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### State v. Nevarez Ramirez Appellant's Brief Dckt. 47742

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47742-2020
Plaintiff-Respondent,	)	
	)	MINIDOKA COUNTY NO. CR34-19-2741
v.	)	
	)	
VANESSA NEVAREZ RAMIREZ,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Following Vanessa Ramirez’s guilty plea to trafficking in methamphetamine, the district court sentenced her to six years, with three years fixed. Ms. Ramirez appeals. She argues the district court abused its discretion by imposing an excessive indeterminate term.

Statement of Facts and Course of Proceedings

The State filed a criminal complaint alleging Ms. Ramirez committing one count of trafficking in methamphetamine. (R., pp.6–7.) According to the probable cause affidavit, Ms. Ramirez sold 29.2 grams of methamphetamine to a confidential informant. (R., pp.9–10.) Ms. Ramirez waived a preliminary hearing, and the magistrate bound her over to district court.

(R., pp.24, 25–26, 27.) The State filed an Information charging her with trafficking in methamphetamine and a sentencing enhancement for a second drug offense. (R., pp.28–30.) Trafficking in methamphetamine carries a mandatory minimum fixed term of three years, and the maximum sentence is life in prison. I.C. § 37-2732B(a)(4)(A), (D).

Pursuant to a plea agreement with the State, Ms. Ramirez pled guilty to trafficking. (R., pp.38–39, 50–52; Tr. Vol. I,<sup>1</sup> p.11, L.11–p.13, L.6.) The State agreed to dismiss the enhancement and recommend a sentence of eight years, with three years fixed. (R., p.51; Tr. Vol. I, p.9, Ls.5–14.) The State agreed to dismiss another case with additional drug-related charges. (R., p.51; Tr. Vol. I, p.6, Ls.3–7, p.7, Ls.10–25, p.8, Ls.5–8.) The district court released Ms. Ramirez on her own recognizance pending sentencing. (Tr. Vol. I, p.13, L.14–p.15, L.13; R., pp.53–54.)

At sentencing, the State recommended the district court impose a sentence of eight years, with three years fixed. (Tr. Vol. II, p.7, Ls.11–16.) Ms. Ramirez requested the district court impose the three-year mandatory minimum fixed term and “lesser indeterminate time.” (Tr. Vol. II, p.10, Ls.15–18, p.11, L.2.) The district court sentenced Ms. Ramirez to six years, with three years fixed. (R., p.58; Tr. Vol. II, p.17, Ls.16–19.)

The district court entered a judgment of conviction. (R., pp.58–60.) Ms. Ramirez timely appealed.<sup>2</sup> (R., pp.67–68.)

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<sup>1</sup> There are two transcripts on appeal in one electronic document. Each transcript contains its own internal pagination, and these two transcripts will be cited separately as Volume I and Volume II, with reference its internal pagination. Volume I contains the entry of plea hearing (pages 1 to 4 of overall document). Volume II contains the sentencing hearing (pages 5 to 11 of overall document).

<sup>2</sup> Ms. Ramirez also filed a timely Rule 35 motion and requested the district court retain jurisdiction. (R., p.63.) The district court denied the motion. (R., p.65.) Due to the mandatory minimum fixed term, and the lack of new or additional information, Ms. Ramirez does not challenge the district court’s denial of her motion.

## ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of six years, with three years fixed, upon Ms. Ramirez for trafficking in methamphetamine?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Six Years, With Three Years Fixed, Upon Ms. Ramirez For Trafficking In Methamphetamine

“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, Ms. Ramirez’s sentence does not exceed the statutory maximum. *See* I.C. § 37-2732B(a)(4)(A), (D) (three-year fixed mandatory minimum, maximum of life). Accordingly, to show the sentence imposed was unreasonable, Ms. Ramirez “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).

“‘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, Ms. Ramirez asserts the district court abused its discretion by imposing an excessive indeterminate sentence under any reasonable view of the facts. Specifically, she contends the district court should have sentenced her to a lesser indeterminate term in light of the mitigating factors, including her troubled childhood, substance abuse issues, renewed commitment to her sobriety, acceptance of responsibility, and plan for success upon her release.

