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### State v. Bellenbrock Appellant's Brief Dckt. 46938

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46938-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-19-1293
v.	)	
	)	
CODY ALAN BELLENBROCK,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Cody Alan Bellenbrock appeals from the district court's Judgment of Conviction and Commitment. Mr. Bellenbrock was sentenced to a unified sentence of five years, with one and one-half years fixed. He asserts that the district court abused its discretion in sentencing him to an excessive sentence without giving proper weight and consideration to the mitigating factors that exist in his case.

## Statement of the Facts & Course of Proceedings

On January 25, 2019, an Information was filed charging Mr. Bellenbrock with possession of a controlled substance, destruction and/or concealment of evidence, possession of drug paraphernalia, and resisting and/or obstructing. (R., pp.26-27.) The charges were the result of a traffic stop conducted after the vehicle Mr. Bellenbrock was driving crossed the center yellow line twice. (PSI, p.1.)<sup>1</sup> Mr. Bellenbrock admitted that he had used heroin and was then ordered out of the vehicle. (PSI, p.1.) Instead complying with the request of the officer to show him what he had in his hand, Mr. Bellenbrock put the item in his mouth, beginning to ingest the container, and then resisted handcuffing. (PSI, p.2.)

Mr. Bellenbrock entered a guilty plea to possession of a controlled substance and resisting and/or obstructing. (R., p.28.) Pursuant to the plea agreement, the remaining charges were dismissed. (R., p.42.) At sentencing, the prosecution requested the imposition of a unified sentence of five years, with two years fixed, for the possession of a controlled substance charge, and time served for the resisting charge. (Tr., p.21, Ls.16-19.) Defense counsel requested that the district court place Mr. Bellenbrock on probation and allow him to participate in mental health court. (Tr., p.22, L.20 – p.23, L.5.) The district court imposed a unified sentence of five years, with one and one-half years fixed, for the possession of a controlled substance charge, and 110 days for the resisting charge. (R., pp.42-45.) Mr. Bellenbrock filed a Notice of Appeal timely from Judgment of Conviction and Commitment. (R., pp.47-48.)

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<sup>1</sup> For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as “PSI” and referenced pages will correspond with the electronic page numbers contained in this file.

## ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Bellenbrock, a unified sentence of five years, with one and one-half years fixed, following his plea of guilty to possession of a controlled substance?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed, Upon Mr. Bellenbrock, A Unified Sentence Of Five Years, With One And One-Half Years Fixed, Following His Plea Of Guilty To Possession Of A Controlled Substance

Mr. Bellenbrock asserts that, given any view of the facts, his unified sentence of five years, with one and one-half years fixed, is 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)). Mr. Bellenbrock does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Bellenbrock must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Appellate courts use a four-part test for determining whether a district court abused its discretion: 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. Bellenbrock asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

Specifically, he asserts that the district court failed to give proper consideration to his admitted substance abuse problem and desire for treatment. 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 sentence. *State v. Nice*, 103 Idaho 89 (1982).

Mr. Bellenbrock began using illegal substances as a teenager. (PSI, pp.7, 81.) He has used methamphetamine, heroin, marijuana, cocaine, inhalants, prescription opiates, synthetic cannabis, hallucinogens, Adderall, ecstasy, and alcohol. (PSI, p.81.) His drug of choice is marijuana. (PSI, p.378.) Although he “hates” methamphetamine and heroin, he admits that these are the drugs he turns to when he begins using again. (PSI, p.378.) Mr. Bellenbrock was diagnosed with Stimulant Use Disorder – Amphetamine Type, Severe; Opioid Use Disorder, Severe; and Alcohol Use Disorder, Severe – Early Remission. (PSI, p.8.) He recognizes that he is an addict and needs treatment to overcome his addiction. (PSI, p.82.) It was recommended that he participate in Level II.1 Intensive Outpatient Treatment. (PSI, p.23.)

