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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47343-2019
)	
v.)	ADA COUNTY NO. CR01-18-53476
)	
CHRISTOPHER DAVID PIELSTICK,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Christopher D. Pielstick pled guilty to felony domestic violence, the district court sentenced him to ten years, with three years fixed. Mr. Pielstick appeals, and he argues the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State filed a Criminal Complaint alleging Mr. Pielstick committed the crimes of attempted strangulation and domestic violence in the presence of a child. (R., pp.10–11.)

According to the Presentence Investigation Report (“PSI”),¹ Mr. Pielstick and his now ex-wife got into an argument one night, and it turned physical. (PSI, p.3.) At one point, Mr. Pielstick allegedly threw his ex-wife on the ground and tried to strangle her. (PSI, p.3.) Their [REDACTED] was present for much of the incident. (PSI, p.3.)

Mr. Pielstick waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.68, 69–70.) The State filed an Information charging Mr. Pielstick with these two offenses. (R., pp.71–72.) Pursuant to a plea agreement, Mr. Pielstick pled guilty to domestic violence in the presence of a child. (Tr.,² p.5, L.8–p.6, L.24, p.25, Ls.15–24; R., p.97.) The State agreed to dismissal of the attempted strangulation charge. (Tr., p.5, Ls.11–16, p.6, Ls.8–14; *see* R., p.140 (dismissal of charge).)

At sentencing, the State recommended the district court impose a sentence of ten years, with three years fixed. (Tr., p.52, Ls.16–21, p.53, Ls.11–12.) Mr. Pielstick requested the district court sentence him to six years, with two years fixed, and suspend the sentence or retain jurisdiction (“a rider”). (Tr., p.54, Ls.2–6.) The district court agreed with the State’s recommendation and sentenced Mr. Pielstick to ten years, with three years fixed. (Tr., p.65, Ls.12–10.) The district court entered a judgment of conviction, and Mr. Pielstick timely appealed. (R., pp.139–41, 144–45.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Pielstick to ten years, with three years fixed, for felony domestic violence?

¹ Citations to the PSI refer to the 655-page electronic document with the confidential sentencing materials, titled “Pielstick 47343 psi.”

² There are two electronic transcripts on appeal, but only one is cited herein. Citations to “Tr.” refer to the seventeen-page transcript with four hearings: entry of plea, sentencing, motion to withdraw guilty plea, and second sentencing. The other three-page transcript, which contains two motion hearings, is not cited herein.

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Pielstick To Ten Years, With Three Years Fixed, For Felony Domestic Violence

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Pielstick’s sentence does not exceed the statutory maximum. *See* I.C. § 18-918(2)(b), (4) (twenty-year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Pielstick “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

The district court’s decision to retain jurisdiction is also reviewed for an abuse of discretion. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). “The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant’s rehabilitative potential and suitability for probation.” *Id.* at 676. “[P]robation is the ultimate objective of a defendant who is on retained jurisdiction.” *Id.* at 677. “There can be no abuse of discretion in a trial court’s refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation.” *Id.* Similarly, “[t]he choice of probation, among available sentencing alternatives, is committed to the sound discretion of the trial court” *State v. Landreth*, 118 Idaho 613, 615 (Ct. App. 1990).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Here, Mr. Pielstick asserts the district court did not exercise reason and therefore abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment, retained jurisdiction, or probation in light of the mitigating factors, including his past drug and alcohol use, prosocial activities and employment history, and acceptance of responsibility and remorse.

First, [REDACTED] Mr. Pielstick’s past drug and alcohol use stand in favor of a more lenient sentence. A sentencing court should give “proper consideration of the defendant’s alcoholic problem, the part it played in causing [the] defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho 89, 91 (1982). The impact of substance abuse on the defendant’s criminal conduct is “a proper consideration in mitigation of punishment upon sentencing.” *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Here, Mr. Pielstick started drinking at age twenty-one, but he quickly ended up drinking every day and getting drunk weekly. (PSI, pp.15, 225.) He also used methamphetamine for about three months. (PSI, pp.14–15, 225.) Eventually, due in large part to his drug and alcohol use, Mr. Pielstick went to prison for robbery in 2003. (Tr. Vol. I, p.54, L.15–p.55, L.5; PSI, p.212.) He admitted that he committed the robbery to get money for methamphetamine and alcohol.

