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### State v. Garcia Appellant's Brief Dckt. 47065

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47065-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-18-22397
v.	)	
	)	
RAFAEL IVAN AVREU GARCIA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Mr. Garcia appeals from the district court's Judgment of Conviction and Order of Commitment. Mr. Garcia was sentenced to unified sentences of seventeen years, with five years fixed, for both his trafficking in heroin and trafficking in methamphetamine convictions, and five years fixed, for his unlawful possession of a firearm conviction, all charges to be served concurrently. He asserts that the district court abused its discretion in sentencing him to excessive sentences without giving proper weight and consideration to the mitigating factors present in his case.

## Statement of the Facts & Course of Proceedings

On June 5, 2018, an Indictment was filed charging Mr. Garcia with trafficking in heroin, trafficking in methamphetamine, possession of a controlled substance (cocaine), manufacture or possess with intent to deliver drug paraphernalia, possession of a controlled substance (marijuana), and possession of drug paraphernalia. (R., pp.30-32.) The charges were filed after police executed a search warrant at Mr. Garcia's home. (PSI, pp.3-4.)<sup>1</sup> The Indictment was later amended to include an unlawful possession of a firearm charge. (R., pp.46-48.) Later, an Information was filed modifying the trafficking in heroin charge, but charging the same crimes. (R., pp.97-99.)

Mr. Garcia entered a guilty plea to the trafficking in heroin, trafficking in methamphetamine, and unlawful possession of a firearm charges. (R., p.86.) At sentencing, the prosecution recommended unified sentences of twenty years, with four years fixed, for trafficking in heroin; twenty years, with five years fixed, for trafficking in methamphetamine; and three years fixed, for the unlawful possession of a firearm. (4/16/19 Tr., p.17, Ls.7-20.) Defense counsel requested that Mr. Garcia be sentenced to unified sentences of ten years, with three years fixed, for the trafficking charges, and one year fixed, for the unlawful possession of a fire arm charge. (4/16/19 Tr., p.18, Ls.10-14.) The district court imposed unified sentences of seventeen years, with five years fixed, for each of the trafficking charges, and five years fixed, for the unlawful possession of a firearm, with all sentences to be served concurrently. (R., pp.117-19.) Mr. Garcia filed a Notice of Appeal timely from the district court's Judgment of Conviction and Order of Commitment. (R., pp.125-28.) He also filed a timely Motion to

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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.

Reconsider Sentence Pursuant to I.C.R. 35. (R., pp.145-47.) The motion was denied.<sup>2</sup>  
(R., pp.148-50.)

### ISSUE

Did the district court abuse its discretion when sentencing Mr. Garcia following his plea of guilty to trafficking in heroin, trafficking in marijuana, and unlawful possession of a firearm?

### ARGUMENT

#### The District Court Abused Its Discretion When Sentencing Mr. Garcia Following His Plea Of Guilty To Trafficking In Heroin, Trafficking In Marijuana, And Unlawful Possession Of A Firearm

Mr. Garcia asserts that, given any view of the facts, his unified sentences of seventeen years, with five years fixed, for each of the trafficking charges, and five years fixed, for the unlawful possession of a firearm, with all sentences to be served concurrently, 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)). Mr. Garcia does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Garcia must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing

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<sup>2</sup> On appeal, Mr. Garcia does not raise the denial of the Rule 35 motion because he did not present new or additional information as required by *State v. Huffman*, 144 Idaho 201, 203 (2007).

*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. Garcia 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, Mr. Garcia 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. Garcia has a history of substance abuse. He first used cocaine at the age of 18, hallucinogens at 19, marijuana at 28, and methamphetamine and heroin at 43. (PSI, p.17.) He was diagnosed with Cannabis Use Disorder, Moderate, In Early Remission, In a Controlled Environment; Opioid Use Disorder, Severe, In Early Remission, In a Controlled Environment; and Stimulant Use Disorder, Amphetamine Type, Severe, In Early Remission, In a Controlled Environment. (PSI, p.23.) In the past, he has been able to maintain sobriety for long periods of

time. (PSI, p.17.) He was sober for 15 years between 1992 and 2007. (PSI p.17.) Mr. Garcia has a desire to once again stop using drugs and has admitted that treatment will be necessary. (PSI, p.17.)

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, 5815 (1999). Mr. Garcia has been previously diagnosed with depression, Borderline Personality Disorder, and Posttraumatic Stress Disorder. (PSI, p.23.) He has been prescribed Paxil, Celexa, and Effexor to help with his mental health issues. (PSI, pp.15, 23.) In the past he has been suicidal and has attempted suicide four times in his life. (PSI, p.23.) He is willing to try "whatever works" to address his mental health concerns. (PSI, p.16.)

