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### State v. Carpenter Appellant's Brief Dckt. 47639

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47639-2019
Plaintiff-Respondent,	)	
	)	CASSIA COUNTY NO. CR16-19-2742
v.	)	
	)	
MICHAEL WAYNE CARPENTER,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Michael Carpenter pled guilty to one count of possessing a stolen vehicle. He received a unified sentence of five years, with two years fixed, with the court retaining jurisdiction. On appeal, Mr. Carpenter 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 April 4, 2019, Deputy Kirk Barnes saw a Jeep parked on the side of the interstate (I-84). (Presentence Investigation Report (*hereinafter*, PSI),<sup>1</sup> p.9.) He ran the license plate and learned that the Jeep been reported stolen. (R., p.11.) When Deputy Barnes spoke to the young man he saw walking away from the Jeep, the young man gave the name of the registered owner, who was [REDACTED]. (R., p.11.) Deputy Barnes searched the man, incident to an arrest, and located an identification card for Michael Carpenter, who looked like the young man and who was not the registered owner of the Jeep. (R., p.11.) During a search of the Jeep, Deputy Barnes located a smoking pipe and a bag containing a substance that tested presumptively positive for methamphetamine. (R., p.11.)

Based on these facts, Mr. Carpenter was charged by information with possessing a stolen vehicle, possession of methamphetamine, and providing false information to law enforcement. (R., pp.22-24.) Pursuant to a plea agreement, Mr. Carpenter entered an *Alford*<sup>2</sup> plea to possession of a stolen vehicle and the other charges were dismissed. (8/20/19 Tr., p.4, L.6 – p.5, L.16; p.11, L.25 – p.12, L.2; R., pp.43-55.) In exchange, the State agreed to recommend a sentence of five years, with two years fixed, with no more than retained jurisdiction, and that Mr. Carpenter be released on his own recognizance following his guilty plea. (8/20/19 Tr., p.4, L.6 - p.5, L.16; R., pp.43-44, 48.)

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<sup>1</sup> 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.

<sup>2</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

At the sentencing hearing,<sup>3</sup> the State asked the district court to sentence Mr. Carpenter to a unified sentence of five years, with two years fixed, but to retain jurisdiction. (10/29/19 Tr., p.7 Ls.2-13.) Defense counsel asked the district court to sentence Mr. Carpenter to a unified sentence of five years, with two years fixed, but to suspend the sentence and place him on probation. (10/29/19 Tr., p.8, L.24 – p.9, L.3.) Mr. Carpenter requested in the alternative, should the district court opt not to place him on probation, for a shorter sentence to serve. (10/29/19 Tr., p.9, L.21 – p.10, L.2.) Mr. Carpenter was sentenced to five years, with two years fixed, with the district court retaining jurisdiction. (10/29/19 Tr., p.15, Ls.2-24; R., pp.69-73.)

Mr. Carpenter filed a notice of appeal timely from the judgment of conviction. (R., pp.80-82, 87-90.)

#### ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of five years, with two years fixed, upon Mr. Carpenter following his plea of guilty to possessing a stolen vehicle?

#### ARGUMENT

##### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Two Years Fixed, Upon Mr. Carpenter Following His Plea Of Guilty To Possessing A Stolen Vehicle

Mr. Carpenter asserts that, given any view of the facts, his unified sentence of five years, with two 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. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). In

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<sup>3</sup> Mr. Carpenter failed to appear for his October 1, 2019 sentencing hearing, but he was quickly located and arrested. (R., pp.61-67.)

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. Carpenter 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. Carpenter must show that in light of the governing criteria, the sentences were 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. Carpenter's sentence is excessive considering any view of the facts.

Mr. Carpenter had a turbulent childhood. His father was not in his life, and his mother died of a heroin overdose when he was just [REDACTED]. (PSI, p.10.) Mr. Carpenter was in foster care for several years until he was adopted at [REDACTED]. (PSI, p.10.) Mr. Carpenter does have a [REDACTED] child whom he misses. (PSI, p.12.)

Another mitigating factor the district court should have more fully considered is that Mr. Carpenter does not have difficulty obtaining or holding employment. (PSI, p.13.) He has carpentry and welding skills, and has worked regularly in fabrication and as a framer. (PSI, p.13.)

Further, Mr. Carpenter expressed remorse and accepted responsibility for his actions. (8/20/19 Tr., p.4, L.6 – p.5, L.16; p.11, L.25 – p.12, L.2; PSI, p.19.) Idaho recognizes that some leniency is required when a defendant accepts responsibility for his acts. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Mr. Carpenter asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his difficult early life, his employability, and his acceptance of responsibility it would have imposed a less severe sentence.

#### CONCLUSION

Mr. Carpenter 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 3<sup>rd</sup> day of April, 2020.

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

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of April, 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