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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46996-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-18-54724
v.)	
)	
CORDELL JASON LAMB,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Cordell Lamb appeals from his judgment of conviction for aggravated assault and misdemeanor driving under the influence of alcohol (“DUI”), arguing the district court abused its discretion when it sentenced him to an aggregate unified term of five years, with two years fixed. He makes this argument mindful of the fact that the district court followed the recommendation of his trial counsel at sentencing.

Statement of Facts and Course of Proceedings

Mr. Lamb was involved in two incidents on October 22, 2018. (Presentence Investigation Report (“PSI”), p.3.) First, he was involved in a road rage incident with another driver, Zachary Jesse, which resulted in both Mr. Lamb and Mr. Jesse exiting their vehicles and exchanging verbal threats. (PSI, p.3.) During the course of the encounter, Mr. Lamb “pulled out a knife” and “lunged at [Mr. Jesse] in like an aggressive tone.” (Tr., p.176, Ls.1-13.) Mr. Jesse testified he feared for his safety. (Tr., p.187, Ls.7-8.) Both Mr. Lamb and Mr. Jesse returned to their vehicles and drove away when a woman who was driving by said she was going to call the police if they did not leave the area. (Tr., p.176, Ls.13-18.) Mr. Jesse contacted the police via the non-emergency dispatch number after he returned home. (Tr., p.190, Ls.6-17.)

As the police were responding to the non-emergency call, Mr. Lamb was involved in a second incident approximately one mile away from where he and Mr. Jesse had their altercation. (Tr., p.12, Ls.13-16.) Mr. Lamb allegedly ran a red light, and struck another vehicle. (PSI, p.3.) The officer who responded to the scene arrested Mr. Lamb for driving under the influence, and Mr. Lamb’s blood alcohol level was later measured at 0.151. (PSI, pp.3, 26, 66.)

Mr. Lamb was charged by Information, and subsequently, Amendment Information, with one count of aggravated assault. (R., pp.25-26, 67-68.) The prosecutor filed an Information Part II alleging Mr. Lamb is a persistent violator within the meaning of Idaho Code § 19-2514. (R., pp.59-60.) The prosecutor filed a motion to consolidate this case with CR01-18-51147, charging Mr. Lamb with misdemeanor DUI, because “the facts, evidence and witnesses are the same in each case.” (R., pp.27-28, 71.) Mr. Lamb did not object to the prosecutor’s motion, and the district court granted the motion on December 7, 2018. (R., pp.29-30.) On February 7, 2019, Mr. Lamb filed a motion pursuant to Idaho Criminal Rule 14 to sever the two charges, which he

captioned as a motion for relief from prejudicial joinder. (R., pp.71-75.) The district court denied Mr. Lamb's motion following a hearing. (*See* R., p.89; Tr., p., 8, L.16 – p.16, L.11.)

Mr. Lamb pled guilty to misdemeanor DUI prior to the commencement of trial. (Tr., p.40, Ls.7-22.) Mr. Lamb did not reserve his right to appeal from the district court's denial of his motion to sever. (*See id.*) The case proceeded to trial on the aggravated assault charge. (*See* Tr., p.42, Ls.15-23.) The jury found Mr. Lamb guilty of aggravated assault, and Mr. Lamb then pled guilty to being a persistent violator. (Tr., p.312, Ls.5-14, p.318, L.23 – p.319, L.19; R., p.114.) The district court followed the recommendation of defense counsel and sentenced Mr. Lamb for the aggravated assault to a unified term of five years, with two years fixed, with credit for 68 days served. (Tr., p.342, Ls.2-5; R., p.146.) The district court sentenced Mr. Lamb for misdemeanor DUI to 90 days in Ada County Jail, to be served concurrently. (Tr., p.343, L.24 – p.344, L.2.) The judgment of conviction was entered on April 26, 2019, and Mr. Lamb filed a timely notice of appeal. (R., pp.145-51.)

On July 29, 2019, Mr. Lamb filed a motion for credit for time served, requesting credit for 92 days instead of 68 days. (R., p.159.) The district court partially granted Mr. Lamb's motion, awarding him credit for 81 days.¹ (Motion to Augment, Aug. pp.1-3.) The district court entered an amended judgment of conviction on September 13, 2019, reflecting its amended award of credit for time served. (Motion to Augment, Aug. pp.4-7.)

