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### State v. De Motte Appellant's Brief Dckt. 46902

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46902-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-18-28573
v.	)	
	)	
DARRELL ALLAN DE MOTTE,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Following a trial, the jury convicted [REDACTED] Darrell Allen De Motte of felony attempted abuse, exploitation, or neglect of a vulnerable adult, felony burglary, felony abuse, exploitation, or neglect of a vulnerable adult, and a persistent violator sentencing enhancement. The district court imposed an aggregate unified sentence of thirty years, with seven years fixed. On appeal, Mr. De Motte asserts the district court abused its discretion when it imposed his sentence.

## Statement of the Facts & Course of Proceedings

The State charged Mr. De Motte by Information with attempted abuse, exploitation, or neglect of a vulnerable adult, burglary, and abuse, exploitation, or neglect of a vulnerable adult. (R., pp.61-62.) Later, the State filed an Information Part II, alleging Mr. De Motte was a persistent violator. (R., pp.86-87.) Mr. De Motte entered a not guilty plea. (R., p.67.) He also exercised his right to self-representation for the jury trial. (*See Tr.*, p.11, L.14 – p.23, L.25.)<sup>1</sup>

At Mr. De Motte's jury trial, William "Jody" Evans testified for the State that his aunt, Patricia Amptman, had cognitive difficulties exacerbated by her drinking. (*See Tr.*, p.182, L.19 – p.189, L.17.) Mr. Evans testified that, after Ms. Amptman's neighbor, Mr. De Motte, called for a welfare check, Ms. Amptman's purse was unable to be found. (*See Tr.*, p.190, L.3 – p.193, L.17.) According to Mr. Evans, Mr. De Motte stated he called in the welfare check because he had seen another neighbor's daughter in Ms. Amptman's backyard, but the responding officer told Mr. Evans that Mr. De Motte had called about smelling natural gas from his house. (*See Tr.*, p.193, L.18 – p.194, L.24.)

Mr. Evans testified that, based on those concerns and noticing charges on Ms. Amptman's bank account that were not hers, he began to suspect Mr. De Motte and installed a video surveillance system in Ms. Amptman's house. (*See Tr.*, p.194, L.25 – p.196, L.1.) Per Mr. Evans, he later reviewed the surveillance footage, and it showed at one point Mr. De Motte asking Ms. Amptman to leave her house to help Mr. De Motte's mother. (*See Tr.*, p.199, L.25 – p.200, L.21.) Mr. Evans testified that the footage later showed Mr. De Motte returning to Ms. Amptman's house and turning on the gas on the stove before leaving again. (*See Tr.*, p.200, L.22 – p.202, L.7.) Mr. Evans testified that the footage then showed Mr. De Motte and

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<sup>1</sup> Please note that each four-page sheet in the Transcript on Appeal does not have individual page numbers, but the page numbers are listed on the bottom of the sheet.

Ms. Amptman coming back, with Ms. Amptman acting stunned upon discovering the gas was on, and Mr. De Motte telling her that was dangerous. (*See Tr.*, p.202, Ls.8-19.)

According to Mr. Evans, he reviewed the footage after getting calls from Ms. Amptman's bank and a Meridian Police Department detective. (*See Tr.*, p.199, L.4 – p.200, L.5.) He testified the footage showed that, after they discovered the gas was on, Mr. De Motte and Ms. Amptman left for the bank. (*See Tr.*, p.202, Ls.20-24.) An assistant bank manager at the bank testified for the State that Ms. Amptman came to the bank and requested \$500.00 from her account, but she smelled of alcohol and the transaction was eventually canceled. (*See Tr.*, p.270, L.20 – p.272, L.5.)

The assistant bank manager also testified that before Ms. Amptman arrived at the bank, there had been a series of ATM withdrawals from Ms. Amptman's accounts, each in the amount of \$300.00, over the course of about a month. (*See Tr.*, p.272, L.6 – p.273, L.24.) Ms. Amptman did not appear in the photographs associated with those ATM transactions. (*See Tr.*, p.273, L.25 – p.274, L.8.) The assistant bank manager testified that Mr. De Motte was the person in the photographs associated with the transactions. (*See Tr.*, p.275, L.11 – p.281, L.8.) The Meridian detective testified that there were sixteen transactions identified as fraudulent, and Mr. De Motte was in all twelve of the photographs the bank provided. (*See Tr.*, p.304, Ls.8-16.) The detective further testified that there had been transactions with a tobacco shop and Uber on Ms. Amptman's financial transaction cards, and the Uber transactions were associated with Mr. De Motte's Uber accounts. (*See Tr.*, p.304, L.17 – p.307, L.5, p.316, L.14 – p.320, L.3.)

Mr. De Motte's mother, Leola Boyd, testified for the defense that Ms. Amptman, when she was too intoxicated to drive, would ask Mr. De Motte to help her get some money out of the ATM, and Mr. De Motte would also help Ms. Amptman with groceries and gas. (*See Tr.*, p.403,

L.7 – p.407, L.13.) Ms. Boyd further testified that Mr. Evans had called Mr. De Motte about checking the gas at Ms. Amptman’s house, including on the day depicted in the surveillance footage. (*See Tr.*, p.408, L.15 – p.410, L.16.)

At the conclusion of the jury trial, the jury found Mr. De Motte guilty of attempted abuse, exploitation, or neglect of a vulnerable adult, burglary, and abuse, exploitation, or neglect of a vulnerable adult. (R., pp.320-21.) The jury then found that Mr. De Motte was a persistent violator. (*See R.*, p.322.) The district court granted Mr. De Motte’s request to reappoint the public defender for sentencing. (*See Tr.*, p.576, L.19 – p.577, L.6.)

