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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|-------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 47503-2019 |
| Plaintiff-Respondent, |) | |
| |) | LATAH COUNTY NO. CR29-19-1292 |
| v. |) | |
| |) | |
| EARL NORMAN CASEY, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Earl Casey pled guilty to one count of violating a no contact order. He received a unified sentence of three and one-half years, with one and one-half years fixed, but the district court retained jurisdiction. Mindful that Mr. Casey waived his right to appeal his sentence, Mr. Casey contends that this sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

On May 13, 2019, Earl Casey slapped his girlfriend while they were arguing over a phone. (Presentence Investigation Report (*hereinafter*, PSI),¹ p.4.) The reporting party also told officers that Mr. Casey had marijuana. There was a no contact order between Mr. Casey and his girlfriend. (PSI, p.3.)

Based on these facts, Mr. Casey was charged by information with felony violation of a no contact order, misdemeanor domestic battery, and possession of marijuana. (R., pp.31-34.) Pursuant to a plea agreement, Mr. Casey pled guilty to the felony violation of a no contact order, and the misdemeanors were dismissed.² (6/3/19 Tr., p.39, L.20 – p.41, L.7; p.43, L.1 – p.44, L.8; R., pp.28-30.) In exchange, the State agreed to recommend a sentence of three and one-half years, with one and one-half years fixed. (6/3/19 Tr., p.40, Ls.1-16; R., pp.28-29.)

At the sentencing hearing, the State asked the district court to sentence Mr. Casey to three and a half years, with one and a half years fixed, but for the court to retain jurisdiction. (9/6/19 Tr., p.17, L.19 – p.18, L.10.) Defense counsel advised the court that Mr. Casey had been accepted at the Good Samaritan program and asked the district court to place Mr. Casey on probation. (9/6/19., p.19, Ls.6-15.) Mr. Casey was sentenced to three and one-half years, with one and one-half years fixed, and the district court retained jurisdiction. (9/6/19 Tr., p.24, Ls.4-9; p.42, L.7 – p.43, L.8; R., pp.53-56.) Mr. Casey timely appealed from the judgment of conviction. (R., pp.59-61.)

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

² The plea agreement also required Mr. Casey to give up his right to appeal the judgement and sentence and to file an I.C.R. 35 motion. (R., p.29; 6/3/19 Tr., p.41, Ls.1-6.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of three and one-half years, with one and one-half years fixed, upon Mr. Casey following his plea of guilty to violating a no contact order?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Three And One-Half Years, With One And One-Half Years Fixed, Upon Mr. Casey Following His Plea Of Guilty To Violating A No Contact Order

Mindful that he waived his right to appeal the sentence, Mr. Casey asserts that, given any view of the facts, his unified sentence of three and onehalf years, with one and one-half years fixed and the court retaining jurisdiction, 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 giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

Mr. Casey does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by the exercise of reason, Mr. Casey 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). 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. *Id.*

In light of the mitigating factors present in this case, Mr. Casey's sentence is excessive considering any view of the facts. The district court abused its discretion by retaining jurisdiction instead of placing him on probation.

Mr. Casey has been diagnosed with PTSD, high anxiety, and major depression. (9/6/19 Tr., p.31, Ls.5-12; PSI, p.15.) He knows that he needs to address his mental health issues. (PSI, p.17.)

Another mitigating fact in this case is that Mr. Casey is addicted to methamphetamine. (PSI, pp.16, 26.) Mr. Casey's criminal conduct occurs when he is under the influence or when he is in the throes of his addiction. (PSI, p.17; 9/6/19 Tr., p.20, Ls.18-20.) Mr. Casey wrote regarding having committed the crimes that he feels, "Horrible & with regret everyday starting as soon as I wake up through most of the day." (PSI, p.6.) Mr. Casey wants to remain sober. (PSI, pp.17-18.) However, Mr. Casey does really well in the community when he is not using methamphetamine. (9/6/19 Tr., p.20, Ls.11-19.) He has four children and wants to be a good father to them. (PSI, pp.13, 18.) Mr. Casey is a good worker. He is skilled in welding and related trade skills. (9/6/19 Tr., p.20, Ls.21-22; p.22, Ls.17-21; p.33, Ls.16-18; PSI, pp.14-15.) His supervisors described him as "hard working, fast, did a good job with a great attitude." (PSI, p.15.) Mr. Casey has an excellent work history. (9/6/19 Tr., p.26, Ls.15-16.)

Mr. Casey's behavior in jail has been much different after this offense and is indicative of his resolve to permanently change his life for the better. Where previously the jail staff experienced difficulties dealing with Mr. Casey, during his most recent incarceration, Mr. Casey's "been great this time." (9/6/19 Tr., p.9, Ls.14-24.) A jail officer testified that

Mr. Casey has “been doing really good” and Mr. Casey “expressed wanting a desire to change and to do better.” (9/6/19 Tr., p.8, Ls.2-6.) At sentencing, Mr. Casey told the court “I’m looking for more of an opportunity to rebuild my life and get back to my children and things like that, rather than being caught in the moment of, um, well, self-denial and . . . personal afflictions that I haven’t really addressed.” (9/6/19 Tr., p.25, L.25 – p.26, L.5.) Mr. Casey explained, “I think probably a huge effect factor into that is that I’ve been in my Bible for the . . . pretty much since I’ve been downstairs [in custody].” (9/6/19 Tr., p.26, Ls.6-8.) He told the court that the Bible has “helped me a lot. I can already see the calmness.” (9/6/19 Tr., p.26, Ls.7-9.) Mr. Casey discussed with the court the circumstances that led him from having a house, a vehicle, a good job—seemingly having his life back together—to his relapse on methamphetamine. (9/6/19 Tr., p.33, L.9 – p.35, L.12.) He told the court, “I am so desperate to have a change of life.” (9/6/19 Tr., p.36, Ls.8-9.)

Based upon the above mitigating factors, and mindful that he agreed to waive his right to appeal his sentence as a part of the plea agreement, Mr. Casey asserts that the district court abused its discretion by retaining jurisdiction instead of placing him on probation. He asserts that had the district court properly considered his addiction to methamphetamine, his mental health conditions, and his strong desire to change his life, it would have imposed a less severe sentence.

CONCLUSION

Mr. Casey respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 4th day of March, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th 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

SJC/eas