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State v. Farmer Appellant's Brief Dckt. 47282

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. MONROE MONTE FARMER, Defendant-Appellant.	NOS. 47282-2019, 47283-2019, & 47284-2019 BINGHAM COUNTY NOS. CR06-19-1273, CR06-19-1274, & CR06-19-1290 APPELLANT'S BRIEF

STATEMENT OF THE CASE

Nature of the Case

Monroe Monte Farmer pled guilty to burglary, fleeing or eluding a police officer, aggravated assault, and driving under the influence in three consolidated cases. He was sentenced to unified terms of eleven years, with five years fixed. In this consolidated appeal, Mr. Farmer argues the district court abused its discretion by imposing excessive sentences.

Statement of the Facts & Course of Proceedings

In April 2019, Mr. Farmer was arrested after a high-speed pursuit. (*See* 47283 R., p.17.)[1] He was then charged in multiple cases with multiple counts of burglary, fleeing or eluding a police officer, aggravated assault on certain personnel, accessory to burglary, driving under the influence, destruction of evidence, and principal to burglary. (47282 R., pp.7-8 (Case CR06-19-1273 ("the first burglary case")); 47283 R., pp.9-11 (Case CR06-19-1274 ("the eluding and aggravated assault case")); 47284 R., pp.7-9 (Case CR06-19-1290 ("the second burglary case")).) After waiving his preliminary hearings, he was bound over to district court in all cases. (47283 R., p.48.) An Information was then filed in each case. (*See* 47282 R., p.31; 47283 R., pp.49-51; 47284 R., pp.30-32.) In the eluding and aggravated assault case, the State also filed enhancements for use of a firearm and being a member of a gang. (47283 R., pp.53-55.)

The parties entered into a plea agreement wherein Mr. Farmer pleaded guilty to five charges: in the first burglary case, to Count I: Burglary; in the second burglary case, to Count V: Burglary; and in the eluding and aggravated assault case to Count I: Fleeing or Attempting to Elude, Count II: Aggravated Assault, and Count IV: Driving Under the Influence. (CoP.Tr., p.5, Ls.16-19; p.9, Ls.14-19.)[2] In exchange, the State agreed to dismiss the remaining charges in both the second burglary case and the eluding and aggravated assault case, dismiss the enhancements filed in the eluding and aggravated assault case, amend Count II in the eluding and aggravated assault case to simple aggravated assault (from aggravated assault on certain personnel), dismiss a fourth case in its entirety, recommend that the burglary charges run concurrent with each other,

[1] Citations to the clerk's records will be referred to by the Docket Number and type of document.
[2] Transcripts for all three cases were combined into one electronic file. The transcript from the June 3, 2019 Change of Plea Hearing will be cited to as CoP.Tr. and will reference the specific page numbers for that hearing. The transcript for the August 8, 2019 Sentencing Hearing will be cited as Sent.Tr. and will reference the specific page numbers for that hearing.

and that it would concur in the recommendation from the presentence investigation. (47282 R., p.43; 47283 R., p.96; 47284 R., p.47.) Mr. Farmer also agreed to pay restitution in all cases. (CoP.Tr., p.10, Ls.10-13.)

A sentencing hearing was then held. (47282 R., pp.66-68; 47283 R., pp.123-25; 47284 R., pp.69-71.) Counsel for Mr. Farmer recommended he be placed on probation and that all sentences run concurrent with each other. (Sent.Tr., p.13, Ls.8-9; p.15, Ls.9-10.) The State recommended eight years, with two fixed, on each of the burglary charges, that those charges run concurrent to each other; that he be given "the full sentence" on the DUI charge, that charge to run concurrent to the others; five years, with two fixed, on the fleeing and eluding charge, that the sentence for that charge to run consecutive to the others; and five years, with two years fixed for the aggravated assault charge, that the sentence for that charge to run consecutive to the others. (Sent.Tr., p.18, L.18 – p.19, L.5.) The court clarified that the State was asking for "a total fixed time of six years" altogether which the State confirmed. (Sent.Tr., p.19, Ls.6-13.) The State then asked that the court retain jurisdiction. (Sent.Tr., p.19, Ls.16-18.) The court sentenced Mr. Farmer to a total unified term of eleven years, with five years fixed, as follows: On the first burglary case, six years, with two years fixed (Sent.Tr., p.25, Ls.10-13); on the second burglary case, a concurrent term of six years, with two years fixed (Sent.Tr., p.26, Ls.15-21); and on the eluding and aggravated assault case, five years, with two years fixed, on the eluding charge, five years, with three years fixed, on the aggravated assault charge, and six months on the DUI, with for all the charges in that case to run concurrent with each other, but consecutive to the charges in the two burglary cases (Sent.Tr., p.26, L.22 – p.28, L.3). The district court declined to place Mr. Farmer on probation or to retain jurisdiction. (Sent.Tr., p.28, Ls.4-8.) A global Judgment of

Conviction was entered in all three cases. (47282 R., pp.69-72; 47283 R., pp.126-29; 47284 R., pp.72-75.)

