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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	<b>NO. 47121-2019</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>TWIN FALLS COUNTY</b>
<b>v.</b>	)	<b>NO. CR42-18-6843</b>
	)	
<b>ANTHONY ANAYA,</b>	)	<b>APPELLANT'S BRIEF</b>
	)	
<b>Defendant-Appellant.</b>	)	
<hr/>		

**BRIEF OF APPELLANT**

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TWIN FALLS**

**HONORABLE ROGER B. HARRIS**  
**District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Anthony Anaya, pursuant to a plea agreement, pleaded guilty to felony aggravated assault with the use of a firearm enhancement, felony unlawful possession of a firearm, and felony solicitation to commit witness intimidation. Mr. Anaya subsequently filed a motion to withdraw his guilty plea, which the district court denied. The district court imposed a unified sentence of twenty years, with ten years fixed.

In this appeal, Mr. Anaya asserts: (1) his waiver of his right to appeal from the plea agreement is invalid and unenforceable, because his plea was not knowing, intelligent, and voluntary; (2) the district court abused its discretion when it denied his motion to withdraw his guilty plea, because his plea was not knowing, intelligent, and voluntary; and (3) in the alternative, the district court abused its discretion when it imposed his sentence.

### Statement of the Facts and Course of Proceedings

Shawn and Cierra Gifford reported to Twin Falls Police Department officers that Mr. Anaya showed up to their residence looking for Mr. Gifford's brother, refused to leave when told the brother was not there, and threatened them with a handgun. (*See Presentence Report (hereinafter, PSI), p.7.*)<sup>1</sup> Officers subsequently found and detained Mr. Anaya, and found a handgun under the hood of the van he had been seen driving. (*See PSI, pp.7-8.*) The caliber of the handgun matched that of a bullet Mr. Anaya had allegedly ejected from the chamber of the handgun at the Giffords' residence, but Mr. Anaya told the officers he was a felon and could not have a gun. (*See PSI, p.8.*) Later, in the presentence investigation questionnaire, Mr. Anaya

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<sup>1</sup> All citations to the PSI refer to the 82-page PDF version of the Presentence Report and its attachments.

stated that Mr. Gifford's brother had owed him money, things got heated at the Giffords' residence and Mr. Gifford pulled an AK-47 on him, and in response he pulled out his gun and cocked it back. (*See* PSI, p.9.)

The State charged Mr. Anaya with two counts of felony aggravated assault, each with a use of a firearm enhancement; one count of felony unlawful possession of a firearm; and a persistent violator sentencing enhancement. (R., pp.37-41.) Mr. Anaya entered a not guilty plea to the charges. (R., p.42.)

Shortly before Mr. Anaya's trial was set to begin, he agreed to enter into a plea agreement, where he would plead guilty to amended charges of one count of felony aggravated assault with a use of a firearm enhancement, one count of felony unlawful possession of a firearm, and one count of felony solicitation to commit witness intimidation. (*See* R., pp.56-67, 70-72.) The Amended Information alleged, with respect to the solicitation charge, that Mr. Anaya had solicited a person "to engage in conduct which would constitute the crime of witness intimidation by contacting and preventing a named victim from testifying in a criminal proceeding." (*See* R., p.72.)

Sentencing recommendations under the plea agreement would be open, with the exception that the parties would recommend that the sentences run concurrently with each other. (*See* R., p.67.) The Offer-Plea Agreement also contained the following provision: "By accepting this offer the defendant waives the right to: (1) file a Rule 35 Motion regarding the initial Judgment (except as to an illegal sentence) and (2) appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court, including all suppression issues." (R., p.67.) The offer further provided, "However, the defendant may appeal the sentence if the Court exceeds the recommendation made by the State at sentencing

regarding: (1) the determinate portion of the sentence, and/or (2) a probation recommendation, and/or (3) a retained jurisdiction recommendation.” (R., p.67.) The district court accepted Mr. Anaya’s guilty pleas. (*See* Tr. 12/17/18, p.17, Ls.16-20.)

