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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47569-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-53358
v.)	
)	
AARON DEAN MCINTOSH,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

The State charged Aaron McIntosh with two counts of attempted strangulation, one count of felony domestic violence, and one count of aggravated assault. A jury acquitted Mr. McIntosh of the attempted strangulation and aggravated assault charges, but found him guilty of felony domestic violence. The district court sentenced Mr. McIntosh to a unified term of ten years, with three years fixed, declining to place him on probation. Mr. McIntosh asserts the district court abused its discretion by failing to place him on probation.

Statement of the Facts & Course of Proceedings

The State filed an amended complaint accusing Mr. McIntosh of committing two counts of attempted strangulation, one count of felony domestic violence, and one count of aggravated assault. (R., pp.36-38.) Mr. McIntosh waived his right to a preliminary hearing, was bound over into the district court, and an information was filed charging him with these crimes. (R., pp.43-47, 50-52.) A jury acquitted Mr. McIntosh of the attempted strangulation and aggravated assault charges, but found him guilty of felony domestic violence. (R., pp.287-88.)

During the sentencing hearing, the State asked the district court to impose a unified term of ten years, with four years fixed (Tr. 10/11/19, p.293, Ls.2-8), while Mr. McIntosh asked the court to impose a suspended ten years sentence, with three years fixed, and to place him on probation (Tr. 10/11/19, p.302, Ls.6-13). The district court imposed a unified term of ten years, with three years fixed, but declined to place Mr. McIntosh on probation. (R., pp.295-99; Tr. 10/11/19, p.310, Ls.14-19.) Mr. McIntosh filed a timely Notice of Appeal. (R., pp.311-13.)

ISSUE

Did the district court abuse its discretion by failing to place Mr. McIntosh on probation, in light of the mitigating factors that exist in his case?

ARGUMENT

The District Court Abused Its Discretion By Failing To Place Mr. McIntosh On Probation, In Light Of The Mitigating Factors That Exist In His Case

Mr. McIntosh asserts that the district court abused its discretion by failing to place him on probation. The decision whether to place a defendant on probation is left to the sound discretion of the sentencing court. Where a defendant contends that the sentencing court abused its discretion, 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. McIntosh testified in his own defense, admitting that he struck his ex-wife during an argument about money (although claiming it was in self-defense), but denying that he had attempted to strangle or threaten her. (Tr. 6/4/19, p.70 – p.108, L.19.) The jury apparently rejected Mr. McIntosh’s self-defense claim, but found him not guilty of the other charges. (R., pp.287-88.) Nevertheless, Mr. McIntosh told the PSI writer that he felt ashamed of his actions, and guilty for the difficulties he put his ex-wife and his family through. (PSI, p.5.)¹ Mr. McIntosh enjoys the support of his family, and his mother and grandmother both wrote letters in support of him. (R., pp.39-40.)

Mr. McIntosh recognizes that “there is ‘something within that’s causing [him] to feel angry,’” and he believes that he needs to learn coping skills. (PSI, p.6.) During the sentencing hearing, Mr. McIntosh again apologized for his actions, specifically apologizing to the victim, and he explained to the court that his actions were not done with ill intent, but in a moment of panic, and that he was trying to be a better person. (Tr. 10/11/19, p.307, L.8 – p.308, L.4.) Idaho courts recognize that remorse for one’s actions, coupled with the desire for treatment, and support of family, are all mitigating factors that should counsel a court to impose a less severe sentence. *See State v. Shideler*, 103 Idaho 593 (1982); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991); *State v. James*, 112 Idaho 239 (Ct. App. 1986). In light of the mitigating factors that exist

¹ Citations to the Presentence Investigation Report and its attached documents will use the designation “PSI,” and the page numbers associated with the 1,009-page electronic file containing those documents.

in this case, Mr. McIntosh asserts that the district court abused its discretion by failing to place him on probation.

CONCLUSION

Mr. McIntosh respectfully requests that this Court remand his case to the district court with instructions that he be placed on probation, or for whatever other relief this Court deems appropriate.

DATED this 19th day of May, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCP/eas