

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

8-16-2019

### State v. Evans Appellant's Brief Dckt. 46986

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Evans Appellant's Brief Dckt. 46986" (2019). *Not Reported*. 5952.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/5952](https://digitalcommons.law.uidaho.edu/not_reported/5952)

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](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender  
I.S.B. #7259  
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. 46986-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-19-2924
v.	)	
	)	
LYDIA PAIGE EVANS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Lydia Paige Evans appeals from the district court's Judgment of Conviction and Commitment. Ms. Evans was sentenced to a unified sentence of four years, with one year fixed, for her possession of a controlled substance conviction. She asserts that the district court abused its discretion in sentencing her to an excessive sentence without giving proper weight and consideration to the mitigating factors that exist in this case.

## Statement of the Facts & Course of Proceedings

On February 8, 2019, an Information was filed charging Ms. Evans with possession of a controlled substance and possession of drug paraphernalia. (R., pp.22-23.) Ms. Evans was arrested on a parole violation warrant and, during the arrest, admitted to possessing methamphetamine and syringes. (PSI, p. 1.)<sup>1</sup>

Ms. Evans entered a guilty plea to the possession of a controlled substance charge. (R., p.25.) At sentencing, the prosecution requested the imposition of a unified sentence of five years, with one year fixed. (Tr., p.21, Ls.21-24.) Defense counsel recommended a six month fixed term and left the remainder of the sentence to the court's discretion. (Tr., p.24, Ls.22-24.) The district court imposed a unified sentence of four years, with one year fixed, to be served consecutively to Canyon County case CR- 2015-16222. (R., pp.31-33.) Ms. Evans filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.42-43.) She also filed a timely Motion for Reconsideration of Sentence. (R., p.35.) The motion was denied. (R., pp.38-40.)<sup>2</sup>

## ISSUE

Did the district court abuse its discretion when it imposed, upon Ms. Evans, a unified sentence of four years, with one year fixed, following her plea of guilty to possession of a controlled substance?

---

<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.

<sup>2</sup> On appeal, Ms. Evans does not challenge the denial of her Rule 35 motion because there was no new or additional information submitted in support as is required by *State v. Huffman*, 144 Idaho 201, 203 (2007).

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed, Upon Ms. Evans, A Unified Sentence Of Four Years, With One Year Fixed, Following Her Plea Of Guilty To Possession Of A Controlled Substance

Ms. Evans asserts that, given any view of the facts, her unified sentence of four years, with one year fixed, to be served consecutive to Canyon County case CR- 2015-16222, 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)). Ms. Evans does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Evans 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). Ms. Evans asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in her case and, as a result, did not reach its decision by an exercise of reason.

Specifically, she asserts that the district court failed to give proper consideration to her 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). Ms. Evans began using heroin at the age twelve; marijuana at thirteen; prescription opioids, Xanax, and methamphetamine at sixteen; alcohol and inhalants at eighteen; and cocaine and hallucinogens at twenty. (PSI, p.10.) She was diagnosed with Stimulant Use Disorder - Amphetamine Type, Severe - In a Controlled Environment; Cannabis Use Disorder, Moderate - In a Controlled Environment; Other Hallucinogen Use Disorder, Moderate - In a Controlled Environment; Opioid Use Disorder, Severe - Early Remission in a Controlled Environment; and Sedative, Hypnotic, or Anxiolytic Use Disorder, Mild - Early Remission in a Controlled Environment. (PSI, p.7.) It was recommended that she participate in Level II.1 Intensive Outpatient treatment. (PSI, pp.5, 17.) Ms. Evans' evaluation indicated that she has a "high motivation for treatment." (PSI, p.13.)

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). Ms. Evans has been previously diagnosed with Bipolar Disorder, depression, and anxiety. (PSI, p.83.) She has a history of attempting suicide. (PSI, p.83.) Recently, she

was diagnosed with Attention-Deficit/Hyperactivity Disorder – Predominantly inattentive presentation – Provisional. (PSI, p.7.) Although a recent GAIN-I Core assessment found there were no recommendations concerning treatment for Ms. Evans, she has recognized that mental health treatment would be beneficial. (PSI, p.5.)

Additionally, Ms. Evans has expressed her 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. Ms. Evans has expressed her remorse for committing the instant offense noting that she is “[v]ery disopointed [sic] in myself.” (PSI, p.2.)

Based upon the above mitigating factors, Ms. Evans asserts that the district court abused its discretion by imposing an excessive sentence upon her. She asserts that had the district court properly considered her substance abuse, desire for treatment, mental health issues, and remorse, it would have crafted a less severe sentence.

#### CONCLUSION

Mr. Evans 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 16<sup>th</sup> day of August, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of August, 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