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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47113-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-6696
v.)	
)	
CHRISTIAN P. JOHNSON,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Christian P. Johnson pled guilty to driving under the influence (“DUI”), the district court sentenced him to eight years, with three years fixed. Mr. Johnson moved for a reduction in his sentence pursuant to Idaho Criminal Rule 35 (“Rule 35”). The district court denied his motion. Mr. Johnson now appeals, and he argues the district court abused its discretion by imposing an excessive sentence and denying his Rule 35 motion.

Statement of Facts and Course of Proceedings

In March 2019, the State charged Mr. Johnson by Information with a felony DUI and two misdemeanors for resisting an officer and driving without privileges. (Aug. R., pp.1–2.) Pursuant

to a plea agreement, Mr. Johnson pled guilty to the DUI, and the State agreed to dismiss the misdemeanors. (Tr. Vol. I,¹ p.8, Ls.16–17, p.13, Ls.3–10; *see also* Tr. Vol. II, p.28, Ls.12–16.) The State also agreed to recommend the district court retain jurisdiction (“a rider”) with an underlying sentence of eight years, with two years fixed. (Tr. Vol. I, p.8, Ls.17–18.)

At sentencing, the district court determined the State was no longer bound by its sentencing recommendation due to the discovery of the prior offenses in Mr. Johnson’s criminal history. (Tr. Vol. II, p.5, L.11–p.6, L.4.) The State recommended a harsher sentence of ten years, with four years fixed, and did not recommend a rider. (Tr. Vol. II, p.6, Ls.19–23.) Mr. Johnson requested a rider with an underlying sentence of seven years, with two years fixed. (Tr. Vol. II, p.13, Ls.4–6, p.19, Ls.4–5.) The district court declined to retain jurisdiction and sentenced Mr. Johnson to eight years, with three years fixed. (Tr. Vol. II, p.26, L.20–p.27, L.2, p.27, Ls.11–12.)

Mr. Johnson timely appealed from the district court’s judgment of conviction. (R., pp.38–41, 43–44.) A little over three months later, Mr. Johnson moved for a reduction in his sentence to a rider and included documents in support. (Aug. R., pp.3–23.) The district court denied his motion. (Aug. R., pp.24–25.)

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of eight years, with three years fixed, upon Mr. Johnson, after his DUI guilty plea?
- II. Did the district court abuse its discretion when it denied Mr. Johnson’s Rule 35 motion?

¹ The transcripts of the entry of plea and sentencing hearings are contained in one document, but each transcript contains its own pagination. They will be cited separately, with Volume I referencing the entry of plea hearing and Volume II referencing the sentencing hearing.

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Eight Years, With Three Years Fixed, Upon Mr. Johnson, After His DUI Guilty Plea

“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 (1997) (alteration in original)). Here, Mr. Johnson’s sentence does not exceed the statutory maximum. *See* I.C. § 18-8005(6) (ten-year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Johnson “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).

The district court’s decision to retain jurisdiction is also reviewed for an abuse of discretion. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). “The primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant’s rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction.” *Id.* “There can be no abuse of discretion in a trial court’s refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation.” *Id.*

“‘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. Johnson 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 retained jurisdiction in light of the mitigating factors, including his significant mental health issues, substance abuse issues, physical ailments, and amenability to treatment for his mental health and substance abuse issues.

Mr. Johnson’s mental health issues support a more lenient sentence or a period of retained jurisdiction. Idaho Code § 19-2523 requires the sentencing court to consider the defendant’s mental health condition if it is a significant factor, and the record must show that the sentencing court adequately considered this factor when imposing a sentence. I.C. § 19-2523; *Delling*, 152 Idaho at 132–33. Here, ██████████ Mr. Johnson was diagnosed with bipolar disorder and “some personality disorder issues.” (Presentence Investigation Report (“PSI”),² pp.103, 105.) Mr. Johnson has struggled with mental health issues for quite some time. He reported that he was diagnosed with schizophrenia and depression. (PSI, pp.127, 146.) He was hospitalized in 2015 for “feeling really down” and in 2016 for a suicide attempt. (PSI, pp.99, 127, 201–02.) Most recently, Mr. Johnson was treated by the Terry Reilly Clinic for

² Citations to the PSI refer to the 320-page electronic document, titled “Conf.Docss-Johnson.pdf,” with the confidential exhibits.

schizophrenia. (PSI, pp.127, 147, 161, 203–30.) However, Mr. Johnson got into a car accident a few weeks before the instant offense and stopped getting treatment. (PSI, pp.110, 126–27; Tr. Vol. II, p.13, Ls.11–14.) After the accident, Mr. Johnson was in chronic pain. (Tr. Vol. II, p.13, L.17.) He also has degenerative disc disease. (PSI, pp.99, 100, 127.) He receives social security benefits, and he believed he was unable to work due to his mental and physical issues. (PSI, pp.99. 126.)

Unfortunately, instead of seeking professional treatment after the accident, Mr. Johnson turned to drugs and alcohol. Mr. Johnson’s substance abuse and alcohol issues, the impact of his drug and alcohol 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 alcoholic problem, the part it played in causing [the] defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho 89, 91 (1982). 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). Mr. Johnson started using drugs and alcohol at a very young age and has struggled with staying sober for most of his life. (PSI, p.128.) His longest period of sobriety was two years. (PSI, p.128.) After he got hurt in the accident, he started drinking alcohol “as a pain killer.” (PSI, p.110.) He was diagnosed with a severe alcohol use disorder. (PSI, p.103.) Mr. Johnson was also using marijuana and methamphetamine. (PSI, p.128.) Mr. Johnson’s substance abuse issues, and his co-occurring mental health issues, stand in favor of mitigation.