¹ The Clerk's Record does not contain a copy of the Order Granting Motion For Credit For Time Served In Part and the Amended Judgment of Conviction. Simultaneously with the filing of this brief, Mr. Lamb is a filing a motion to augment to include copies of these documents in the record.

ISSUE

Did the district court abuse its discretion at sentencing?

ARGUMENT

The District Court Abused Its Discretion At Sentencing

This Court reviews sentencing decision for an abuse of discretion. *State v. McIntosh*, 160 Idaho 1, 8 (2016). This Court considers whether the trial court: “(1) correctly perceived the issue as one of discretion; (2) acted within the 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 an exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018) (citation omitted). Generally, when appealing a sentence as an abuse of discretion, the appellant “must establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment.” *State v. Varie*, 135 Idaho 848, 856 (2001) (citation omitted). Mindful of the doctrine of invited error, Mr. Lamb contends that, considering the four objectives of criminal punishment, the aggregate sentence the district court imposed on him was not reasonable and represents an abuse of discretion.

The first objective of criminal punishment is protection of society, *see Varie*, 135 Idaho at 856, and the sentence the district court imposed on Mr. Lamb was excessive considering this objective. The evidence at trial indicated Mr. Lamb and Mr. Jesse both decided to engage in an altercation, and to escalate that altercation, when either could have elected to simply drive or walk away. (PSI, p.3.) While Mr. Lamb displayed a knife during the course of the altercation, he was certainly not the sole party at fault. (PSI, p.3.) The district court candidly acknowledged that “this wasn’t the most egregious aggravated assault based on the testimony.” (Tr., p.341, Ls.1-3.) The district court said it did not know it would have found Mr. Lamb guilty of aggravated

assault, and “had some real question about whether the jurors were going to unanimously conclude that violence was imminent.” (Tr., p.340, Ls.4-10.) The court also recognized that Mr. Lamb could have hurt Mr. Jesse if he wanted to, and clearly elected not to do so. (Tr., p.341, Ls.3-5.) Based on the nature of the offense, a term of incarceration of up to five years was simply not reasonable.

The second objective of criminal punishment is deterrence of the individual and the public generally, *see Varie*, 135 Idaho at 856, and the sentence the district court imposed on Mr. Lamb was excessive considering this objective. Again, Mr. Lamb was at fault, but Mr. Jesse was also at fault. Mr. Lamb, Mr. Jesse, and the public at large should of course be deterred from escalating road rage incidents, but this deterrence need not come by way of sentencing one of the participants in such an incident to a lengthy term of incarceration. Driving under the influence of alcohol is arguably the more serious offense, but it was a misdemeanor under the facts of this case, and thus cannot support a sentence of imprisonment of up to five years.

The third objective of criminal punishment is rehabilitation, *see Varie*, 135 Idaho at 856, and the sentence the district court imposed on Mr. Lamb was excessive considering this objective. Mr. Lamb spent 25 years of his life in prison; he went in at age 18, and was released at age 43. (Tr., p.336, L.22 – p.337, L.4.) Prior to committing the criminal offenses charged in this case, Mr. Lamb had been out of prison for five years with no problem. (Tr., p.337, Ls.4-10.) He acknowledged at sentencing that he “can be violent” and explained that, when pursued, he is going to defend himself, as he has “known violence [his] whole life.” (Tr., p.337, Ls.11-24.) It is hard to imagine another term of imprisonment is going to have a positive impact on Mr. Lamb. This is especially true considering the letter of support submitted by Mr. Lamb’s sister to the district court. (PSI, p.244.) Suzette Lamb, a therapist, described her brother as “a man of strong

convictions, fierce passion for life, and incredible intellect and industriousness” who can be a meaningful member of society “with the right treatment, care, intervention, education and support.” (PSI, p.244.) Mr. Lamb’s rehabilitation will not be furthered by additional time in prison.

The fourth objective of criminal punishment is punishment or retribution, *see Varie*, 135 Idaho at 856, and the sentence the district court imposed on Mr. Lamb was excessive considering this objective. Again, Mr. Lamb was wrong to engage in an altercation with Mr. Jesse, but Mr. Lamb’s conduct, considered in the context of a mutual (and unwarranted) disagreement, does not justify a term of imprisonment.

Considering the substantial mitigating factors that exist in this case, and notwithstanding the aggravating factors, the district court abused its discretion when it sentenced Mr. Lamb to an aggregate unified term of five years, with two years fixed.

CONCLUSION

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

DATED this 9th day of January, 2020.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 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

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

AWR/eas