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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47145-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-1498
v.)	
)	
KEVIN WAYNE WAGES,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Kevin Wages pled guilty to possession of methamphetamine based upon his possessing a syringe that he admitted he used to inject methamphetamine. Mr. Wages asserts that his unified sentence of seven years, with two years fixed, is excessive in light of the mitigating factors that exist in his case.

Statement of the Facts & Course of Proceedings

In January of 2019, an officer with the Meridian Police Department saw Mr. Wages sitting in a car in a hotel parking lot, and the officer approached Mr. Wages as he got out of the

car. (PSI, p.143.)¹ Mr. Wages, who was on parole at the time, consented to the search of his person and the officer discovered a marijuana roach in his pocket. (PSI, p.143.) Mr. Wages informed the officer that he also had a syringe concealed in his jacket pocket, and admitted that he had used the syringe to inject methamphetamine. (PSI, p.143.) A subsequent search of the vehicle revealed marijuana, psilocybin mushrooms, methamphetamine, and a pistol. (PSI, pp.143-44.) The State filed an amended criminal complaint charging Mr. Wages with possession of methamphetamine, possession of marijuana in excess of three ounces, unlawful possession of a firearm, and misdemeanor possession of psilocybin mushrooms, and possession of drug paraphernalia. (R., pp.17-18.) Mr. Wages waived his right to a preliminary hearing, was bound over into the district court, and an information was filed charging him with the above crimes. (R., pp.16, 19-20, 26-27.)

While Mr. Wages readily admitted to possessing the marijuana roach and the syringe he used to inject methamphetamine that were on his person, he denied knowledge or possession of the items found in the vehicle, as he just rode in the car to the hotel where he was arrested. (Tr. Sent., p.7, L.3 – p.8, L.4.) Mr. Wages entered into a plea agreement with the State, pleading guilty to possession of methamphetamine, and the State agreed to dismiss the remaining charges and to not file a persistent violator enhancement. (R., pp.38-49; Tr. Plea, p.5, L.10 – p.11, L.23.) During the sentencing hearing, the State asked the district court to impose a unified term of seven years, with three years fixed (Tr. Sent., p.5, Ls.9-11), while Mr. Wages asked the court to impose a suspended unified term of five years, with two years fixed, and to place him on probation (Tr. Sent., p.8, Ls.9-10). The district court orally pronounced a unified sentence of

¹ Citations to the Presentence Investigation Report and its attached documents will use the designation “PSI” and will include the page number associated with the 250-page electronic file containing those documents.

seven years, with two years fixed, to run consecutively to his previously imposed sentence. (Tr. Sent., p.14, Ls.5-10.)² Mr. Wages filed a timely Notice of Appeal. (R., pp.52-58.)

ISSUE

Did the district court abuse its discretion by imposing upon Mr. Wages a unified sentence of seven years, with two years fixed, as that sentence is excessive in light of the mitigating factors present in his case?

ARGUMENT

The District Court Abused Its Discretion By Imposing Upon Mr. Wages A Unified Sentence Of Seven Years, With Two Years Fixed, As That Sentence Is Excessive In Light Of The Mitigating Factors Present In His Case

Mr. Wages asserts that, given any view of the facts, his unified sentence of seven years, with two years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. 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.

Mr. Wages was released on parole in May of 2018, following a 2014 felony eluding conviction, and he relapsed into drug use about six months after his release. (PSI, pp.2-3.) He has a long history of substance abuse issues, all stemming from the abuse he endured as a child. Mr. Wages was “physically, emotionally, and sexually abused by multiple people from ages 5-13,” and he recognizes that he needs help for these issues. (PSI., p.73.) He was introduced to

² The Judgment of Conviction states that Mr. Wages’ sentence is a unified term of five years, with two years fixed. (R., pp.52-55.)

alcohol and marijuana by his mother when he was just 5 years old, methamphetamine at age 7 by his parents, heroin at age 10, and his uncles introduced him to cocaine at age 10. (PSI, p.25.)

Mr. Wages also suffers from mental health problems. His past diagnoses include schizophrenia and attention deficit hyperactivity disorder, and he has a current diagnosis of bipolar disorder. (PSI, pp.72, 89.) Mr. Wages has gained insight into how his mental health problems and substance abuse issues interact. He recognizes that his mental health is much improved when he is not using illegal drugs, and he realizes that getting treatment for his mental health issues is necessary for him to ultimately reach his goal of living a drug-free life. (PSI, pp.3-4, 89; Tr. Sent., p.9, L.20 – p.11, L.12.) Prior to his sentencing hearing, Mr. Wages had already made progress towards his recovery by establishing a plan to obtain treatment for both his substance abuse issues and for his mental health problems, through community-based treatment programs. (Tr. Sent., p.8, L.23 – p.9, L.20.)

Mr. Wages expressed his remorse for his actions and a desire for treatment. (Tr. Sent., p.9, L.17 – p.12, L.1; PSI, p.2.) Mr. Wages expressed that he was “ashamed of his behavior and that he hurt his wife and family.” (PSI, p.2.) Even though Mr. Wages’ addiction stemmed from his own family introducing him to alcohol and drugs at an age when children should be learning their ABCs, Mr. Wages recognized that there was no one to blame for his actions but himself, and though he knows he has a tough road ahead of him, he is striving for recovery. (Tr. Sent., p.9, L.20 – p.12, L.1.)

Idaho Courts recognized that substance abuse and mental health issues, coupled with a desire for treatment, and remorse for one’s conduct, are all mitigating factors that should counsel a sentencing court to impose a less-severe sentence. *See State v. Nice*, 103 Idaho 89 (1982); *Hollon v. State*, 132 Idaho 573 (1999); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). In light

of the mitigating factors that exist in his case, Mr. Wages asserts the district court imposed an excessive sentence.

CONCLUSION

Mr. Wages respectfully requests that this Court reduce his sentence to a unified term of five years, with two years fixed, with instructions that he be placed on probation, or for whatever other relief this Court deems just.

DATED this 21st day of January, 2020.

Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st 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
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/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JCP/eas