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### State v. Allen Appellant's Brief Dckt. 47093

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47093-2019
Plaintiff-Respondent,	)	
	)	BONNEVILLE COUNTY NO. CR10-18-12236
v.	)	
	)	
ZACHARY TYLER ALLEN,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Mr. Allen pleaded guilty to one count of forgery. The district court imposed a sentence of five years, with one and one-half years fixed, but retained jurisdiction. On appeal, Mr. Allen asserts the district court abused its discretion by imposing an excessively harsh underlying sentence.

Statement of the Facts & Course of Proceedings

In December of 2018, an Idaho Falls Police officer spoke with the owner of Advantage Employer Solutions, which contracted with Dairy Queen to handle their payroll. (Presentence

Report (PSI), pp.2-3.)<sup>1</sup> The owner told the officer that his company had issued one check to Mr. Allen for \$14.84. (PSI, p.3.) Pursuant to an investigation, the officer discovered that Mr. Allen had cashed that check for an altered amount, and had forged and cashed—or attempted to cash—several other checks in other towns in eastern Idaho. (PSI, p.3.)

The following day, the officer was advised that Mr. Allen was trying to cash another check. (PSI, p.3.) When the officer responded to the bank, he saw Mr. Allen trying to cash the check, and Mr. Allen later admitted that he had previously cashed forged checks and received \$2,316.52 from those transactions. (PSI, p.3.)

After waiving a preliminary hearing, Mr. Allen was charged, by Information, with one count of grand theft, and one count of forgery. (R., pp.27-31.)<sup>2</sup> Subsequently, he agreed to plead guilty to the forgery charge. (R., pp.35-37.) In exchange, the State agreed to dismiss the grand theft charge, concur with the PSI’s sentencing recommendation, and recommend “no worse than a retained jurisdiction.” (R., pp.35-37; Tr., p.8, L.3 – p.10, L.5.)<sup>3</sup>

At the sentencing hearing, Mr. Allen’s counsel requested that the district court impose a sentence of three years, with one year fixed, but suspend that sentence and place Mr. Allen on probation. (Tr., p.19, Ls.4-6.) The State recommended that the district court impose an underlying sentence of eight years, with two years fixed, and retain jurisdiction. (Tr., p.19, Ls.13-16.) Ultimately, the district court retained jurisdiction, and imposed an underlying sentence of five years, with one and one-half years fixed. (R., pp.57-59; Tr., p.23, L.12 – p.24,

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<sup>1</sup> All citations to the PSI refer to the 44-page electronic document.

<sup>2</sup> The Clerk’s Record in this case is split into three separate volumes. However, the pagination is consistent from one volume to the next. For ease of reference, pages 1-64 are contained in Volume 1; pages 65-96 are contained in Volume 2\_Part 1; and pages 97-126 are contained in Volume 2\_Part 2.

<sup>3</sup> Citations to the transcript refer to the page numbers of the 32-page electronic document.

L.1.) Mr. Allen filed a notice of appeal timely from the district court's judgment of conviction.  
(R., pp.68-70.)

### ISSUE

Did the district court abuse its discretion when it imposed an underlying sentence of five years, with one and one-half years fixed, following Mr. Allen's plea of guilty to one count of forgery?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed An Underlying Sentence Of Five Years, With One And One-Half Years Fixed, Following Mr. Allen's Plea Of Guilty To One Count Of Forgery

Given the facts of this case, Mr. Allen's underlying sentence of five years, with one and one-half years fixed, is excessive because it is not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, this 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." *State v. McIntosh*, 160 Idaho 1, 8 (2016). In such a review, the Court "considers the entire length of the sentence under an abuse of discretion standard." *Id.* An appellate court conducts a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. It considers 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).

