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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47326-2019
Plaintiff-Respondent,)	
)	BONNER COUNTY NO. CR09-18-4227
v.)	
)	
RICHARD KAINOUA BORJA,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Richard Kainoua Borja pled guilty to one count of felon in possession of a firearm. The district court imposed a unified sentence of four years, with two years fixed, and retained jurisdiction. The district court then relinquished jurisdiction a short time later. Mr. Borja appeals, asserting the district court abused its discretion when it failed to initially place him on probation, and again when it relinquished jurisdiction.

Statement of the Facts & Course of Proceedings

In early 2018, detectives from the Bonner County Sherriff's Office received a report that Mr. Borja had been involved in a domestic violence situation. (R., p.12.) After investigating those reports, Mr. Borja was charged with two counts of aggravated assault, both with deadly weapon enhancements, and two counts of being a felon in possession of a firearm. (R., pp.19-22.) A preliminary hearing was held and Mr. Borja was then bound over to district court on all counts. (R., pp.47-49.) The State then filed an Information. (R., pp.54-56.)

Three months later, pursuant to plea negotiations with the State, Mr. Borja agreed to plead guilty to one count of being a felon in possession of a firearm; in exchange, the State agreed to drop the other counts and enhancements, and not to exceed the sentence recommended in the presentence investigation report. (R., pp.86, 90.) At the sentencing hearing, the State moved for dismissal of the other charges and enhancements, and recommended a unified sentence of five years, with two years fixed, and for the court to retain jurisdiction. (Tr., p.9, Ls.19-23.) Mr. Borja's attorney asked that he be given probation. (Tr., p.15, Ls.6-9.) The court then imposed a sentence of four years, with two years fixed, and retained jurisdiction. (Tr., p.17, Ls.2-6; R., pp.112-14.)¹

Shortly after beginning the retained jurisdiction program, a rider review hearing was held. (Tr., pp.23-33.) After reviewing an incident report from an altercation that occurred between Mr. Borja and another inmate, the court relinquished jurisdiction. (Tr., p.32, Ls.8-14; R., pp.136-39.)

Mr. Borja timely appealed from the order relinquishing jurisdiction. (R., pp.140-41.)

¹ Mr. Borja filed a motion under Rule 35 for a reduction of his sentence. (R., p.123.) However, he did not include any new information with that motion. *See State v. Huffman*, 144, Idaho 201, 203 (2007). Accordingly, he does not appeal the court's denial of that motion. (R., p.125.)

ISSUES

- I. Did the district court abuse its discretion when it refused to place Mr. Borja on probation following his plea of guilty to being a felon in possession of a firearm?
- II. Did the district court abuse its discretion when it relinquished jurisdiction instead of placing Mr. Borja on probation?

ARGUMENT

I.

The District Court Abused Its Discretion By Not Placing Mr. Borja On Probation Following His Plea Of Guilty To Being A Felon In Possession Of A Firearm

A. Introduction

Mr. Borja asserts the district court abused its discretion by not placing him on probation. Specifically, he asserts that the district court failed to exercise reason by not adequately weighing mitigating factors that should have led the court to place him on probation.

B. Standards Of Review

There are “four objectives of criminal punishment: (1) protection of society, (2) deterrence of the individual and the public generally, (3) possibility of rehabilitation, and (4) punishment or retribution for wrongdoing.” *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982) (citing *State v. Wolfe*, 99 Idaho 382, 384 (1978)). Even so, “the primary consideration is the good order and protection of society, [and a]ll other factors must be subservient to that end.” *Id.* (internal quotation marks and citations removed).

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)).

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).

In this case, Mr. Borja contends the district court abused its discretion by failing to exercise reason in its ultimate sentencing decision. “[R]easonableness is a fundamental requirement.” *State v. Nice*, 103 Idaho 89, 90 (1982). “[R]easonableness’ implies that a term of confinement should be tailored to the purposes for which the sentence is imposed.” *Toohill*, 103 Idaho at 568.