Mr. Anaya subsequently filed a Motion to Withdraw Plea of Guilty, specifically asserting “that the guilty plea in this case . . . was not entered knowingly, intelligently and voluntarily.” (R., pp.88-89.) Later, Mr. Anaya filed an Amended Motion to Withdraw Plea of Guilty. (R., pp.98-100.) The amended motion asserted that his “guilty plea was not entered voluntarily due to the pressure exerted upon him by both the State and [Mr. Anaya’s] counsel.” (R., p.98.) Mr. Anaya also asserted that he “was pressured by the State in that, the State threatened to file additional charges, thus adding more potential jail time, if [Mr. Anaya] did not accept the State’s then current offer.” (R., p.98.) He asserted that he “was pressured by his counsel to accept the offer by the State for the same reasons,” and further he “understood from his then counsel that the Aggravated Assault charges were defensible but was pressured into pleading guilty to them anyway.” (R., p.99.) Additionally, Mr. Anaya asserted that he “pled guilty to a charge, witness intimidation, that he was not aware he was charged with, thus his plea was not entered intelligently.” (R., p.99.)

The district court (with a district judge different from the district judge who had presided over the change of plea hearing) conducted a hearing on Mr. Anaya’s motion to withdraw his guilty plea, where Mr. Anaya and his former trial counsel testified. (*See* R., p.103. *See generally* Tr. 3/29/19.) The district court took judicial notice of the change of plea hearing transcript. (*See* Tr. 3/29/19, p.91, Ls.5-9.)

The district court then issued a Memorandum Decision on Defendant’s Motion to Withdraw Guilty Pleas. (R., pp.104-17.) The district court determined that Mr. Anaya’s “guilty

plea entered in this matter is constitutionally valid because the plea was knowingly, intelligently, and voluntarily entered.” (R., p.107.) The district court determined that Mr. Anaya “has not presented any convincing evidence to support his contention that he was pressured or coerced into accepting the plea agreement.” (R., p.108.) Per the district court, the primary source of the “pressure” Mr. Anaya felt before entering the plea was the potential life sentence he faced under the persistent violator sentencing enhancement, if he were convicted at trial of any of the pending felony charges. (*See R.*, p.108.)

While some of Mr. Anaya’s written answers on the Guilty Plea Advisory Form provided some initial concerns to the district court, the district court ultimately determined that trial counsel did not pressure Mr. Anaya or tell him that he had to accept the State’s offer. (*See R.*, pp.108-09.) The district court also determined that the “pressure” articulated by Mr. Anaya “is the natural pressure he felt by having to make a tough decision in this criminal case, and not pressure or coercion being exerted on him by the State attorney or [trial counsel].” (R., p.109.) Thus, the district court determined that Mr. Anaya’s “plea of guilty was entered voluntarily.” (R., p.110.)

The district court also determined that Mr. Anaya’s assertion “that he was confused and unaware that he was pleading guilty to the Solicitation charge . . . . is clearly contradicted by the record in this matter.” (R., p.110.) The district court determined that Mr. Anaya had filled out most of the Guilty Plea Advisory Form by himself before the change of plea hearing, and he had confirmed that he answered the question in the form asking him to explain the charges to which he intended to plead guilty. (*See R.*, p.110.) The district court determined this was very important, because it showed that Mr. Anaya “clearly understood the charges to which he would be pleading and that he understood prior to entering his plea with the court; If he didn’t



understand what he was doing as he now argues, he wouldn't have been able to outline in his own handwriting the charges to which he was pleading without the help of his attorney.” (R., pp.110-11.)

The district court determined that Mr. Anaya had stated multiple times during the plea colloquy that he had plenty of time to get legal advice and did not need additional time, and he verbally provided a factual basis for each of the charged offenses to which he was pleading guilty. (*See* R., p.111.) Thus, the district court determined that Mr. Anaya “made a knowing, intelligent and well-reasoned choice to accept the State’s offer and plead guilty because doing so would remove the Persistent Violator enhancement and limit his maximum sentence to 20 years.” (R., pp.111-12.)

Turning to whether Mr. Anaya had understood the consequences of pleading guilty, the district court determined that the record “clearly and unequivocally shows” that he “understood the nature of the charges to which he was pleading guilty.” (R., p.112.) The district court determined that one of the most compelling facts supporting its conclusion that the plea was knowing, intelligent, and voluntary was Mr. Anaya’s “demonstrated understanding of the terms of the plea agreement and his verbalization of his reasons for accepting the plea agreement.” (R., pp.113-14.) Per the district court, Mr. Anaya had specifically informed the prior district judge at the change of plea hearing “that he was accepting the plea agreement and pleading guilty to the charges to avoid the Persistent Violator enhancement, because it carried a potential life sentence.” (*See* R., p.114.) The district court then found that Mr. Anaya had not shown any other just reason for withdrawing his plea. (*See* R., pp.114-15.) Thus, the district court denied Mr. Anaya’s motion to withdraw his guilty plea. (R., p.116.)

