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### State v. Burkhead Appellant's Brief Dckt. 47340

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47340-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-19-6386
v.	)	
	)	
RODNEY MATTHEW BURKHEAD,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

A jury found Rodney Matthew Burkhead guilty of felony domestic violence in the presence of a child, and Mr. Burkhead admitted that he was subject to the persistent violator enhancement. Mr. Burkhead asserts the district court abused its discretion by imposing a unified sentence of ten years, with three years fixed, in light of the mitigating factors that exist in this case. Mr. Burkhead further asserts that the district court abused its discretion by denying his Rule 35 motion seeking a reduction in his sentence.

## Statement of the Facts & Course of Proceedings

The State charged Mr. Burkhead with one count of domestic violence in the presence of a child, and further alleged that he was subject to the persistent violator enhancement. (R., pp.23-24, 50-51.) At trial, Mr. Burkhead's former girlfriend, Tiffany Gneiting, testified that both she and Mr. Burkhead were drinking beer while watching the Superbowl in February of 2019. (Tr. 6/18/19, p.72, L.17 – p.77, L.23.) Though Ms. Gneiting denied that she remembered much from what happened that day, including her interactions with police officers, she testified that at some point she remembered being curled up in a fetal position while Mr. Burkhead was repeatedly striking her head, and that her juvenile son called 911. (Tr. 6/18/19, p.77, L.24 – p.79, L.14; p.89, L.1 – p.96, L.22.) Although Ms. Gneiting testified at trial that that she did not remember striking Mr. Burkhead (Tr. 6/18/19, p.79, Ls.15-16), she admitted that she testified during the preliminary hearing that both she and Mr. Burkhead were striking each other, and that she did not remember who started the fight (Tr. 6/18/19, p.101, L.17 – p.102, L.3). One of the responding officers, Daniel Pierce, testified that both Ms. Gneiting and Mr. Burkhead had injuries consistent with being in a physical altercation, and Ms. Gneiting admitted to him that both she and Mr. Burkhead struck each other, but she did not remember who threw the first punch. (Tr. 6/18/19, p.103, L.16 – p.115, L.11.)

Mr. Burkhead exercised his right not testify (Tr. 6/18/19, p.120, L.24 – p.121, L.12), the jury found him guilty of domestic violence in the presence of a child (R., p.82; Tr. 6/18/19, p.156, Ls.1-13), and Mr. Burkhead admitted he had two prior felony convictions and was subject to the persistent violator enhancement (Tr. 6/18/19, p.157, L.3 – p.159, L.11). During the sentencing hearing, the State asked the court to impose a unified sentence of 15 years, with four years fixed (Tr. 8/26/19, p.11, Ls.10-13), while Mr. Burkhead asked the court to impose a unified

term of five years, with two years fixed, and to retain jurisdiction (Tr. 6/18/19, p.17, Ls.13-15). The district court imposed a unified sentence of ten years, with three years fixed. (R., pp.92-94; Tr. 6/18/19, p.32, Ls.21-23). Mr. Burkhead filed a timely Notice of Appeal. (R., pp.95-97.) Mr. Burkhead also filed a timely Rule 35 motion, asking the court to reduce his sentence to a unified term of six years, with two years fixed, noting that he had completed programs while incarcerated that taught him how to control his aggressive behavior while in a relationship. (R., pp.102-06.) The district court denied Mr. Burkhead's Rule 35 motion. (R., pp.108-09.)

### ISSUES

- I. Did the district court abuse its discretion when it imposed upon Mr. Burkhead a unified sentence of ten years, with three years fixed, in light of the mitigating factors that exist in his case?
- II. Did the district court abuse its discretion by denying Mr. Burkhead's Rule 35 motion?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Imposed Upon Mr. Burkhead A Unified Sentence Of Ten Years, With Three Years Fixed, In Light Of The Mitigating Factors That Exist In His Case

Mr. Burkhead asserts that, given any view of the facts, his unified sentence of ten years, with three 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. Burkhead told the presentence investigator that Ms. Gneiting started the altercation by striking him in the head and neck area after he had nodded-off, and Mr. Burkhead only struck her in self-defense.<sup>2</sup> (PSI, pp.4-5.)<sup>3</sup> He told the district court that, due to a C1-C2 fusion, he lost 50% movement in his neck and that any attack against him could be potentially life threatening. (Tr. 8/26/19, p.18, P.24 – p.19, L.2.) Nevertheless, Mr. Burkhead admitted that he should not have struck Ms. Gneiting back after she attacked him. (Tr. 8/26/19, p.19, Ls.17-21.) Mr. Burkhead also recognized the role that alcohol played in the events of that night, and stated that he was willing to engage in treatment: “I need it. It’s apparent that I have an alcohol problem.” (Tr. 8/26/19, p.21, Ls.17-19.)

Family is very important to Mr. Burkhead, and he hopes that he can return to Missouri to be with them. (PSI, p.17.) His mother, Karen Mendoza, wrote a letter in support of Mr. Burkhead, noting that he has both mental health and addiction issues, and she asked the court to consider alternatives to prison, so that Mr. Burkhead can get treatment for both. (PSI, p.40.)

Idaho courts recognize that alcohol addiction and the willingness to seek treatment, in addition to support of family, are mitigating factors that should counsel a court to impose a less-severe sentence. *See State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982). In light of the mitigating factors that exist in this case, Mr. Burkhead asserts the district court abused its discretion by imposing an excessive sentence.

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<sup>2</sup> In pronouncing its sentence, the district court recognized that Ms. Gneiting herself said that she was not sure who threw the first punch, but it was clear that too much alcohol was consumed, and some amount of mutual physical aggression occurred. (Tr. 8/26/19, p.26, Ls.8-20.)

<sup>3</sup> Citations to the presentence investigation report and its attached documents use the designation “PSI,” and the page number associated with the 637-page electronic file containing those documents.

## II.

### The District Court Abused Its Discretion By Denying Mr. Burkhead's Rule 35 Motion

Whether to grant the leniency requested through a Rule 35 motion is left to the sound discretion of the court. Mr. Burkhead asserts the district court abused its discretion by denying his Rule 35 motion seeking a reduction of his sentence to a unified term of six years, with two years fixed. In support of his motion, Mr. Burkhead informed the court that he had “completed several programs while being incarcerated and he has learn[ed] much regarding how to control his aggressive behavior when in a relationship with someone else.” (R., p.103.) By completing these programs, Mr. Burkhead has shown a willingness to accept responsibility for his actions and to try to improve himself so that he does not repeat the same mistakes he made in this case. *See State v. James*, 112 Idaho 239 (Ct. App. 1986) (recognizing rehabilitation is an important factor in determining an appropriate sentence). In light of Mr. Burkhead's participation in the programming available to him, he asserts the district court abused its discretion by denying his Rule 35 motion.

### CONCLUSION

Mr. Burkhead respectfully requests that this Court reduce his sentence to a unified term of six years, with two years fixed, or for whatever other relief this Court deems appropriate.

DATED this 9<sup>th</sup> day of June, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9<sup>th</sup> 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](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCP/eas