Despite his severe substance abuse disorder and significant mental health issues, Mr. Johnson was amenable to treatment and expressed a renewed commitment to his sobriety. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v.*

Shideler, 103 Idaho 593, 595 (1982). Here, a licensed psychologist recommended psychiatric treatment. (PSI, p.106.) The psychologist also recommended a cognitive thinking program, which could have been provided during the rider. (PSI, p.106; Tr. Vol. I, p.15, Ls.16–19.) The rider program would have allowed Mr. Johnson’s “a chance to stabilize and get treatment” for his mental health and substance abuse issues. (Tr. Vol. II, p.18, Ls.10–15.) Further, Mr. Johnson was amenable to treatment. (PSI, pp.129, 144.) In the PSI, he explained:

I was not getting daily accountability and raising the bar for myself to use all available time seeking recovery: doctors, meetings, peers, and I had climbed out of the pit but halted for immediate gratifications that are what kept me in addiction. To redeem such [r]eckless behavior will be that I never do it (drink drive) again. Pay my debts, do the work, see self-respect return, contribute back to the recovery community, and hope always to remember the pain and grief that this can never happen again. Please have mercy on me to allow me to return home as soon as able.

(PSI, p.130.) Mr. Johnson recognized that he lost everything that he cared about because of alcohol, and he knew that he needed to stop using drugs and alcohol. (PSI, pp.128, 129.) To help with his alcohol addiction, he was willing to take Antabuse. (PSI, p.128.) He was ashamed of his actions in the instant offense. (PSI, p.110.) Similarly, Mr. Johnson stated at sentencing:

About the putting people at risk when I’ve gotten behind the wheel and operated a vehicle, I completely know that that is unacceptable. Because people could get hurt, and it would . . . fracture my living ability. And I don’t want to ever do that again.

I am so upset because it all dawned on me now. Up through the last -- the last 20 years just went by. I’ve just now come into what I am to do with living and being responsible.

(Tr. Vol. II, p.19, Ls.11–20.) Mr. Johnson stated that he didn’t want to be “that guy” drinking alcohol and being “stupid.” (Tr. Vol. II, p.20, Ls.1–10, p.23, Ls.2–3.) Mr. Johnson’s acceptance of responsibility, remorse, and amenability to treatment also support a lesser sentence or a period of retained jurisdiction.

In summary, Mr. Johnson asserts the district court did not exercise reason and therefore abused its discretion by imposing an excessive sentence. Proper consideration of the mitigating factors supported a more lenient sentence or a period of retained jurisdiction.

II.

The District Court Abused Its Discretion When It Denied Mr. Johnson's Rule 35 Motion

“A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

Here, Mr. Johnson provided new and additional information to justify a reduction in his sentence. First, Mr. Johnson wrote numerous letters to the district court promising never to drink alcohol again. (*See R.*, pp.48–72; *Aug. R.*, pp.16–17.) Second, in his Rule 35 motion, Mr. Johnson explained that he could get immediate programming if placed on a rider. (*Aug. R.*, p.4.) Due to the length of his sentence, he was currently not getting any structured

programming. (Aug. R., p.5.) He would not be able to begin programming until early 2021. (Aug. R., pp.20, 23.) Third, Mr. Johnson included two letters of support. His mother wrote a letter that expressed her hope for her son to get treatment. (Aug. R., pp.8–9.) Although Mr. Johnson’s mother did not want to “minimize” her son’s issues, she believed that he should be given “one more chance to face his issues and follow through on necessary treatment.” (Aug. R., pp.8–9.) She wrote that his family would be supportive after his release. (Aug. R., p.8.) Mr. Johnson’s aunt, who was a drug and alcohol counselor, wrote that she had seen his mental health deteriorate, and she hoped that he could be sent on a rider to get mental health and substance abuse treatment. (Aug. R., p.10.) Finally, Mr. Johnson wrote a letter to the district court that explained his plan to succeed in the community. (Aug. R., pp.11–13.) He planned to: (1) coordinate with Health and Welfare, Access Behavioral Health, and Terry Reilly for service and medication; (2) obtain employment; (3) attend 12 step meetings and work with a sponsor; (4) comply with any terms of probation; (5) volunteer and donate clothes; and (6) quit smoking. (Aug. R., p.12.) Mr. Johnson also stated his current medication helped him maintain his sobriety and see clearly. (Aug. R., pp.11, 13.)

Mr. Johnson asserts this new and additional information of his family support, medication stabilization, and plan to succeed on probation support a reduction in his sentence to a rider. He submits the district court did not exercise reason and therefore abused its discretion by denying his Rule 35 motion.

CONCLUSION

Mr. Johnson respectfully requests this Court reduce his sentence as it deems appropriate. In the alternative, he respectfully requests this Court vacate his judgment of conviction and remand this case to the district court for a new sentencing hearing. Alternatively, he respectfully requests this Court reverse or vacate the district court's order denying his Rule 35 motions and remand this case to the district court for a new Rule 35 motion hearing.

DATED this 8th day of November, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th 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

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

JCS/eas