At the sentencing hearing, Mr. Anaya recommended that the district court impose an aggregate unified sentence of twenty years, with five years fixed. (*See* Tr. 5/10/19, p.54, L.16 – p.55, L.12.) The State recommended that the district court impose, for aggravated assault with a use of a firearm enhancement, a unified sentence of twenty years, with fifteen years fixed; for unlawful possession of a firearm, a unified sentence of five years fixed; and for solicitation, a unified sentence of five years fixed, to run concurrently with the aggravated assault sentence. (*See* Tr. 5/10/19, p.41, Ls.12-19.)

The district court imposed, for aggravated assault with a use of a firearm enhancement, a unified sentence of twenty years, with ten years fixed; for unlawful possession of a firearm, a unified sentence of five years fixed; and for solicitation to commit witness intimidation, a unified sentence of five years fixed. (R., pp.120-23.) The sentences were to run concurrently with each other. (R., p.120.)

Mr. Anaya filed a Notice of Appeal timely from the district court's Judgment of Conviction. (R., pp.126-30; *see* R., pp.134-38 (Amended Notice of Appeal).)

## ISSUES

- I. Is Mr. Anaya's waiver of his right to appeal invalid and unenforceable, because his plea was not knowing, intelligent, and voluntary?
- II. Did the district court abuse its discretion when it denied Mr. Anaya's motion to withdraw his guilty plea, because his plea was not knowing, intelligent, and voluntary?
- III. Did the district court abuse its discretion when it imposed a unified sentence of twenty years, with ten years fixed, upon Mr. Anaya following his pleas of guilty to aggravated assault, unlawful possession of a firearm, and solicitation to commit witness intimidation?

## ARGUMENT

### I.

#### Mr. Anaya’s Waiver Of His Right To Appeal Is Invalid And Unenforceable, Because His Plea Was Not Knowing, Intelligent, And Voluntary

##### A. Introduction

As a preliminary matter, Mr. Anaya asserts the waiver of his right to appeal is invalid and unenforceable. The Offer—Plea Agreement included a provision stating: “By accepting this offer the defendant waives the right to . . . appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court, including all suppression issues.” (R., p.67.) However, Mr. Anaya asserts the State will not be able to meet its burden of showing that the above appeal waiver is valid and enforceable. Rather, the appeal waiver is invalid and unenforceable, because Mr. Anaya’s plea was not knowing, intelligent, and voluntary.

##### B. Standard Of Review

Waiver is an affirmative defense, and the State has the obligation to assert and prove the enforceability of the waiver. *See Garza v. Idaho*, 139 S. Ct. 738, 744-45 (2019) (observing that “even a waived appellate claim can still go forward if the prosecution forfeits or waives the waiver”).

“The right to appeal is purely a statutory right and is not a right guaranteed by any provision of the federal or state constitutions.” *State v. Murphy*, 125 Idaho 456, 457 (1994) (citing I.C. § 19-2801). However, because “the waiver of the right to appeal in this case was entered as a part of the plea agreement,” an appellate court will employ the same analysis as would be used “in determining the validity of any plea of guilty.” *See id.* The Idaho Supreme

Court has held, “A plea agreement is contractual in nature, must be measured by contract law standards, and as a question of law, this Court exercises free review.” *State v. Cope*, 142 Idaho 492, 495 (2006). “If the evidence is conflicting as to the circumstances surrounding the plea,” an appellate court “will accept the trial court’s findings of fact supported by substantial evidence,” but “will freely review the court’s application of constitutional requirements to the facts found.” *State v. Hawkins*, 115 Idaho 719, 720-21 (1989).

