with two years fixed. Mr. Burns appeals, and he argues that the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State filed a criminal complaint alleging that Mr. Burns committed the crimes of grand theft by receiving stolen property and burglary. (R., pp.8-9, 24-25.) According to the

Presentence Investigation Report (“PSI”),¹ Mr. Burns pawned a hunting bow owned by another person. (PSI, p.3.) The owner had left his garage door open, and the bow had been stolen out of his garage. (PSI, p.3.) Mr. Burns waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.30, 32–33.) The State filed an Information charging him with grand theft and burglary. (R., pp.40–41.)

Pursuant to a plea agreement, Mr. Burns pled guilty to grand theft, and the State agreed to dismiss the burglary charge (R., p.52; Tr., p.4, Ls.11–24.) The State also agreed to recommend a sentence of seven years, with two years fixed. (R., p.52; Tr., p.4, L.14–p.5, L.4.)

At sentencing, the State made a recommendation consistent with the plea agreement. (R., p.58; Tr., p.19, L.24–p.20, L.2.) Mr. Burns requested a sentence of seven years, with one year fixed. (R., p.58; Tr., p.25, Ls.8–10.) The district court sentenced him to five years, with two years fixed. (R., p.58; Tr., p.27, Ls.18–21.)

Mr. Burns timely appealed from the district court’s judgment of conviction. (R., pp.62–64; 66–67.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of five years, with two years fixed, upon Mr. Burns for grand theft?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Two Years Fixed, Upon Mr. Burns For Grand Theft

“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

¹ Citations to the PSI refer to the 158-page electronic document with the confidential exhibits.

sentence.” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Burns’s sentence does not exceed the statutory maximum. *See* I.C. 18-2408(2)(2) (one-year minimum, fourteen-year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Burns “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).

Here, Mr. Burns asserts that the district court abused its discretion by imposing an excessive determinate sentence under any reasonable view of the facts. Specifically, he contends that the district court should have sentenced him to a lesser fixed term of imprisonment in light of the mitigating factors, including his substance abuse issues and acceptance of responsibility.

Mr. Burns’s substance abuse issues, the impact of his substance abuse on his behavior, and his need for treatment are strong factors in mitigation. A sentencing court should give “proper consideration of the defendant’s alcoholic problem, the part it played in causing [the] 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). In this case, [REDACTED] Mr. Burns has struggled with drug and alcohol addiction for more than half of his life. He started drinking alcohol and smoking marijuana at age nine. (PSI, p.17.) At age eleven, he started using methamphetamine. (PSI, p.17.) As a teenager, he began using cocaine, prescription medication, and heroin. (PSI, pp.17–18.) At the time of the instant offense, Mr. Burns was smoking marijuana, methamphetamine, heroin, and prescription medication every day. (PSI, pp.17–18. 23.) He was under the influence of methamphetamine and heroin when he pawned the hunting bow. (PSI, p.4.) Mr. Burns's long-time substance abuse issues and its impact on his behavior support a lesser fixed term.

In addition, Mr. Burns expressed remorse and accepted responsibility for his actions. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). In the PSI, Mr. Burns reported that he felt remorseful and upset about the crime. (PSI, p.3.) He also apologized for his actions. (PSI, p.19.) His goals were to maintain a job, do well on parole, and find a home. (PSI, pp.18–19.) Similarly, he stated at sentencing:

I just want to say, you know, I take full accountability for the things that I did.
And I just want to take the time to apologize to the Court for everything that -- the felonies that I did commit. And I just want to say thank you for taking your time.

(Tr., p.25, L.21–p.26, L.1.) These statements of remorse and regret stand in favor of a lesser fixed term.

Along with his acceptance of responsibility and remorse, Mr. Burns started the advanced placement classes for SBISA, thinking for a change, and anger management programming while

in custody pending sentencing. (Tr., p.24, Ls.7–10.) At sentencing, his trial counsel explained that Mr. Burns was parole eligible in about three months in a separate case, and Mr. Burns was concerned that a longer fixed term in the instant case would cause him to be removed from those classes. (Tr., p.24, Ls.4–7, p.25, Ls.3–6.) According to his trial counsel, Mr. Burns was about halfway done with his classes and he did not want to lose his “positive progress.” (Tr., p.25, Ls.5–7.) A lesser fixed term of one year would have allowed Mr. Burns to continue with his classes. (Tr., p.25, Ls.8–18.) Mr. Burns’s commitment to his treatment is another strong mitigating factor.

In light of these mitigating factors, Mr. Burns submits that the district court did not exercise reason and thus abused its discretion by imposing an excessive sentence of five years, with two years fixed. Proper consideration of these mitigating factors warranted a lesser fixed term of one year.

CONCLUSION

Mr. Burns 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 to the district court for a new sentencing hearing.

DATED this 4th day of October, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October, 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

JCS/eas