(PSI, pp.212, 225.) Mr. Pielstick's past drug and alcohol use, as well as its impact on his criminal conduct, is a mitigating factor in support of a lesser sentence.

Second, Mr. Pielstick's success once discharged from parole also supports leniency in sentencing. After the robbery conviction, Mr. Pielstick was initially paroled in 2008. (PSI, p.10.) He began studying for an associate's degree in automotive technology at the College of Western Idaho. (PSI, p.12; Tr., p.55, Ls.9–10.) He met his ex-wife there, and they had their son. (PSI, p.12; Tr., p.55, Ls.11–14.) Mr. Pielstick also got sober. (Tr. Vol. I, p.55, Ls.6–8.) Unfortunately, due to some mental health issues and relapses, Mr. Pielstick returned to prison for parole violations in 2010 and 2012. (PSI, p.10; Tr., p.55, Ls.14–18.) In 2014, however, Mr. Pielstick was paroled again, and he had no further issues. (PSI, p.10.) In 2016, he started working at Larry Miller Dodge. (PSI, p.13.) In 2017, Mr. Pielstick was transferred to the limited supervision unit, and, in 2018, he was discharged from parole with a "Gold Seal." (PSI, p.10.) He remained employed at Larry Miller Dodge as a lead technician until the instant offense. (PSI, p.13.) Along with his gainful employment, Mr. Pielstick went to the Salvation Army for assistance and Bible studies, and an employee there found him to be "always clean-cut, appreciative and very respectful." (PSI, p.52.) He also volunteered at the Boise Rescue Mission and attended the Kuna Life Church. (PSI, pp.11, 53.) In addition, he engaged in positive activities and hobbies, including fishing, gardening, riding motorcycles, Church softball, and car repair. (PSI, p.11.) His goals were to complete his associate's degree and obtain a commercial driver's license. (PSI, p.12.) He had six credits left to finish his degree. (PSI, p.12.) He also wanted to stop drinking. (PSI, p.15.) He planned to attend Alcoholics Anonymous and rely on his sponsor for support. (PSI, pp.15, 651.) This mitigating information on Mr. Pielstick's positive activities and

community involvement, gainful employment, and renewed commitment to his sobriety justify a more lenient sentence, including a rider or probation.

Finally, Mr. Pielstick has expressed remorse and accepts responsibility for the crime. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). During the presentence interview, Mr. Pielstick stated that he felt “stupid, sorry, full of regret for doing what I did.” (PSI, p.7.) At sentencing, he explained to the district court that he was very motivated to engage in treatment for domestic violence and alcohol abuse. (Tr., p.60, Ls.14–20, p.61, L.25–p.62, L.13, p.62, Ls.16–23.) He recognized that it was not healthy to be in a relationship with his ex-wife, and he needed to give her space. (Tr., p.59, Ls.9–12, p.61, Ls.1–5, p.62, Ls.13–15, p.62, Ls.23–25.) He also apologized: “Your Honor, I do hope that some day [the victim] does not feel as hurt as she does or as she was or as frightened. I hope she is able to heal. I understand my actions have impacted her immensely and I apologize for those today in court.” (Tr., p.63, Ls.1–5.) These statements of acceptance, remorse, and regret stand in favor of mitigation.

In sum, Mr. Pielstick maintains the district court did not exercise reason at sentencing because it failed to give adequate weight to the mitigating factors in his case. Proper consideration of these factors support a lesser prison sentence, a rider, or probation. Therefore, Mr. Pielstick submits the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Pielstick respectfully requests this Court reduce his sentence as it deems appropriate. In the alternative, he respectfully requests this Court vacate his judgment of conviction and remand this case to the district court for a new sentencing hearing.

DATED this 25th day of March, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March, 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

JCS/eas