

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

7-2-2019

State V. Dakager Appellant's Brief Dckt. 46903

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State V. Dakager Appellant's Brief Dckt. 46903" (2019). *Not Reported*. 5915.
https://digitalcommons.law.uidaho.edu/not_reported/5915

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

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. 46903-2019
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR-2016-13731
v.)	
)	
CASEY ERIC DALAGER,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Casey E. Dalager pled guilty to possession of a controlled substance, the district court withheld judgment and placed him on probation. About one year later, Mr. Dalager admitted to multiple probation violations, and the district court revoked his withheld judgment, sentenced him to three years, with one and one-half years fixed, and retained jurisdiction (“a rider”). Later, the district court relinquished jurisdiction. On appeal, Mr. Dalager argues the district court abused its discretion by imposing an excessive sentence and relinquishing jurisdiction.

Statement of Facts and Course of Proceedings

In July 2016, the State filed a criminal complaint alleging Mr. Dalager committed the crime of possession of a controlled substance, methamphetamine. (R., pp.30–31.) The magistrate consolidated this case with a misdemeanor case for driving without privileges (“DWP”). (R., pp.32, 33.) Mr. Dalager waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.44, 45.) The State charged him with possession of a controlled substance and DWP. (R., pp.47–48.)

In September 2017, pursuant to a plea agreement with the State, Mr. Dalager pled guilty to possession of a controlled substance. (R., pp.57, 59; Tr., p.4, Ls.6–13, p.7, L.23–p.24, L.10.) The DWP charge was dismissed. (R., p.58; Tr., p.8, L.21–p.9, L.1.) The district court released Mr. Dalager on his own recognizance. (R., p.59; Tr., p.12, Ls.1–2.) In November 2017, the district court withheld judgment and placed Mr. Dalager on probation for two years. (R., pp.60–64, 70; Tr., p.18, Ls.11–16.)

In October 2018, the State moved for a probation violation. (R., pp.71–77.) The next month, Mr. Dalager admitted to violating his probation for drug use, driving without a license, failing to report to his probation officer, failing to complete treatment, failing to participate in drug testing, changing his address without permission, and absconding from supervision. (Tr., p.23, L.23–p.27, L.16, p.32, Ls.5–14; R., pp.73–76.) The State recommended the district court sentence him to four years, with two years fixed, and retain jurisdiction. (Tr., p.32, L.23–p.33, L.1.) Mr. Dalager requested the district court reinstate probation, with an underlying sentence of three years, with one year fixed. (Tr., p.33, Ls.9–13.) The district court revoked its withheld judgment, sentence Mr. Dalager to three years, with one and one-half years fixed, and retained jurisdiction. (Tr., p.36, Ls.16–20; R., pp.111–13.)

In January 2019, Mr. Dalager was removed from the rider program for a physical altercation with another inmate. (Aug. R., p.4.) Shortly thereafter, the district court held a rider review hearing. (R., p.114.) The State recommended relinquishment. (Tr., p.40, Ls.16–17.) Mr. Dalager requested the district court allow him to finish the rider program. (Tr., p.41, Ls.24–24.) Alternatively, he requested the district court reduce his sentence to two years, with one year fixed. (Tr., p.41, Ls.21–22.) The district court relinquished jurisdiction and imposed the original sentence of three years, with one and one-half years fixed. (Tr., p.43, Ls.18–21; R., pp.115–18.) Mr. Dalager timely appealed.¹ (R., pp.123–25.)

ISSUES

- I. Did the district court abuse its discretion when it sentenced Mr. Dalager to three years, with one and one-half years fixed, following its revocation of his withheld judgment for possession of a controlled substance?
- II. Did the district court abuse its discretion when it relinquished jurisdiction?

ARGUMENT

I.

The District Court Abused Its Discretion When It Sentenced Mr. Dalager To Three Years, With One And One-Half Years Fixed, Following Its Revocation Of His Withheld Judgment For 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

¹ Mr. Dalager subsequently filed an Idaho Criminal Rule 35(b) (“Rule 35”) motion for a reduction of his sentence. (R., pp.120–22.) The district court denied the motion. (R., p.139.) In light of Rule 35’s prohibition of more than one motion for a sentence reduction, Mr. Dalager does not raise the district court’s denial of his motion on appeal. *See* I.C.R. 35(b).

(1997) (alteration in original)). Here, Mr. Dalager's sentence does not exceed the statutory maximum. *See* I.C. § 37-2732(c)(1) (seven year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Dalager "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. Dalager asserts the district court did not exercise reason and thus 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 continued him on the rider in light of the mitigating factors, including young age, minor criminal history, substance abuse issues, acceptance of responsibility, and family support.

