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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47599-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-13551
v.)	
)	
VINCENT JOSEPH OLSZEWSKI,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Vincent Olszewski pleaded guilty to possession of methamphetamine and was sentenced to a unified term of five years, with two years fixed, and the district court retained jurisdiction. Mindful that Mr. Olszewski successfully completed his rider and is now on probation, he asserts that the district court abused its discretion by not placing him on probation when he was initially sentenced.

Statement of the Facts & Course of Proceedings

The State filed a complaint alleging that Mr. Olszewski possessed methamphetamine and drug paraphernalia. (R., pp.8-9.) Mr. Olszewski waived his right to a preliminary hearing and was bound over into the district court, and the State filed an Information charging him with these crimes. (R., pp.16-20.) Additionally, the State filed an Information Part II alleging that Mr. Olszewski was eligible for enhanced penalties due to having a prior possession of a controlled substance conviction. (R., pp.26-27.) Pursuant to an agreement with the State, Mr. Olszewski pleaded guilty to possession of methamphetamine; in exchange, the State dismissed the possession of paraphernalia charge, agreed not to pursue any sentence enhancements, and agreed to limit its sentencing recommendation to a unified term of seven years, with three years fixed, with the court retaining jurisdiction. (R., pp.32-41; Tr., p.4, L.6 – p.16, L.7.)

During the sentencing hearing, the State asked the court to impose a unified sentence of seven years, with three years fixed, with the court retaining jurisdiction (Tr., p.17, L.23 – p.18, L.19), while Mr. Olszewski asked the court to place him on probation with an underlying sentence of five years, with two years fixed (Tr., p.26, Ls.14-17). The district court sentenced Mr. Olszewski to a unified term of five years, with two years fixed, and retained jurisdiction. (R., pp.45-47; Tr., p.28, Ls.8-17.) Mr. Olszewski filed a timely notice of appeal. (R., pp.51-53.)

ISSUE

Did the district court abuse its discretion when it failed to place Mr. Olszewski on probation upon pronouncing his sentence?

ARGUMENT

The District Court Abused Its Discretion When It Failed To Place Mr. Olszewski On Probation Upon Pronouncing His Sentence

Mindful that he is currently on probation because he successfully completed his rider,¹ Mr. Olszewski asserts that, given any view of the facts, the district court abused its discretion by failing to place him on probation when Mr. Olszewski was originally sentenced. 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. 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. Olszewski has long suffered from an addiction to methamphetamine. He describes methamphetamine as his drug of choice, and stated that he “wants to quit using drugs and commented he is getting too old to be using.” (PSI, p.100.) Mr. Olszewski recognized that he needs a ““refresher course,’ to maintain sobriety,” and expressed that “staying away from the drug culture and people who use will enable him to remain sober.” (PSI, p.100.) Mr. Olszewski stated that he was “ashamed” of his actions, and that he and his boyfriend “had finally made the decision to become clean and sober, go back to school, and have a clean fresh start at life.” (PSI, p.94.)

Idaho courts recognize that substance abuse and the desire for treatment, in addition to remorse for one’s conduct, are mitigating factors that should counsel a court to impose a less-

¹ Documents available via iCourt reveal that the district court placed Mr. Olszewski on a five-year period of probation, on July 17, 2020.

severe sentence. *See State v. Nice*, 103 Idaho 89 (1982); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). Mindful that he is currently on probation after successfully completing his rider, Mr. Olszewski asserts that the district court abused its discretion by not placing him on probation upon pronouncing his sentence.

CONCLUSION

Mr. Olszewski respectfully requests that this Court to grant him whatever relief the Court deems appropriate.

DATED this 8th day of October, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF to be served as follows:

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

JCP/eas