"When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" *McIntosh*, 160 Idaho at 8 (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). Unless it appears that the length of the sentence is "necessary to accomplish

the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution,” the sentence is unreasonable. *Id.* When a sentence is excessive “considering any view of the facts,” because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are multiple mitigating factors that show why Mr. Allen’s sentence is excessive under any reasonable view of the facts. First, Mr. Allen was only [REDACTED] when he committed these offenses. (PSI, p.1.) Additionally, this was Mr. Allen’s first felony conviction. (PSI, p.16.) These are both well-established mitigating factors that should be considered by the trial court at sentencing. *State v. Dunnagan*, 101 Idaho 125, 126 (1980); *State v. Owen*, 73 Idaho 394, 402 (1953) (“The courts have long recognized that the first offender should be accorded more lenient treatment than the habitual criminal. In addition to considerations of humanity, justice and mercy, the object is to encourage and foster the rehabilitation of one who has for the first time fallen into error, and whose character for crime has not become fixed.”), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971)).

Mr. Allen acknowledged that he was first arrested when he was only [REDACTED] but that appears to be tied to the fact that he was asked to leave his adoptive parents’ home at that age. (PSI, pp.10-11.) Regarding his childhood, he stated that he was “bullied and threatened at school,” and he felt as though his adoptive parents blamed him for “everything that went wrong at home . . . .” (PSI, p.11.) And, after his parents told him to leave their home, he lived with friends for some time, but ultimately ended up homeless. (PSI, pp.11-12.) His difficult childhood should also be considered as mitigating information. *See e.g., State v. Gonzales*, 123 Idaho 92, 93-94 (Ct. App. 1993).

Despite the fact that he has struggled to find his way as a young man, Mr. Allen still aspires to better himself by getting an education and perhaps joining the military. (PSI, pp.12, 15.) At the sentencing hearing, he told the district court that he wanted to “go into the Marines [and] go to law school.” (Tr., p.22, Ls.8-9.) He said he had already taken the Armed Service Vocational Aptitude Battery, and he had passed it, with the exception of the mathematics section. (Tr., p.22, Ls.9-10.) He reported that he suffered with a “math disability” and had trouble understanding “mathematical concepts.” (PSI, p.12.) This is likely tied to the fact that he struggles with attention-deficit/hyperactivity disorder. (PSI, pp.12, 14.) In fact, the PSI investigator recommended that Mr. Allen be tested for the disorder again, as it “may impact his ability to hold a job.” (PSI, p.14.) A defendant’s mental health issues are also a long-recognized mitigating factor. *State v. Odiaga*, 125 Idaho 384, 391 (1994) (“Idaho Code § 19–2523, which requires that the trial court consider the defendant’s mental illness as a sentencing factor, was an integral part of the legislature’s repeal of mental condition as a defense.”).

Similarly, in fashioning an appropriate sentence, a trial court should consider a defendant’s acceptance of responsibility and remorse over his actions. *State v. Shideler*, 103 Idaho 593, 594 (1982) (reducing the defendant’s sentence, in part, because “the defendant has accepted responsibility for his acts”). *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991) (holding that some leniency was required, in part, because the defendant expressed “remorse for his conduct”). In this case, Mr. Allen accepted responsibility for what he had done from the outset. He admitted to law enforcement that he had forged the checks, and he explained to the PSI investigator that he forged the checks because he wanted to break out of the “same routine” of being “homeless living in [his] car again.” (PSI, pp.3.) He also said, “I committed the alleged to pay bills, get my own place, and not be trash.” (PSI, p.3.) He was also remorseful; he stated

that he felt horrible about doing it and wanted to make it right. (PSI, p.3.) Additionally, in his comments to the court, he wrote, “I feel really horrible about what I did . . . .” (PSI, p.15.)

Mr. Allen asserts that his underlying sentence is excessive because it is not necessary to achieve the goals of sentencing, and the district court failed to adequately consider the wealth of mitigating information in his case when it imposed that sentence. In light of that mitigating information, and Mr. Allen’s clear desire to improve himself, a shorter underlying sentence would still serve as a significant deterrent. It would also achieve the goal of protecting society while providing appropriate retribution. As such, Mr. Allen asserts that his extended underlying sentence was not necessary and therefore unreasonable and an abuse of discretion.

#### CONCLUSION

Mr. Allen respectfully requests that this Court reduce his underlying sentence as it deems appropriate.

DATED this 17<sup>th</sup> day of December, 2019.

/s/ Reed P. Anderson  
REED P. ANDERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>th</sup> day of December, 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

RPA/eas