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### State v. Beitz Appellant's Brief Dckt. 46904

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 46904-2019 & 46917-2019
Plaintiff-Respondent,	)	
	)	BANNOCK COUNTY NOS. CR03-18-11927
v.	)	& CR-2018-9572
	)	
EDWIN E. BEITZ,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Edwin Beitz pled guilty in two separate cases to two counts of felony possession of a controlled substance. He received a unified sentence of six years, with three years fixed, in each case. On appeal, Mr. Beitz contends that his sentences represent an abuse of the district court's discretion, as they are excessive given any view of the facts.

## Statement of the Facts & Course of Proceedings

Idaho Supreme Court case number 46917-2019 (Bannock County case number CR-2018-9572), *hereinafter*, “the marijuana case,” and Idaho Supreme Court case number 46904-2019 (Bannock County case number CR03-18-11927), *hereinafter*, “the meth case,” and have been consolidated for appellate purposes. (Apr. 1, 2019.)

In the marijuana case, on August 13, 2018, law enforcement observed a man on a bike who was believed to have a warrant for his arrest. (Presentence Investigation Report (*hereinafter*, PSI),<sup>1</sup> p.13; R.46917, pp.13-14.) The officer stopped the man, Edwin Beitz, and confirmed the warrant. (R.46917, pp.13-14; PSI, p.5.) When Mr. Beitz was searched incident to his arrest, the officer located a syringe, a bag containing a white substance which tested presumptively positive for methamphetamine, and a bag containing green material which tested presumptively positive for marijuana. (R.46917, p.14; PSI, p.5.)

Based on these facts, Mr. Beitz was charged by information with one count of possession of methamphetamine and with a persistent violator sentencing enhancement. (R.46917, pp.50-53.) Pursuant to a plea agreement, Mr. Beitz pled guilty. (R.46917, pp.56-62.) In exchange, the State agreed to dismiss the persistent violator charge and the charges in 2018-7332-FE.<sup>2</sup> (R.46917, p.58.)

While Mr. Beitz was awaiting sentencing in the marijuana case, on October 8, 2018, law enforcement observed a man walking near the front of a school late at night. (R.46904, p.10.) The officer spoke to the man, Edwin Beitz, as to why he was near the school. (R.46904, p.11.)

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<sup>1</sup> Appellant’s use of the designation “PSI” includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

<sup>2</sup> In 2018-7332-FE, Mr. Beitz was charged with possession of methamphetamine and a persistent violator enhancement. (R.46917, p.58.)

After Mr. Beitz provided his identification pursuant to the officer's request, it was discovered that he had an arrest warrant. (R.46904, p.11.) Upon a search of Mr. Beitz pursuant to arrest, officers found a bag containing a substance testing presumptively positive for methamphetamine. (R.46904, p.11.)

Based on these facts, Mr. Beitz was charged by information with one count of possession of methamphetamine and with a persistent violator sentencing enhancement. (R.46904, pp.42-45.) Pursuant to a plea agreement, Mr. Beitz pled guilty to possession of methamphetamine. (12/3/18 Tr., p.4, L.1 – p.5, L.5; p.6, Ls.16-20; R.46904, pp.71-73.) In exchange, the State agreed to dismiss the persistent violator charge and to recommend drug court. (12/3/18 Tr., p.4, Ls.8-24; R.46904, pp.65-66, 70-73.)

Mr. Beitz was accepted into drug court on both cases, but was discharged just a few months later. (R.46904, pp.75-76, 84-85, 89-90; R.46917, pp.86-87, 89-90, 92-93, 97-98.) Mr. Beitz admitted to the allegations contained in the Drug Court Report of Violation. (R.46904, p.92; R.46917, p.103)

At the sentencing hearing, the State asked the district court to retain jurisdiction over Mr. Beitz in both cases. (2/19/19 Tr., p.5, L.24 – p.6, L.7.) Mr. Beitz's counsel asked the district court to place Mr. Beitz on probation. (2/19/19 Tr., p.5, Ls.3-22.) Mr. Beitz was sentenced to six years, with three years fixed in each case, but the district court retained jurisdiction for up to 365 days. (2/19/19 Tr., p.11, Ls.10-24; R.46904, pp.95-98; R.46917, pp.103-106.) Mr. Beitz filed timely notices of appeal. (R.46904, pp.99-102; R.46917, pp.107-110.)