During the sentencing hearing, Mr. De Motte recommended that the district court impose an aggregate unified sentence of ten years, with two years fixed. (*See Tr.*, p.598, Ls.7-18.) The State recommended that the district court impose an aggregate unified sentence of life imprisonment, with no firm recommendation for fixed time, but a suggestion “that 5 years seems close.” (*See Tr.*, p.591, Ls.6-16.) The district court imposed, for attempted abuse, exploitation, or neglect of a vulnerable adult, a unified sentence of thirty years, with seven years fixed; for burglary, a unified sentence of two years fixed; and for abuse, exploitation, or neglect of a vulnerable adult, a unified sentence of thirty years, with two years fixed. (R., pp.328-31.) The sentences were to run concurrently with each other and with the sentence imposed in an unrelated case, Ada County No. CR01-17-3105 (*hereinafter*, the 2017 case).<sup>2</sup> (*See R.*, p.329.)

Mr. De Motte filed a timely Notice of Appeal from the Judgment of Conviction and Commitment. (R., pp.332-34.)

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<sup>2</sup> In No. CR01-17-3105, a jury convicted Mr. De Motte of felony DUI and misdemeanor resisting and/or obstructing an officer, and the district court imposed a unified sentence of seven years, with two years fixed, for the DUI. *State v. De Motte*, No. 45663, 2019 WL 179181 (Ct. App. Jan. 14, 2019). Mr. De Motte appealed, and the Idaho Court of Appeals in Supreme Court Docket No. 45663 affirmed his judgment of conviction and sentence in an unpublished opinion. *Id.*

## ISSUE

Did the district court abuse its discretion when it imposed an aggregate unified sentence of thirty years, with seven years fixed, upon Mr. De Motte following his convictions for attempted abuse, exploitation, or neglect of a vulnerable adult, burglary, and abuse, exploitation, or neglect of a vulnerable adult?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed An Aggregate Unified Sentence Of Thirty Years, With Seven Years Fixed, Upon Mr. De Motte Following His Convictions For Attempted Abuse, Exploitation, Or Neglect Of A Vulnerable Adult, Burglary, And Abuse, Exploitation, Or Neglect Of A Vulnerable Adult

Mr. De Motte asserts the district court abused its discretion when it imposed an aggregate unified sentence of thirty years, with seven years fixed, upon him following his convictions. The district court should have instead followed his recommendation by imposing an aggregate unified sentence of ten years, with two years fixed. (*See Tr.*, p.598, Ls.7-18.)

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) (internal quotation marks omitted). Mr. De Motte does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. De Motte must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. De Motte asserts his aggregate sentence is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider Mr. De Motte status as the caregiver for his mother, Ms. Boyd. At the sentencing hearing, Mr. De Motte's counsel informed the district court: "Darrell's a [REDACTED] single caregiver to his [REDACTED] mother. She's had a number of health issues over the years." (Tr., p.595, Ls.4-7.) Mr. De Motte's presentence report from the 2017 case reflected that Ms. Boyd told the presentence investigator that Mr. De Motte "waits on me hand and foot. I've really gone downhill health-wise." (No. 45663 Presentence Report (*hereinafter*, PSI), p.12.)<sup>3</sup>

Later in the sentencing hearing in this case, defense counsel stated, "I know that Darrell wants nothing more than to get out of custody and to move back in with his mother and take care of her." (Tr., p.598, Ls.19-21.) Mr. De Motte's mother "took him in when he was abandoned as a very young child." (Tr., p.599, Ls.5-7.) Counsel added that, "one of the things again that is most difficult for him here is knowing that he will be away from her, even if he gets a sentence of another 2 years, likely, she is not to be with us for another two years given her age, and Darrell understands that too . . . ." (Tr., p.599, Ls.19-24.) Mr. De Motte told the district court: "The only thing I ask now is I'm probably not going to be out in time to see my mom in her final days, and that's going to be a sentence all unto itself. It really will be." (Tr., p.603, Ls.14-17.)

The district court also did not adequately consider Mr. De Motte's own medical issues. During the sentencing hearing, defense counsel told the district court that Mr. De Motte "had a stroke" and "has a pacemaker installed." (Tr., p.595, Ls.7-8.) Mr. De Motte stated, "This last

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<sup>3</sup> Here, the district court reviewed the presentence report that had been filed in the 2017 case. (*See* Tr., p.576, Ls.2-17, p.579, Ls.16-20.) That presentence report is the subject of Mr. De Motte's Motion to Augment, filed contemporaneously with this brief.

week I found out that my stroke is having a worse effect on it because of the anxiety I'm under.” (Tr., p.603, Ls.17-19.) Mr. De Motte's presentence report from the 2017 case stated that he had his stroke a few months before the instant offenses, and Mr. De Motte “felt this was due to stress.” (See PSI, p.17.) He had his pacemaker put in place about a year before the offenses in this case. (See PSI, p.16.) Further, about two years prior to the instant offenses, he suffered a traumatic brain injury after slipping on ice and hitting his head. (See PSI, p.17.) Moreover, Mr. De Motte had been diagnosed with cancer about eleven years before the offenses here. (See PSI, p.14.) Mr. De Motte told the district court at the sentencing hearing, “I just believe that the time I'm doing might be the last I will be alive.” (Tr., p.603, Ls.20-22.)

Because the district court did not adequately consider the above mitigating factors, Mr. De Motte's aggregate unified sentence is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed his sentence.

#### CONCLUSION

For the above reasons, Mr. De Motte respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 12<sup>th</sup> day of February, 2020.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12<sup>th</sup> day of February, 2020, 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

BPM/eas