Idaho courts have previously recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Bellenbrock was recently diagnosed with Rule Out Major Depressive Disorder, Recurrent, With Psychotic Features; Rule Out Generalized Anxiety Disorder; Rule Out Posttraumatic Stress Disorder or Acute Stress Disorder or other disorder of extreme stress – Provisional; Rule Out Attention-Deficit/Hyperactivity Disorder - Combined presentation – Provisional; and Rule Out Conduct Disorder. (PSI, pp.9-25.) After receiving these diagnoses, Mr. Bellenbrock participated in a more thorough evaluation and was evaluated as having a primary diagnosis of Major Depressive Disorder – moderate and secondary diagnoses of ADHD, Opioid Use Disorder – Severe, and Stimulant Use Disorder – Severe. (PSI, p.380.) It was recommended that he participate in mental health treatment services. (PSI, p.381.)

Furthermore, in *State v. Shideler*, 103 Idaho 593, 594 (1982), the Idaho Supreme Court noted that family and friend support were factors that should be considered in the Court's decision as to what is an appropriate sentence. Mr. Bellenbrock has the support of his mother, step-father, sister, son's mother, girlfriend, and her mother. (PSI, p.378.)

Additionally, Mr. Bellenbrock has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, "In light of Alberts' expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character." *Id.* 121 Idaho at 209. Mr. Bellenbrock has expressed his remorse for committing the instant offense stating, "I feel terrible and wish I would have [sought] help months prior." (PSI, p.5.) In his written comments to the district court he noted:

Im asking for help over the last 6 years Ive started a pattern a pattern I want to break going to prison and doing time is easy Ive been out there several

times I have access to whatever I want can do whatever I want I get out on low supervision I think I have it all under control I dont listen to people when they say get help see a doctor my life slowly starts to fall apart I start using here and there I push people away I dont seek help I isolate use more drugs get arrested and thats happened over and over. Im done not listening to people that care and profesionals. Ive been told for years seek mental health help Im more ready now than ever to be honest with myself and others ask for and hopefully get the help I need so I can stop using drugs stop getting into trouble stop going to prison and become the functioning member of society I know I can be. [sic]

(PSI, p.5.) He expressed similar sentiments at the sentencing hearing:

I know what I did was wrong, I accept full responsibility for my actions. Like the State says, I've been to prison a couple times now. I'm on this downward spiral that the same thing keeps happening over and over and over again. I go out for two years, year and a half, I get let out on limited supervision, I go, I think I have everything in line, I don't listen to people when they tell me go see a doctor, check yourself in, I start isolating, I push everybody away, and I start using drugs and that turns into severe depression where I don't want to live anymore, I don't want to keep pushing forward, I want to just quit and that ends up putting me into treatment facilities and the County Jail, and then I sit there for months and months and then the same cycle over and over again.

My mental health is something that I've neglected over the years and something that I know I need to face. I need to handle these demons or I'm not going to be around a whole lot longer to face them. I have a good support system out there right now, I have a sober place to live, I talked to my boss, he's still hanging onto my job for me, I have transportation, I'm almost 90 days clean and sober right now, and that's something I want to hang onto and keep pushing forward with.

I know going to prison right now is definitely on the table, but I've been there, like I said, a couple times and all that's out there is drugs, violence, gangs, and it hasn't done anything for me. I guess I'm just asking for maybe help me try something different this time because I don't want to keep doing the same thing over and over again. I got a little boy that I want to make sure doesn't go down the same road I've been going down, and I just hope you take all that into consideration.

(Tr., p.23, L.19 – p.25, L.2.)

Based upon the above mitigating factors, Mr. Bellenbrock asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his substance abuse, desire for treatment, mental health issues,

friend and family support, and remorse, it would have crafted a sentence that focused on his rehabilitation rather than incarceration.

CONCLUSION

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

DATED this 29<sup>th</sup> day of July, 2019.

/s/ Elizabeth Ann Allred  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> 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](mailto:ecf@ag.idaho.gov)

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

EAA/eas