Ms. Ramirez's traumatic experiences as a child and teenager, which contributed to her substance abuse issues, should be considered in mitigation. Ms. Ramirez's father abused her mother, and both of her parents used drugs. (Presentence Investigation Report ("PSI"),<sup>3</sup> p.10.) She and her siblings had to move in with her grandparents when her parents were in prison for drugs. (PSI, p.10.) Once her father was out of prison, he would get drunk all the time and hit her. (PSI, p.10.) At [REDACTED], Ms. Ramirez smoked marijuana topped with methamphetamine from an older man. (PSI, p.10.) This man [REDACTED] when she was high. (PSI, p.10.) She "fell deep into drugs" after that and would have sex in exchange for drugs even though she did not want to. (PSI, p.10.) Soon thereafter, Ms. Ramirez started getting in trouble at school and with the police. (PSI, pp.9, 10, 14.) Eventually, at [REDACTED], she was released from juvenile custody and went back to high school. (PSI, p.10.) One night, she went to party and got "roofied." (PSI, pp.10, 18.) She woke up with her clothes "on halfway" and her shirt "on backwards." (PSI, p.10.) A few months later, she found out [REDACTED] at that party. (PSI, pp.10, 18.) She got "taunted" for [REDACTED] and dropped out of high school. (PSI, pp.10, 14.) Overall, Ms. Ramirez reported a history of physical, sexual, and emotional abuse. (PSI, p.32.)

As a young adult, Ms. Ramirez continued to abuse drugs and alcohol. (PSI, pp.17-18.) She started drinking regularly at [REDACTED] and would have a six-pack of wine coolers at a

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<sup>3</sup> Citations to the PSI refer to the 101-page electronic document with the confidential exhibits.

time. (PSI, p.18.) She stopped drinking at [REDACTED] after going to juvenile detention. (PSI, p.18.) Ms. Ramirez would also smoke methamphetamine and marijuana. (PSI, pp.17–18.) She eventually got sober in 2011, but then started fall back into alcohol abuse in 2016. (PSI, pp.5, 18, 101, 40–41.) She started drinking alcohol again, and she was drinking four or five Steel Reserves daily. (PSI, p.18.) She turned to methamphetamine to control her drinking and ended up smoking or injecting it every day. (PSI, p.18.) Ms. Ramirez met the criteria for a severe substance abuse disorder. (PSI, p.27.) Unfortunately, Ms. Ramirez’s own drug addiction led to her selling drugs, which in turn led to the instant offense. (PSI, p.4.) Ms. Ramirez was [REDACTED] at the time of sentencing. (PSI, p.1.)

This information on Ms. Ramirez’s childhood and substance abuse issues are factors in favor of mitigation. A sentencing court must give “proper consideration of the defendant’s alcoholic problem, the part it played in causing 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). In addition, the Court of Appeals has recognized that a defendant’s “extremely troubled childhood is a factor that bears consideration at sentencing.” *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). In light of this information of Ms. Ramirez’s traumatic childhood and her drug and alcohol addiction, Ms. Ramirez submits the district court imposed an excessive indeterminate term.

Despite Ms. Ramirez’s troubled youth and substance abuse issues, she has the tools and support to stay drug- and alcohol-free and become a contributing member of society. When Ms. Ramirez was previously on probation from 2015 to 2018, she had no probation violations. (PSI, p.10) During her release pending sentencing, Ms. Ramirez participated in the OATS

Family Center intensive outpatient program. (R., p.56.) This program reported that she made progress by learning sobriety skills, connecting with her religious faith, obtaining a full-time job at the Amalgamated Sugar Company, becoming a better mother, and teaching her family about sobriety. (R., p.56.) The Amalgamated Sugar Company confirmed Ms. Ramirez's full-time employment, and the company had no problems with her "probability of continued employment." (Aug. R., p.1.) Her supervisor at the company wrote:

Vanessa worked directly for me during this Fall's sugar beet harvest. She explained her situation to me, which came as some of a surprise. Vanessa showed no signs of irresponsibility during her time working under me. In fact, she was always eager to learn new jobs, would take on any job assigned to her even if dirty or excessively labor intensive, she followed instructions meticulously, and she was very helpful in many aspects of employment. Of the approximately 23 employees I supervised I would say Vanessa was one of the hardest working and a joy to have on the team.