C. The Appeal Waiver Is Invalid And Unenforceable, Because Mr. Anaya’s Plea Was Not Knowing, Intelligent, And Voluntary

Mr. Anaya asserts the appeal waiver is invalid and unenforceable, because his plea was not knowing, intelligent, and voluntary. “When a defendant enters a plea of guilty, the defendant waives, among others, the following rights of constitutional dimension: the privilege against compulsory self-incrimination, the right to a jury trial and the right to confront one’s accusers.” *State v. Carrasco*, 117 Idaho 295, 297 (1990). “Fundamental rights are involved, and a valid waiver will not be presumed but must be demonstrated by the record.” *Id.* “Before a trial court accepts a plea of guilty in a felony case, the record must show that the plea has been made knowingly, intelligently and voluntarily, and the validity of a plea is to be determined by considering all the relevant circumstances surrounding the plea as contained in the record.” *Id.* at 297-98 (citing *State v. Colyer*, 98 Idaho 32 (1976)).

[W]hether a plea is voluntary and understood by the defendant requires inquiry into three basic areas. The first is whether the defendant’s plea was voluntary in the sense that he understood the nature of the charges and was not coerced. Secondly, it must be determined whether the defendant knowingly and intelligently waived his right to a jury trial, to confront his accusers, and to refrain from incriminating himself. Thirdly, it must be determined whether the defendant understood the consequences of pleading guilty.

*Id.* at 298.

Mr. Anaya's plea was not knowing, intelligent, and voluntary. The plea was not voluntary because of the pressure Mr. Anaya felt from the State and from trial counsel. At the hearing on the motion to withdraw guilty plea, Mr. Anaya testified that he felt nervous and scared about the persistent violator sentencing enhancement the State had charged. (*See* Tr. 3/29/19, p.9, Ls.14-17.)

Mr. Anaya also felt pressure from trial counsel. When Mr. Anaya answered the "Has your attorney told you that you must accept this plea agreement" question on the Guilty Plea Advisory Form, he initially put "Yes." (Tr., 3/29/19, p.15, L.15 – p.16, L.6; R., p.59.) Mr. Anaya testified at the motion to withdraw plea hearing that he answered the question that way because "I felt like he was pressuring me into it." (Tr. 3/29/19, p.16, Ls.13-17.) Mr. Anaya testified that he felt pressured because "if I don't agree to this stuff and say the right things," then "I'm not going to get the deal that was offered by the prosecution." (Tr. 3/29/19, p.16, Ls.21-25.) He testified: "I didn't want the deal. . . . I didn't agree with it, but I didn't understand it, you know. I just felt a lot of pressure." (Tr. 3/29/19, p.17, Ls.1-4.) He changed his answer after trial counsel explained "that if I did say 'yes,' then I'm not agreeing to this guilty plea form, that I'm not agreeing to this deal that was put on the table for me." (Tr. 3/29/19, p.17, Ls.5-14.)

Later in the hearing on the motion to withdraw plea, Mr. Anaya explained why he told the district court during the plea colloquy that he understood and knew what he was doing, without meaning it: "To get it over with. I felt pressured. I didn't understand things fully." (Tr. 3/29/19, p.28, L.2 – p.29, L.2.)

The district court determined, having listened to the plea colloquy and the testimony from Mr. Anaya and trial counsel, that it was convinced that trial counsel "did not pressure Anaya or tell him that he had to accept the State's offer," and that trial counsel "advised Anaya that if he

did not want to accept the State's offer, they could proceed to trial and there would be no plea deal with the State." (*See R.*, p.109.) However, trial counsel's advice that Mr. Anaya did not have to take the plea fails to negate the pressure Mr. Anaya described that he was feeling. The plea was not voluntary because of the pressure Mr. Anaya felt from the State and from trial counsel.

Moreover, the plea was not intelligent because Mr. Anaya was not aware that he was being charged with solicitation to commit witness intimidation. At the hearing on the motion to withdraw guilty plea, Mr. Anaya testified that, before the change of plea hearing, trial counsel "made me understand that that was just a threat by the prosecution, that he—that they were thinking about filing new charges of sollicita—or intimidating a witness on me, that it was a threat if I didn't plead guilty." (Tr. 3/29/19, p.18, Ls.13-19.) Trial counsel had told him "that the prosecution was thinking about charging me with intimidating a witness but not to worry about it yet." (Tr. 3/29/19, p.18, Ls.22-25.) He testified that he did not remember putting a mark on the Guilty Plea Advisory Form in response to the question, "Are you pleading guilty because you did commit the acts alleged in the information or indictment?" (*See Tr.* 3/29/19, p.20, Ls.15-25; *R.*, p.64.)