## ISSUE

Did the district court abuse its discretion when it imposed an aggregate unified sentence of six years, with three years fixed, upon Mr. Beitz following his pleas of guilty to two counts of felony possession of a controlled substance?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed An Aggregate Unified Sentence Of Six Years, With Three Years Fixed, Upon Mr. Beitz Following His Pleas Of Guilty To Two Counts Of Felony Possession Of A Controlled Substance

Mr. Beitz asserts that, given any view of the facts, his sentences of six years, with three years fixed, are excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, 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. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). The Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). In reviewing a trial court’s decision for an abuse of discretion, the relevant inquiry regards four factors:

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.

*Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

Mr. Beitz does not allege that his sentences exceed the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by the exercise of reason, Mr. Beitz must show that in light of the governing criteria, the sentences were

excessive considering any view of the facts. *State v. Broadhead*, 120 Idaho 141, 145 (1991). The governing criteria or objectives of criminal punishment are: “(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.” *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978)).

In light of the mitigating factors present in these cases, Mr. Beitz’s sentences are excessive considering any view of the facts.

Mr. Beitz was under the influence when he was charged with these drug crimes. (PSI, p.6.) Mr. Beitz recognizes that his drug use is a weakness. (PSI, p.26.) Mr. Beitz knows he needs treatment and wants to get clean and stay clean. (2/19/19 Tr., p.6, Ls.13-18; PSI, p.28.) Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes its sentence. *State v. Nice*, 103 Idaho 89 (1982).

As Mr. Beitz explained:

Your Honor, I came here in 2010 and I had a wife who is deaf and legally blind. I came here to be and with my parents because they were getting older. Since then they both have passed away. I’ve been having some problems here, but I’m really ready to get straight. I would really appreciate probation because I didn’t – I wasn’t on probation prior to drug court. I went straight into drug court. It just was overwhelming. I am wanting to continue, you know, in a straight, clean life, and I don’t really think being in prison, any kind of prison, will help out.

The S.H.A.R.E. program would be plenty and I could get things going. I have an apartment that I’ve lived in since 2010. I don’t want to lose that and I don’t want to lose a lot other things. That’s why I would appreciate the chance of probation, with the S.H.A.R.E., after care, all of that. That’s all I’ve got to say. Thank you.

(2/19/19 Tr., p.6, L.10 – p.7, L.2.)

Further, Mr. Beitz expressed remorse and accepted responsibility for his actions. (R.46904, pp.71-73; R.46917, pp.56-62; PSI, pp.5-6.) Mr. Beitz expressed his regret to the

presentencing investigator, writing that he does “not ever want to be in this situation again” and that he needs to get past this and get better. (PSI, p.6.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

The issue of reducing a sentence because a defendant expresses remorse has been addressed in several cases. For example, in *Alberts*, the Idaho Court of Appeals noted that some leniency is required when the defendant has expressed “remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Alberts*, 124 Idaho at 209.

The Idaho Supreme Court has also reduced a defendant’s term of imprisonment because the defendant expressed regret for what he had done. *Shideler*, 103 Idaho at 595. In *Shideler*, the Idaho Supreme Court ruled that the prospect of Shideler’s recovery from his poor mental and physical health, which included mood swings, violent outbursts, and drug abuse, coupled with his remorse for his actions, was so compelling that it outweighed the gravity of the crimes of armed robbery, assault with a deadly weapon, and possession of a firearm during the commission of a crime. *Id.* at 594-95. Therefore, the Court reduced Shideler’s sentence from an indeterminate term not to exceed twenty years to an indeterminate term not to exceed twelve years. *Id.* at 593.

Based upon the above mitigating factors, Mr. Beitz asserts that the district court abused its discretion by imposing excessive sentences upon him. He asserts that had the district court properly considered his addiction to controlled substances and his remorse, it would have imposed less severe sentences.

CONCLUSION

Mr. Beitz respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his cases be remanded to the district court for a new sentencing hearing.

DATED this 3<sup>rd</sup> day of October, 2019.

/s/ Sally J. Cooley  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> 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  
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

SJC/eas