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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	S.Ct. No. 47745-2020
Plaintiff-Respondent,)	D.Ct. No. CR09-18-4362
)	
vs.)	APPELLANT'S OPENING BRIEF
)	(Sentencing Appeal)
ALICIA LEDA FLYNN,)	
)	
Defendant-Appellant.)	
_____)	

Appellant Alicia Flynn, submits the following brief pursuant to I.C.R. 35(i).

A. Issue Presented on Appeal

Did the court abuse its discretion in imposing the sentence?

B. Statement of Facts

1. Sentencing proceedings

Ms. Flynn pleaded guilty to the charge of possessing a controlled substance.

Record 154. According to the Presentence Investigation, "Ms. Flynn was arrested for Domestic Battery in another case. At the time of her arrest, she was in possession of a backpack which held a glass pipe containing methamphetamine." Confidential

Documents 46.¹ The Idaho State Police laboratory report found the pipe had some residue. CD 66. The parties' settlement agreement contemplated that Ms. Flynn would receive a suspended prison sentence and be placed on probation. She would spend 30 days in the local jail and pay standard fines and costs as conditions of probation. CD 31.

The state made the agreed-to sentencing recommendation to the court. Transcript p. 6, l. 7-9. Ms. Flynn also asked the court to follow the settlement agreement. *Id.*, l. 12-13. The court, however, sentenced her to a two-year sentence with one year fixed and retained jurisdiction. R 154. At the time of sentencing, Ms. Flynn had 108 days credit for time served. R 155.

A Notice of Appeal was filed. R 164.

At the completion of her rider, the court placed Ms. Flynn on two years of supervised probation, even though Ms. Flynn had 351 days credit for time served. R 181. The two-year term of probation effectively amended the original sentence to three years with one year fixed. Under the original sentence, had it been imposed, Ms. Flynn would have parole-eligible 257 days later, *i.e.*, 04/25/2020. If she had been paroled then, her sentence would expire on 04/25/2021. Her two-year probationary period will not expire until 04/10/2022. *Id.*

C. *Why Relief Should be Granted*

1. Legal standards

¹ Ms. Flynn pleaded guilty to the amended charge of Disturbing the Peace in that case. *State v. Alicia Leda Flynn*, CR09-18-3743.

When determining the “reasonableness of the original sentence,” the burden is on the defendant to show that it is unreasonable and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393 (1992). A sentence may be such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). “A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case.” *Golden, supra; citing State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). When considering whether the sentencing court imposed an excessively harsh sentence, this Court will “conduct an independent review of the record, having regard for the nature of the offense, the character of the offender, and the protection of the public interest.” *Id., citing State v. Reinke*, 103 Idaho 771, 772 (Ct. App. 1982). When reviewing the length of a sentence, the Court considers the entire sentence. *State v. Oliver*, 144 Idaho 722, 726 (2007).

2. Argument

The sentence imposed here was unreasonably harsh. This was Ms. Flynn’s first felony conviction. CD 155. Further, the possession of methamphetamine residue in a meth pipe is a *de minimus* violation of the prohibition against possessing controlled substances. Thus, the court should have followed the settlement agreement and placed Ms. Flynn on probation. No additional jail time should have been imposed as the settlement agreement contemplated 30 days of

local jail while Ms. Flynn had 108 days of credit for time served at the time of sentencing. R 155. (Adding insult to injury, by the time Ms. Flynn returned from her rider, she had 351 days credit for time served, nearing twelve times the amount recommended by the parties. R 181. In addition, the period of community supervision was increased by nearly a year.)

D. Conclusion

The two-year sentence was unreasonable. This Court should discharge Ms. Flynn from probation immediately as she has already served 351 days of incarceration and 192 days of probation, a punishment far in excess of the gravity of the offense.

Dated this 28th day of October 2020.

/s/Dennis Benjamin
Dennis Benjamin
Attorney for Alicia Flynn

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 2020, I electronically filed the foregoing with the Clerk of the Court using the iCourt e-file system, which caused the following parties or counsel to be served by electronic means:

Idaho State Attorney General
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/s/Dennis Benjamin

Dennis Benjamin