Mr. Farmer timely appealed from the Judgment of Conviction. (47282 R., pp.75-77; 47283 R., pp.132-34; 47284 R., pp.78-80.) These appeals were then consolidated. (47282 R., p.88; 47283 R., p.147; 47284 R., p.91.)

ISSUE

Did the district court abuse its discretion when it imposed unified sentences of eleven years, with five years fixed, upon Mr. Farmer following his pleas of guilty to burglary, fleeing or eluding a police officer, aggravated assault, and driving under the influence?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Unified Sentences Of Eleven Years, With Five Years Fixed, Upon Mr. Farmer Following His Pleas Of Guilty To Burglary, Fleeing Or Eluding A Police Officer, Aggravated Assault, And Driving Under The Influence

Introduction

Mr. Farmer asserts that, given any view of the facts, his unified sentences of eleven years, with five years fixed, are excessive. Specifically, he contends the district court abused its discretion by imposing excessive sentences, especially by having the sentences for eluding, aggravated assault, and DUI run consecutive to the other sentences.

A. Standard Of Review

A court's decisions at sentencing are generally reviewed for an abuse of discretion. *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982) (The Idaho "Supreme Court has applied a general standard of "clear abuse of discretion" to appellate review of sentencing decisions" (citing *State v. Ogata*, 95 Idaho 309, 508 P.2d 141 (1973)). 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) (quoting *State v. Cotton*, 100 Idaho 573 (1979)). Because Mr. Farmer does not allege that his sentence exceeds the statutory maximum, in order to show an abuse of discretion he must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997).

> When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. 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) (emphasis in original). "However, in exercising that discretion, reasonableness is a fundamental requirement." *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982) (citing *State v. Dillon*, 100 Idaho 723, 604 P.2d 737 (1979)).

When a sentence is reviewed, the reviewing court will "consider the defendant's entire sentence." *State v. Oliver*, 144 Idaho 722, 726 (2007). However, the reviewing court will "treat the minimum period specified by the sentencing judge as the probable duration of confinement." *State v. Phillips*, 121 Idaho 261, 262 (Ct. App. 1992).

B. The District Court Abused Its Discretion By Imposing Excessive Sentences

Mr. Farmer asserts that, given any view of the facts, his unified sentences of six years, with two years fixed, and five years, with two years fixed, are excessive. "Even where the district court appropriately understands its discretion and sentences a defendant according to the applicable legal principles, an unreasonably excessive sentence can still be an abuse of discretion, and this Court can reduce the sentence." *State v. Miller*, 151 Idaho 828, 835 (2011). District Courts are allowed to place individuals directly on probation or to retain jurisdiction

because "*the purpose of the [sentencing] statute is the reformation and rehabilitation of a defendant, particularly a first offender*, and to give him an opportunity to reform and take his proper place in society." *State v. O'Dell*, 71 Idaho 64, 69 (1950) (citing I.C. § 19-2601) (emphasis added). Mr. Farmer's tribal probation officer recommended that he "serve at least a rider," and the presentence investigator and the State both recommended the court retain jurisdiction. (PSI, pp.11, 20; Sent.Tr., p.19, Ls.16-18.)[3] Mr. Farmer asserts that by not allowing him to utilize community rehabilitative resources or the programming available in a retained jurisdiction, the court abused its discretion by not correctly applying the applicable sentencing criteria to him and his actions. *See State v. Dallas*, 109 Idaho 670, 675 (1985) ("Once a criminal defendant's guilt has been established, the trial judge is under a duty to tailor the sentence to the individual defendant"). He makes this assertion because his current "sentence essentially discounts any possibility of rehabilitation and successful reentry into society." *Cook v. State*, 145 Idaho 482, 489 (Ct. App. 2008).