C. Mr. Borja’s Rehabilitative Efforts Before Sentencing, Coupled With Multiple Other Mitigating Factors, Warranted An Opportunity For Probation

Courts are required to consider mitigating evidence in favor of the defendant. *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). Some of the mitigating factors courts should consider before sentencing include a defendant's abusive childhood, amenability to treatment, mental health issues, employability, and willingness or need to support a family. Mr. Borja asserts that had the district court properly weighed all of the mitigating evidence in the record, it should have placed him on probation.

Courts are encouraged to show leniency to defendants who have grown up in abusive or broken homes. *See, e.g., State v. Gonzales*, 123 Idaho 92, 93-94 (Ct. App. 1993) (highlighting mitigating factors that included the defendant had dropped out of high school, had been

“subjected to an abusive childhood, living in numerous broken homes,” and “was introduced to drugs and alcohol at a very young age”); *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001) (discussing the defendant's “extremely troubled” and “dreadful childhood steeped in drug abuse, criminality and violence”). Mr. Borja’s childhood was not peaceful or idyllic by any measure. He told the presentence investigator, “I was raised by my grandmother. My mother was an alcoholic drug addict and a prostitute and was not able to care for me and my siblings.” (PSI, p.28.) “He indicated that both parents and siblings have struggled with addiction related issues.” (PSI, p.4.) Mr. Borja also relayed that “his parents were not married at the time of his birth and he does not know his father.” (PSI, p.3.) When he was eighteen, he and his girlfriend were “forced to marry for cultural reasons” and later divorced. (PSI, pp.28, 30.) Mr. Borja did not graduate from high school [and] fell into drugs.” (PSI, p.28.) He “started smoking marijuana when he was [REDACTED] [and] was smoking [it] daily by the [REDACTED].” (PSI, p.5.) He also “began drinking alcohol at the [REDACTED].” (PSI, p.5.) Nevertheless, Mr. Borja asserts the district court did not give this mitigating evidence its proper weight.

Likewise, a defendant who is willing to undergo treatment should be shown leniency. *See, e.g., State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing indeterminate portion of sentence for robbery based on, inter alia, voluntary drug addiction rehabilitation); *State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008) (mitigating circumstances included the defendant’s “willingness to seek treatment for an alcohol problem”). Mr. Borja was actively working on drug addiction treatment before his incarceration. “In April 2018, Mr. Borja participated in outpatient treatment at Alliance Family Services.” (PSI, p.33.) “The GAIN assessment recommended Level 1.0 Outpatient treatment and referral for a mental health evaluation.” (PSI, p.36.) His attorney relayed at sentencing how Mr. Borja was clean “for the first time in a long time” because he

wanted to be reunified with his children. (Tr., p.14, Ls.15-18.) He was working with Child Protective Services on a reunification plan that included weekly urinalysis tests, all of which he passed. (Tr., p.11, Ls.2-7.) He was proactively involved in out-patient treatment as recommended by the GAIN evaluator “and doing well.” (Tr., p.11, Ls.2-7.)

If a defendant has mental illness or mental health problems, that should also be considered as a 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.”). At various times throughout this case, Mr. Borja’s mental health and intellectual limitations were discussed as a possible issue. The presentence investigator reported that “Mr. Borja noted he has difficulty spelling, reading, and writing. His sister, Bella, assisted him in completing the presentence questionnaire.” (PSI, p.31.) During the domestic violence evaluation, Mr. Borja “indicated that Depression, Bipolar and ADD/ADHD run on his maternal side of the family.” (PSI, p.4.) “Mr. Borja described his mental health as ‘stable-ish’ [and] noted he was prescribed ‘depression pills, anxiety pills’ when he was incarcerated in the Bonner County Jail in January 2019.” (PSI, p.32.) He also indicated on the guilty plea advisory form that he had been diagnosed with depression. (R., pp.88-89.) Mr. Borja also reported experiencing problems at school due to his mental health, relating that he “received special education for having a diagnosis of ADHD.” (PSI, p.31.) “He reported that he took specialized classes in school once he started attending classes. He indicated that he recalls that he started reading better when he was in the 5th grade.” (PSI, p.4.) All of this mitigating evidence should have been given greater weight in favor of Mr. Borja being placed on probation.