Mr. Anaya testified that he did not understand the solicitation charge. He testified at the hearing on the motion to withdraw plea that, with respect to the plea colloquy: "I didn't really understand it when he was going through the charges. When I was going through the charges and he had brought it up, I explained that there. But I didn't realize that I just pled guilty to a charge I had never been charged with." (Tr. 3/29/19, p.24, L.24 – p.25, L.5.) He informed the district court at the change of plea hearing that he had gone through the Amended Information and Guilty Plea Advisory Form, because "I was confused. You know, I didn't understand fully.

Things were going so quick, I didn't—I didn't—you know, like we were in a rush. It was just so rushed, and I didn't really have time to really sit down with [trial counsel] to go over exactly what was going on." (*See* Tr. 3/29/19, p.25, Ls.9-19.)

Mr. Anaya testified that, when the district court mentioned the solicitation count, he thought, "How are they charging me with this when I haven't even been charged or pled guilty to it? I've . . . never been charged with that. That was my first: I don't understand. I didn't understand. I didn't understand, period, yeah." (Tr. 3/29/19, p.27, Ls.4-13.) He testified that he told the district court he understood, to "just get it over with." (*See* Tr. 3/29/19, p.27, Ls.14-21.) On cross-examination, Mr. Anaya acknowledged that before the change of plea hearing, he had written out the charges, including the solicitation charge, on part of the Guilty Plea Advisory Form without trial counsel being present. (*See* Tr. 3/29/19, p.33, L.18 – p.34, L.24.) However, he testified that although he knew about the solicitation charge before the change of plea hearing, "I didn't understand it." (*See* Tr. 3/29/19, p.33, L.18 – p.35, L.2; R., p.65.)

The district court determined that because Mr. Anaya confirmed he had answered that question in the Guilty Plea Advisory Form, "it shows Anaya clearly understood the charges to which he would be pleading and that he understood prior to entering his plea with the court; If he didn't understand what he was doing as he now argues, he wouldn't have been able to outline in his own handwriting the charges to which he was pleading without the help of his attorney." (R., pp.110-11.) But as Mr. Anaya testified, even if he knew about the solicitation charge, he was confused and did not understand how he was being charged with it.

In sum, Mr. Anaya's plea was not voluntary because of the pressure Mr. Anaya felt from the State and from trial counsel, and it was not intelligent because Mr. Anaya was not aware that he was being charged with solicitation to commit witness intimidation. Thus, Mr. Anaya's plea



was not knowing, intelligent, and voluntary. *See Carrasco*, 117 Idaho at 297-98. Mr. Anaya’s appeal waiver is therefore invalid and unenforceable.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Anaya’s Motion To Withdraw His Guilty Plea, Because His Plea Was Not Knowing, Intelligent, And Voluntary

#### A. Introduction

Mr. Anaya asserts the district court abused its discretion when it denied his motion to withdraw his guilty plea, because his plea was not knowing, intelligent, and voluntary. The district court determined that Mr. Anaya’s “guilty plea was constitutionally valid” and “was made knowingly, intelligently and voluntarily.” (R., p.114.) However, as shown above, the plea was not voluntary or intelligent. Thus, the district court did not act consistently with the applicable legal standards when it denied the motion to withdraw guilty plea.

#### B. Standard Of Review

The Idaho Supreme Court has held, “We review ‘cases where a defendant has attempted to withdraw a guilty plea’ for abuse of discretion.” *State v. Sunseri*, 165 Idaho 9, \_\_\_, 437 P.3d 9, 12 (2018) (quoting *State v. Dopp*, 124 Idaho 481, 483 (1993)). When an appellate court reviews an alleged abuse of discretion by a trial court, the appellate court will consider 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).

C. The District Court Did Not Act Consistently With The Applicable Legal Standard When It Denied The Motion To Withdraw Plea, Because The Plea Was Not Voluntary Or Intelligent

Mr. Anaya asserts the district court did not act consistently with the applicable legal standards when it denied the motion to withdraw plea, because the plea was not voluntary or intelligent. “A motion to withdraw a plea of guilty may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court may set aside the judgment of conviction after sentence and may permit the defendant to withdraw a plea of guilty.” I.C.R. 33(c).