Courts are required to consider mitigating evidence in favor of the defendant at sentencing. *See State v. Strand*, 137 Idaho 457, 460 (2002) (noting that when reviewing a sentence, Idaho's appellate courts will "review the record on appeal, having due regard for the nature of the offense, *the character of the offender*, and the protection of the public interest") (emphasis added); *State v. Oliver,* 144 Idaho 722, 726 (2007) (same). Mr. Farmer acknowledges that the court did recognize his mental health issues as mitigating. (*See* Sent.Tr., p.23, L.16 – p.24, L.3.) But Mr. Farmer specifically asserts the district court abused its discretion by not

[3] Because the first 42 pages of the presentence investigation report ("PSI") are identical across all three cases, citations to those pages will cite to PSI. But where documents are different across all three case records, citations will be in the format of [Docket Number] PSI. (*Compare* 47283 PSI, pp.1-42 *with* 47283 PSI, pp.1-42, *and* 47284 PSI, pp.1-42.)

adequately considering other mitigating evidence concerning his drug addiction and willingness for treatment, his remorse and accountability for his actions, or his lack of criminal history.

Mr. Farmer has a life-long drug and alcohol addiction problem. (PSI, pp.24-25 (describing alcohol use that "initiated at age 14," and methamphetamine and other stimulant use that "initiated at age 23").) Courts are encouraged to consider alternatives to incarceration for individuals with these problems. *See State v. Nice*, 103 Idaho 89, 91 (1982) (reducing defendant's sentence, in part, because "the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime [the defendant had been drinking at the time of the offense] and the suggested alternatives for treating the problem"). Courts should also look at "a willingness to seek treatment for an alcohol [or drug] problem" as a mitigating factor. *State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008).

Here, in mid-2018, Mr. Farmer lost custody of his only child which led him "to feed [his] alcohol addition to numb [his] pain and drink [himself] out of depression from feeling like [a] bad parent[]." (PSI, pp.6-7.) The GAIN-I evaluator noted that Mr. Farmer "meets lifetime criteria for substance abuse use disorder severe." (PSI, p.25.) Mr. Farmer reported that over the past ten years, he had attempted to use community outpatient group therapy "a couple times" but had "no engagement" in those programs. (PSI, pp.17, 22.) Accordingly, the GAIN-I evaluator recommended that Mr. Farmer "participate in Level 2.1 Outpatient Treatment with Safe and Sober Housing." (PSI, p.35.) Mr. Farmer told the presentence investigator that he wanted to "remain drug free, and that he would also benefit from a substance abuse treatment program." (PSI, p.16.)

Accordingly, Mr. Farmer asserts the district court did not adequately consider his drug addiction problem or his desire for treatment when it refused to consider probation or a retained jurisdiction and instead imposed incarceration.

Courts should also consider as mitigating whether a defendant accepts responsibility for their actions and expresses "remorse for his conduct." *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"); *See also State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing indeterminate portion of sentence based on, among other factors, defendant's voluntary drug addiction rehabilitation and because ""the defendant has accepted responsibility for his acts"); *State v. Caudill*, 109 Idaho 222, 224 (1985) ("The sentencing judge found several mitigating factors, including Caudill's youthful age, prior nonviolent nature, lack of prior criminal record, potential for rehabilitation, and remorse."); *State v. Jackson*, 130 Idaho 293, 295-96 (1997) (finding a fixed-life sentence excessive for reasons that included the fact that the defendant "took full responsibility for his actions, and did not blame the victims in any way").

Here, Mr. Farmer has not blamed the victims in any way, like the defendant in *Jackson*, he has expressed remorse for his actions, like the defendants in *Alberts* and *Caudill*, and he has taken full "responsibility for his acts," like the defendant in *Shideler*. Mr. Farmer said he "[feels] sorry for committing all the crimes and [takes] full [responsibility]. (PSI, p.7.) He said,

> I am sorry for my criminal behavior in this past year and I would like to [apologize] to the community of Blackfoot and county of Bingham for my [illegal] crimes that I took part in and committed. To as well as the [innocent] [civilians] and [bystanders] of Blackfoot that were victimized in my partake [sic] while I committed these acts of crimes against the community of Blackfoot. I did not want to hurt or put anyone in danger while I did these criminal acts, nor was it my intension[] to involve anyone in the process of my criminal acts. So again to the community and Victims and courts in Blackfoot I am [truly] sorry for my behavior and I will take [full] responsibility [for] my actions and take full responsibility [for] my punishment. I greatly [apologize].