First, Mr. Dalager's age and minor criminal history stand in favor of mitigation. Young age is a mitigating circumstance. *State v. Dunnagan*, 101 Idaho 125, 126 (1980). Mr. Dalager

was twenty-two years old at the time of sentencing. (Presentence Investigation Report (“PSI”),² p.8.) Moreover, the instant case was his first felony offense. (PSI, p.10.) “The absence of a criminal record is a mitigating factor that courts consider.” *State v. Miller*, 151 Idaho 828, 836 (2011). “It has long been recognized that ‘[t]he first offender should be accorded more lenient treatment than the habitual criminal.’” *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (alteration in original) (quoting *State v. Nice*, 103 Idaho 89, 91 (1982)). These mitigating factors support a more lenient sentence.

Second, Mr. Dalager’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 [substance abuse] problem, the part it played in causing [the] defendant to commit the crime and the suggested alternatives for treating the problem.” *Nice*, 103 Idaho at 91. 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). Here, Mr. Dalager’s parents were addicted to methamphetamine, and Mr. Dalager started using methamphetamine at age nineteen. (PSI, pp.11, 14.) He is also legally blind and diagnosed with Albinism. (PSI, p.14.) Further, he explained that he was recently diagnosed with borderline personality disorder. (Tr., p.30, Ls.18–19.) Mr. Dalager recognized that his drug use contributed to his legal troubles. (PSI, p.16.) His probation violations also stemmed from his drug relapse. (Tr., p.33, Ls.7–9.) Mr. Dalager’s substance abuse issues and its impact on his criminal behavior warrant a sentence reduction or another rider.

² Citations to the PSI refer to the forty-two-page electronic document with the confidential exhibits.

Third, Mr. Dalager accepted responsibility and felt remorse for his actions. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). He regretted committing the crime and wished he “could take it back and start over.” (PSI, p.9.) He wanted to go back to school, take care of his two young children, and prove he was “not the person” he was when he was on drugs. (PSI, pp.15–16.) At the probation violation hearing, Mr. Dalager again accepted responsibility for his “wrongful actions.” (Tr., p.28, Ls.22–23.) He recognized that his decisions hurt himself, his children, and his mother. (Tr., p.30, Ls.1–5.) He hoped to get mental health treatment. (Tr., p.30, Ls.9–12.) In a letter to the district court, he asked for another chance and asked to continue with his mental health treatment. (Aug. R., p.1.) He also explained that he wanted to take responsibility and take care of his drug addiction. (Aug. R., p.2.) Mr. Dalager’s acceptance of responsibility, amenability to treatment, and remorse support a more lenient sentence.

Finally, Mr. Dalager’s family support is a strong mitigating circumstance. *Shideler*, 103 Idaho at 594–95 (family support and good character as mitigation); see *State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (district court considered family and friend support as mitigating circumstance). Mr. Dalager had a good relationship with his mother. His mother was in the courtroom during the probation violation hearing, and she confirmed that Mr. Dalager could live with her. (Tr., p.34, Ls.6–8.) She would support him while he tried to get into outpatient therapy. (Tr., p.34, Ls.8–9.) Mr. Dalager could also work for the family business. (Tr., p.34, Ls.9–10.) This family support is a mitigating circumstance.

In summary, Mr. Dalager asserts the district court did not exercise reason and thus abused its discretion by imposing an excessive sentence. Proper consideration of the mitigating

circumstances here—Mr. Dalager’s young age, minor criminal history, substance abuse issues, acceptance of responsibility, and family support—warrant a lesser sentence or another rider.

II.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

The district court’s decision whether to retain jurisdiction and place the defendant on probation or relinquish jurisdiction is reviewed for an abuse of discretion. *State v. Brunet*, 155 Idaho 724, 729 (2013); *see also* I.C. § 19-2601(4). “A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate.” *State v. Hansen*, 154 Idaho 882, 889 (Ct. App. 2013).

Here, Mr. Dalager submits the district court did not exercise reason and thus abused its discretion by relinquishing jurisdiction. Although Mr. Dalager fought with another inmate, he did engage in some positive activity, such as working in the kitchen, volunteering, and earning a vocational training in Microsoft Digital Literacy. (Tr., p.41, Ls.7–10.) Mr. Dalager also apologized and recognized that he let his “emotions build to a certain extent” and “did make a huge mistake.” (Tr., p.42, Ls.10–12.) He was “very excited” to start the rider program. (Tr., p.42, L.4.) In light of this information discussed here and in Part I, Mr. Dalager argues the district court did not exercise reason by failing to give sufficient weight to the mitigating factors. Proper consideration of the mitigators supported another rider or a reduced sentence.

CONCLUSION

Mr. Dalager respectfully requests that 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. In the alternative, he respectfully requests this Court reverse or vacate the district court's order relinquishing jurisdiction and remand this case for a new rider review hearing.

DATED this 2nd day of July, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 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