Mr. Garcia's mental health problems may be the result of his difficult childhood. A difficult childhood is a mitigating factor that should be considered at sentencing. *State v. Smith*, 144 Idaho 687, 690-91 (Ct. App. 2007). He was born in Cuba when his mother was just [REDACTED]. (PSI, p.10.) Although it was never confirmed by his mother, Mr. Garcia believes that he was conceived during a gang rape of his mother. (PSI, pp.10-11.) His mother was not kind to him as a child, did not show him any love or affection, acted as if she hated him, and abused him physically. (PSI, p.10.) His family was very poor and he begged for food on the streets. (PSI, p.10.) As a child, he was also repeatedly sexually abused by different men in his life. (PSI, p.10.)

Mr. Garcia's mother moved to the United States when he was fifteen. (PSI, p.10.) Later, while he was still a teenager, his mother forced him to join her in the United States. (PSI, p.11.) Unfortunately, his relationship with his mother did not improve and he was kicked out of the house within a year and began moving from friend to friend around the county. (PSI, p.11.)

When he was approximately 18 years old, he began to use drugs to deal with his depression, anxiety, and anger. (PSI, p.11.)

Despite his difficult childhood, Mr. Garcia has been able to earn his GED and enroll at Boise State University. (PSI, pp.13-14.) He attended for four years and has earned over 100 credits. (PSI, p.14.) He was forced to discontinue his college education to assist his mother. (PSI, p.14.) He has also owned and operated Tentacles Windows and Exteriors LLC, a business he successfully ran for several years prior to his arrest in the case at hand. (PSI, p.14.) A defendant's gainful employment is a mitigating factor that should be considered by the district court in determining the appropriate sentence. *State v. Mitchell*, 77 Idaho 115, 119 (1955).

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. Garcia has the support of his ex-girlfriend's sister, Kelly Goodman. (PSI, p.516.) Ms. Goodman noted that Mr. Garcia has made progress in his sobriety, that she and her partner are "committed to helping Ivan when he is released from prison," and will provide him with a home and employment. (PSI, p.517.) He also supplied letters of support from several other friends. (PSI, pp.518-527.)

Additionally, Mr. Garcia has expressed his remorse for committing the instant offense and exhibits several positive character attributes. 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. Garcia has expressed his remorse for committing the instant offense stating, "My actions were wrong on all levels and

I have no excuse for what I did. My reckless behavior put others at risk as well as myself. . . . I am sorry.” (PSI, p.18.) At the sentencing hearing, he told the district court:

I would like to take responsibility for what I did, and I was in possession of those drugs.

I have been a user throughout my life, not the whole entire time. The last time that I was – that I used drugs was prior to 2017 when I used for only about 6 months, but it was 15 years – 20 years, in 2006 was the last time in Florida in the county jail. Prior to that it was another 12 years and in between all those times, I did not use drugs. I was rehabilitated. I was a member of society. I had a kid. I went to college. I opened up my own business. I have over 20 years – 25 years of tax paying. I have paid taxes in the United States in state.

I have gone back from Boise to Florida because as an immigrant, immigration placed me in Idaho in 1991, and my mother lived in Florida. So I would go down there where the Cuban community was at. And so – and when sometimes life brought problems my way, I escaped by getting high.

But I also have educated myself through Boise State. I have also saved somebody’s life. I have also worked with autistic and people with Aspergers. And I have done many charitable things throughout the community that I can be proud of.

Obviously, I’m not proud of my drug use and it’s something that I couldn’t control at the time. I felt depressed and down and lonely or whatever circumstances were bringing me down, and I would like to be able to, you know, finish my time and get back to my family.

I do have a daughter that lives in Boise. I do have a brother I do have family support in Idaho as well as in Oregon now. My mother is dead, but I have strong circles of people around me that are not criminals, have no part in any criminal activity, and that [are] willing to help me. And that I would like to go to them when my time is done. Apply to be able to be a part of my daughter’s life and my family’s life as well.

(4/16/19 Tr., p.26, L.25 – p.28, L.17.)

Based upon the above mitigating factors, Mr. Garcia 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 treatment, mental health issues, difficult

childhood, employment history, friend and family support, and remorse, it would have crafted a less severe sentence.

CONCLUSION

Mr. Garcia 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 1<sup>st</sup> day of November, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1<sup>st</sup> day of November, 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

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