(PSI, pp.16-17.) When he met with a detective after his arrest, he didn't try to deny anything and cooperated with him in fully describing his role in all the crimes he committed. (*See* 47283 PSI, pp.79-82.) Likewise, the presentence investigator said Mr. Farmer was "prepared and friendly and didn't hesitate to answer my questions. [He] admitted to all of the charges he pled to." (PSI, p.19.) At sentencing, he told the court he had "apologize[d] to the community" for his actions and that he "didn't mean to put anybody in harm that day." (Sent.Tr., p.20, Ls.15-17.) The court said Mr. Farmer acknowledged "[t]he charges in this case are extremely serious." (Sent.Tr., p.22, Ls.13-14.) But Mr. Farmer asserts the district court abused its discretion when it did not adequately consider his remorse and acceptance of responsibility for his actions.

Mr. Farmer also asserts the district court did not adequately consider his lack of previous felonies and that these felonies were part of one sequence of events. "[T]he primary objective of sentencing is protection of society" as well as the "related goals of deterrence, rehabilitation, and retribution." *State v. Schiermeier*, 165 Idaho 447, (2019). "A sentence of confinement fixed for longer than necessary to accomplish these purposes is unreasonable." *State v. Sheahan*, 139 Idaho 267, 284 (2003). In addition,

> 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.

State v. Owen, 73 Idaho 394, 402 (1953). *overruled on other grounds by State v. Shepherd*, 94 Idaho 227, 228 (1971)); *State v. O'Dell*, 71 Idaho 64, 69 (1950) (same) (citing I.C. § 19-2601). A defendant's "prior nonviolent nature, lack of prior criminal record, potential for rehabilitation, and remorse" can all be considered as mitigating factors. *State v. Caudill*, 109 Idaho 222, 224 (1985).

Aggregate sentences may be excessive and unreasonable in certain circumstances, such as when "the charges arose from a single continuing plan of deception." *Cook v. State*, 145 Idaho 482, 489 (Ct. App. 2008) (finding aggregate sentence for nine related counts of grand theft to be excessive, in part, because "the charges arose from a single continuing plan of deception"); *State v. Drapeau,* 97 Idaho 685, 693 (1976) (modifying sentences from consecutive to concurrent because the two crimes "arose out of the same act"); *see also State v. Monroe*, 97 Idaho 457, 457 (1976) (modifying sentence for actions that were part of a "common scheme or plan" because "imposition of three consecutive fourteen year sentences was unduly harsh and an abuse of discretion"); *State v. Hoskins*, 131 Idaho 670, 673 (Ct.App.1998) (modifying sentences to run concurrently instead of consecutively due to the nature of the offenses and the defendant's lack of criminal background); *but compare State v. Teske*, 123 Idaho 975, 977 (Ct. App. 1993) (declining to order sentences to be served concurrently instead of consecutively where defendant had prior criminal history, inability to maintain steady employment, and a problem with drug and alcohol abuse).

Here, prior to the events of these cases, Mr. Farmer had "eight prior misdemeanor cases containing nine convictions;" but "[e]ight of the convictions [were] for driver's license or insurance offenses, and one [was] for failing to present ID for alcohol." (PSI, p.11.) And even those convictions were not recent. (*See* PSI, p.11 ("There are no convictions in iCourt Portal between 2013 and 2017.").) The court acknowledged the four felony counts he pled guilty to were his "first, second, third, and fourth, felony convictions," and that his "record prior to that wasn't extensive." (Sent.Tr., p.22, Ls.6-8.) The State did not explain why it asked for those sentences to be consecutive to the other charges, and the court had clarified with the prosecutor that Mr. Farmer had not pointed a gun at the pursuing officers. (*See* Sent.Tr., p.17, Ls.23-25

("There was a car chase. There was some gun pointing. THE COURT: Granted, not by this individual. [PROSECUTOR] Correct, just with a group of people.") But the court still ordered that the charges from the eluding and aggravated assault case be served consecutive to the two burglary cases. (Sent.Tr., p.28, Ls.2-3.) Mr. Farmer asserts that this was an abuse of discretion.

Accordingly, Mr. Farmer asserts the district court abused its discretion when it declined to place him directly on probation or to retain jurisdiction. The court then further abused its discretion by imposing excessive sentences by having the sentences from the eluding and aggravated assault case run consecutive to the other cases.

CONCLUSION

Mr. Farmer respectfully requests that this Court remand his case with orders that he is to be placed on probation. Alternatively, he requests that this Court reduce his sentence as it deems appropriate.

DATED this 31st day of March, 2020.

/s/ R. Jonathan Shirts
R. JONATHAN SHIRTS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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RJS/eas