A defendant working to provide for his family is another factor courts should consider in mitigation. *See, e.g., State v. Nice*, 103 Idaho 89, 91 (1982) (reducing the sentence of a defendant, in part, because he “was working and helping to support his children at the time of the conviction”); *State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991) (treating the fact that the defendant “was a reliable and hard worker when employed” as mitigating, but nevertheless affirming his sentences). At sentencing, Mr. Borja’s attorney reported he was “working full time at Clyde’s Towing.” (Tr., p.11, Ls.10-11.) Mr. Borja’s employer told the presentence investigator that “he shows up every day and [that] he’s doing fine.” (PSI, p.31.) Mr. Borja also “expressed an interest in obtaining his GED in the future.” (PSI, p.4.) Mr. Borja was “trying to be reunified with his [two young] children” and was doing all of this in an effort to show he could support them. (Tr., p.14, Ls.15-18.)

Mr. Borja asserts that had the district court properly weighed all of the mitigating evidence in the record, it should have led to him being placed on probation instead of being sent to prison.

II.

The District Court Abused Its Discretion By Relinquishing Jurisdiction Instead Of Placing Mr. Borja On Probation

A. Introduction

Mr. Borja asserts the district court abused its discretion when it relinquished jurisdiction instead of placing him on probation.

B. Standard Of Review

“The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and

will not be overturned on appeal absent an abuse of that discretion.” *State v. Reed*, 163 Idaho 681, 684 (Ct. App. 2018)). An alleged abuse of discretion will be reviewed for the four factors previously cited. *See Lunneborg*, 163 Idaho at 863. “A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate.” *State v. Hansen*, 154 Idaho 882, 889 (Ct. App. 2013).

C. The District Court Abused Its Discretion By Relinquishing Jurisdiction Instead Of Placing Mr. Borja On Probation

Mr. Borja asserts the district court abused its discretion by relinquishing jurisdiction and not placing him on probation. Specifically, he asserts the district court failed to exercise reason in relinquishing jurisdiction given the failure of the Department of Correction to follow previously issued separation orders.

Shortly after Mr. Borja was placed in the retained jurisdiction program, he was involved in an altercation with another inmate. (*See Supp.R.*, p.2.)² The other individual had some relationship to Mr. Borja’s charges, and a separation order had been in place due to that relationship. (*See Tr.*, p.28, Ls.9-17.) Mr. Borja told the court the altercation began when the other individual “came up to [him] and threatened [him].” (*Tr.*, p.28, L.25.) This happened despite Mr. Borja informing the Department of Correction when he began the retained jurisdiction program that a separation order needed to be placed between them. (*Tr.*, p.28, Ls.15-17.) Mr. Borja does not dispute his role in the incident, and told the district court, “I am truly, unbelievably sorry for doing what I did, for my actions. I was foolish for letting him get to me.” (*Tr.*, p.28, Ls.18-20.)

² The Supplemental Record file will be cited to as Supp.R.

Mr. Borja asserts the district court abused its discretion by relinquishing jurisdiction because he could have been placed in another institution and allowed to complete the retained jurisdiction programming away from the other individual. “Confinement in any of the State's institutions is within the normal limits or range of custody which the conviction has authorized the State to impose.” *Meachum v. Fano*, 427 U.S. 215, 225 (1976). Prior to the incident, his attorney reported that Mr. Borja had been showing signs of success in the program, and “seemed motivated to complete [the] G.E.D. program.” (Tr., p.30, Ls.20-24.) Mr. Borja’s attorney also told the court that “there is a lot that [Mr. Borja] could benefit from by being on the retained jurisdiction.” (Tr., p.31, Ls.2-3.) But even with the evidence of both Mr. Borja’s initial success, and the Department of Correction’s failure to enforce or impose a separation order, the district court relinquished jurisdiction. Mr. Borja asserts the district court did not reach that decision by an exercise of reason and thus abused its discretion.

CONCLUSION

Mr. Borja respectfully requests that this Court remand his case with instructions that he be placed on probation.

DATED this 11th day of June, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 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

RJS/eas