“To withdraw a guilty plea prior to sentencing, the defendant must show a just reason for withdrawing the plea.” *Sunseri*, 165 Idaho at \_\_\_, 437 P.3d at 13 (internal quotation marks omitted). “If he does so, then the State may avoid the granting of the motion by showing that prejudice would result if the plea were withdrawn.” *Id.*, 437 P.3d at 13 (internal quotation marks omitted). “The first step in analyzing a motion to withdraw a guilty plea is to determine whether the plea was knowingly, intelligently, and voluntarily made.” *Id.* at \_\_\_, 437 P.3d at 14 (internal quotation marks omitted).

“If a plea was not taken in compliance with constitutional due process standards, which require that a guilty plea be made voluntarily, knowingly and intelligently, then ‘manifest injustice’ or the lower standard of ‘just reason’ will be established as a matter of law.” *State v. Stone*, 147 Idaho 330, 333 (Ct. App. 2009). “However, a constitutional defect in the plea is not necessary in order to show either a ‘just reason’ or ‘manifest injustice.’” *Id.* “If the plea is constitutionally valid, the court must then determine whether there are any other just reasons for withdrawal of the plea.” *Sunseri*, 165 Idaho at \_\_\_, 437 P.3d at 14 (internal quotation marks and emphasis omitted).

For the reasons discussed above in Section I, and incorporated herein by reference thereto, Mr. Anaya's plea was not voluntary because of the pressure Mr. Anaya felt from the State and from trial counsel, and it was not intelligent because Mr. Anaya was not aware that he was being charged with solicitation to commit witness intimidation. Thus, Mr. Anaya's plea was not knowing, intelligent, and voluntary, providing a just reason for withdrawal of the plea. *See Sunseri*, 165 Idaho at \_\_\_, 437 P.3d at 13-14; *Stone*, 147 Idaho at 333. The district court therefore did not act consistently with the applicable legal standards when it denied the motion to withdraw plea, because the plea was not voluntary or intelligent. The district court abused its discretion when it denied Mr. Anaya's motion to withdraw his guilty plea, because his plea was not knowing, intelligent, and voluntary.

### III.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Twenty Years, With Ten Years Fixed, Upon Mr. Anaya Following His Pleas Of Guilty To Aggravated Assault, Unlawful Possession Of A Firearm, And Solicitation To Commit Witness Intimidation

In the alternative, Mr. Anaya asserts the district court abused its discretion when it imposed a unified sentence of twenty years, with ten years fixed, upon him following his pleas of guilty. The district court should have instead followed his recommendations by imposing a unified sentence of twenty years, with five years fixed. (*See* Tr. 5/10/19, p.54, L.18 – p.55, L.12.)

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 “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

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. Anaya does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Anaya 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. Anaya asserts his 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. Anaya’s devotion to his family. In his written comments to the district court in the presentence investigation questionnaire, Mr. Anaya wrote, “I am a Father of 2 Boys Who need me and a Wife who needs my Help Raising these Kids.” (PSI, p.26.) He stated that his kids look up to him as a father who loves them and has raised them right. (PSI, p.26.)

At the sentencing hearing, Mr. Anaya told the district court that in the period that he was out of prison and sober before the incident: “I did some real good things. I provided for my kids, provided for my family.” (See Tr. 5/10/19, p.56, L.13 – p.56, L.2.) He also informed the district court that, besides his time in prison, ‘I’ve been in my kids’ life their whole life.’

(Tr. 5/10/19, p.57, Ls.22-24.) He stated that, while he could “do time,” it was “different” this time because “my kids are having to go through this and be affected by this, so it’s emotionally traumatizing to me.” (Tr. 5/10/19, p.58, Ls.14-17.) Further, Mr. Anaya stated: “I’m not a lost cause. I’m a father and I’m a provider. I’ve always provided for my children in a positive way regardless of my drug addiction.” (Tr. 5/10/19, p.60, Ls.22-25.) He did not want to “leave my kids without a father.” (Tr. 5/10/19, p.61, Ls.15-16.)