(Aug. R., p.2.) Her supervisor was also a pastor, and he wrote that Ms. Ramirez acknowledged her "shortcomings" and "frequently spoke about a positive, drug-free life with her family and church family." (Aug. R., p.2.) He believed she was sincere and intended to follow through with making a "better go at life." (Aug. R., p.2.) Ms. Ramirez also submitted to weekly drug tests, and they were all negative. (PSI, p.10.) At sentencing, her counsel stated: "Since Vanessa has been released from custody, she's been a model citizen. I don't know if I've seen anybody who had been more productive and done more to benefit her family and those that she associates with in the community in general . . . ." (Tr. Vol. II, p.8, Ls.12-18.) Her goals were to get sober and take care of her three children. (PSI, p.20.) Ms. Ramirez's mother, who was now sober and had temporary guardianship over Ms. Ramirez's children, (PSI, p.22), wrote that Ms. Ramirez had a "wake up call." (PSI, p.41.) Her mother explained, "I feel that if she is given an opportunity to stay out and work and continue in her recovery and strengthening her relationship with God she will be a very productive member of society." (PSI, p.41.) Her mother was very supportive of

her. (PSI, pp.40–41.) Finally, a friend from church also wrote a letter in support. (Aug. R., p.3.) Her friend wrote that Ms. Ramirez was “completely transparent” and offered “no excuses for her actions.” (Aug. R., p.3.) Her friend believed Ms. Ramirez was taking accountability for her actions. (Aug. R., p.3.) Her friend also discussed her bible studies in jail: “I visited with Vanessa and her mom after her release and know that she has engaged in trying to make a positive influence on others who struggle with addiction by continuing to do bible ministry to the women at our local jail. This is something she had started before being released.” (Aug. R., p.3.) Her friend believed Ms. Ramirez was “committed to making amends” and contributing “positively to her family, church, and community.” (Aug. R., p.3.) These mitigating factors showing that Ms. Ramirez could succeed upon release justified a lesser indeterminate term.

Finally, Ms. Ramirez accepted responsibility and was very remorseful for her criminal actions. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). In the PSI, Ms. Ramirez admitted that she committed a crime by selling drugs, but she “would tell them thank you” because her life was spiraling out of control. (PSI, p.4.) She stated, “I was saved that day.” (PSI, p.4.) She felt “horrible” about the crime and “lost everything again.” (PSI, p.5.) Similarly, she stated at sentencing:

I want to start off by thanking you for giving me an OR because without that time I wouldn't be able to prove to my family, especially my children, that I'm not a monster. I have an addiction and for eight years I've fought it. Within eight months it was all gone, my house, my car, everything, because of that addiction.

I truly believe meth is the devil's way to get everybody away from the right way of life, you know. When I got arrested that night, I felt so relieved because it was over.

(Tr. Vol. II, p.11, Ls.15–25.) She explained that she had a good support system and a renewed faith in God. (Tr. Vol. II, p.12, Ls.4–16, p.13, Ls.8–13.) These statements of remorse, regret, and acceptance of responsibility support a shorter indeterminate sentence.

In sum, Ms. Ramirez maintains the district court did not exercise reason and thus abused its discretion by imposing an excessive indeterminate term. She contends proper consideration of the mitigating factors in her case warranted a lesser indeterminate term.

### CONCLUSION

Ms. Ramirez respectfully requests this Court reduce her indeterminate term as it deems appropriate. In the alternative, she respectfully requests this Court vacate her judgment of conviction and remand this case to the district court for a new sentencing hearing.

DATED this 19<sup>th</sup> day of May, 2020.

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

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> 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  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

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

JCS/eas