The district court also did not give adequate consideration to the outpouring of support Mr. Anaya received from his friends and family. During the sentencing hearing, Mr. Anaya’s counsel portrayed the State as “trying to show Mr. Anaya as an angry, foul-mouthed, demeaning partner,” and asserted that, in response to that characterization, “We have seven people that are here in support of Mr. Anaya.” (See Tr. 5/10/19, p.51, Ls.18-24.) Mr. Anaya also submitted numerous letters in support from his friends and family. (See PSI, pp.34-50.) For example, both of Mr. Anaya’s young sons wrote letters in support. (See PSI, pp.35-36.) One wrote to the district court, “I am begging you to please let my dad come home to us . . . I am [REDACTED] and I need him in my life.” (PSI, p.35.) Mr. Anaya’s other son wrote, “I love and need my daddy in my life,” and that he missed him “so much it hurts my heart.” (PSI, p.36.) Mr. Anaya’s mother-in-law also wrote to the district court, asking the court to “give him lesser time so he can be with his children whom really love and need him.” (PSI, pp.37-38.)

Mr. Anaya’s pastor wrote a letter of support as well, stating that Mr. Anaya “has come out of a hard life and we were very excited to see him choose to put his faith and trust in Jesus. Anthony was baptized and for about a year he was a completely different person. Kind, loving, helpful and very involved around the church.” (PSI, p.49.) The pastor wrote, “We were all very sad to see him fall back into his old lifestyle.” (PSI, p.49.) Mr. Anaya’s pastor concluded:

“When Anthony is clean and sober, I believe he is a wonderful man who would not hurt anyone. On the other hand when he is using he is another person completely. In my opinion, his ability to stay clean is the most important concern.” (PSI, p.49.)

Additionally, the district court did not adequately consider Mr. Anaya’s problems with substance abuse. During the presentence investigation, Mr. Anaya explained that he relapsed on alcohol, heroin, methamphetamine, marijuana, and oxycodone about three months before the instant offenses. (See PSI, pp.24-25.) That was after he participated in some treatment following his release from prison, and he had been sober for thirteen months before relapsing. (See PSI, p.25.) Mr. Anaya also stated he was under the influence of methamphetamine, oxycodone, and alcohol at the time of the incident. (See PSI, p.9.) He wrote, “I made a Mistake and my Drug Addiction was The main Force Behind this incident.” (PSI, p.26.) According to Mr. Anaya, “I need Treatment not long term Lock up & Isolation From the Real World.” (PSI, p.26.)

At the sentencing hearing, Mr. Anaya told the district court: “I’ve struggled with addiction, you know, for a lot of years, 20 years. I’m a heroin addict; I’m a meth addict. And I made some pretty poor choices when I’m high, and that’s for sure. I know for a fact that this situation would have never happened if I wasn’t high.” (Tr. 5/10/19, p.56, Ls.8-12.) He also admitted, “I relapsed, and I fell straight up flat on my face.” (Tr. 5/10/19, p.57, Ls.2-3.) Mr. Anaya stated, “I left home more because I was scared to have myself around my kids, getting high,” and he “knew that I was going to struggle with this addiction once I used that one time, and I did.” (Tr. 5/10/19, p.57, Ls.4-7.)

Moreover, the district court did not adequately consider Mr. Anaya’s remorse and acceptance of responsibility. During the presentence investigation, regarding the instant offense,

he stated, “I regret ever going there with no intent to Commit a crime.” (PSI, p.9.) He also wrote in his comments to the district court, “I accept any consequences Resulting in the Behavior I chose to do But I as Well as my Kids & Family beg of Your Leniency when Sentencing Me.” (PSI, p.26.) At the sentencing hearing, Mr. Anaya addressed the district court: “I want to say that in no way do I justify my actions. I know I must accept responsibility for it, you know. That’s a big one. I know that.” (Tr. 5/10/19, p.56, Ls.1-3.) He continued: “Remorse, yeah, I feel it, you know. I regret every day that the situation even happened. You know, I want to apologize to the Court, and I want to apologize to all my family and to the victims, to the Giffords.” (Tr. 5/10/19, p.56, Ls.3-7.)

Because the district court did not adequately consider the above mitigating factors, Mr. Anaya’s sentence is excessive considering any view of the facts. Thus, the district court abused its discretion when it imposed a unified sentence of twenty years, with ten years fixed, upon Mr. Anaya.

#### CONCLUSION

For the above reasons, Mr. Anaya respectfully requests that this Court vacate his judgment of conviction, reverse the district court’s order denying his motion to withdraw his guilty plea, and remand the case to the district court for further proceedings. Alternatively, Mr. Anaya respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 6<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 6<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  
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/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BPM/eas