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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47769-2020
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR14-19-12493
v.)	
)	
MICHAEL EDWARD ANDERSON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Michael Anderson pled guilty to unlawful possession of a firearm, the district court sentenced him to five years, with two years fixed. Mr. Anderson appeals, and he argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

The State filed a Criminal Complaint alleging that Mr. Anderson committed the crimes of aggravated assault, unlawful possession of a firearm, and misdemeanor domestic battery.

(R., pp.14-16.) According to the Presentence Investigation Report (“PSI”),¹ Mr. Anderson and his girlfriend, E.R., had been living together since 2016 and had one child in common. (PSI, p.13.) Mr. Anderson and E.R. began arguing one night, and that argument turned physical. (PSI, pp.12-14.) E.R. alleged that Mr. Anderson slapped her on the left side of the face and eventually pointed a gun at her. (PSI, pp.12-14.) According to Mr. Anderson, the two of them had been drinking prior to this incident. (PSI, p.2.) After Mr. Anderson found out the police were coming to the home, he loaded the gun and pointed it at his head because “he would rather die than go to jail.” (PSI, p.2.) Eventually, law enforcement showed up to investigate this incident, which resulted in Mr. Anderson being arrested for the charges set forth in the Criminal Complaint. (PSI, pp.12-14.)

A preliminary hearing was held, and the magistrate bound Mr. Anderson over to the district court following that hearing. (R., pp.23-25.) The State filed an Information charging Mr. Anderson with these three offenses. (R., pp.26-28.) Pursuant to a plea agreement, Mr. Anderson pled guilty to unlawful possession of a firearm and misdemeanor domestic assault. (Tr., p.1, L.4—p.18, L.18, p.23, L.22—p.27, L. 6²; R., pp.46-48, 52-62.) The State filed an Amended Information, which removed the aggravated assault charge and changed the misdemeanor domestic battery charge to a misdemeanor domestic assault charge. (Tr., p.1, L.10—p.2, L.7; R., pp.49-51.) The State also agreed not to pursue any deadly weapon or persistent violator enhancements. (Tr., p.2, Ls.4-7.) Pursuant to the plea agreement, the State agreed to recommend no more than two years fixed, executed, with the indeterminate portion of

¹ Citations to the PSI refer to the 191-page electronic document with the confidential sentencing materials, titled “Confidential Exhibits Appeal 47769-2020.”

² There is one transcript on appeal, which contains the change of plea and both sentencing hearings.

the sentence to be argued at sentencing, for the felony. (Tr., p.2, Ls.8-11, p.23, L.22—p.24, L.17.)

At sentencing, the State recommended a sentence of five years, with two years fixed, and asked that the sentence be executed. (Tr., p.39, Ls.2-4.) Mr. Anderson requested that the district court sentence him to five years, with two years fixed, and that the district court suspend the sentence and place Mr. Anderson on probation for five years. (Tr., p.45, L.23—p.46, L.9.) The district court followed the State’s recommendation, sentencing Mr. Anderson to serve a term of five years, with two years fixed, for the felony.³ (Tr., p.51, Ls.16-20.) The district court entered a judgment of conviction, and Mr. Anderson timely appealed. (R., pp.70, 76-77, 93-96.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Anderson to five years, with two years fixed, for unlawful possession of a firearm?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Anderson To Five Years, With Two Years Fixed, For Unlawful Possession Of A Firearm

“Where the sentence imposed by a trial court is within statutory limits, ‘the appellant bears the burden of demonstrating that it is a clear abuse of discretion.’” *State v. Windom*, 150 Idaho 873, 875 (2011) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. 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.

³ For the misdemeanor domestic assault charge, Mr. Anderson received a sentence of 177 days in jail with credit for 177 days served. (R., p.72.)

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018). In this matter, Mr. Anderson’s sentence does not exceed the statutory maximum. See I.C. § 18-3316(1) (five-year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Anderson “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).

“[R]easonableness” implies that a term of confinement should be tailored to the purposes for which the sentence is imposed.” *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982).

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).

In this case, Mr. Anderson asserts the district court did not exercise reason and therefore abused its discretion by imposing a sentence that is excessive under any reasonable view of the facts. Specifically, Mr. Anderson contends the district court should have sentenced him to probation in light of the mitigating factors present in this case, including his abusive childhood, acceptance of responsibility, military service, substance abuse issues, and mental illness.

First, Mr. Anderson’s abusive childhood supports a more lenient sentence. 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). During the pre-sentence investigation, Mr. Anderson disclosed that he was disciplined with a belt, paddle, or

other device as a child. (PSI, p.19.) Mr. Anderson was sexually abused by his uncle's friend when he was [REDACTED]. (PSI, p.19.) Mr. Anderson never knew his biological father as a child, was raised by an abusive stepfather, and was left largely to fend for himself. (PSI, p.28.) Mr. Anderson's troubled childhood, as well as its impact on his criminal conduct, is a mitigating factor in support of a lesser sentence.

Second, Mr. Anderson has expressed great remorse for his actions and accepts responsibility for the crime. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). During sentencing, Mr. Anderson apologized to E.R. for his actions. (Tr., p.47, Ls.6-12.) Mr. Anderson also explained to the district court that he had asked E.R. for forgiveness and that it would be a long time before he could forgive himself. (Tr., p.49, Ls.18-22.) During the presentence investigation, Mr. Anderson wrote that he felt, "horrible, devastated with the miscommunication & the choice I made. I wish I could relive that night." (PSI, p.15.) These statements of acceptance, remorse, and regret stand in favor of mitigation.

Third, a defendant's prior military service is a recognized mitigating factor. *State v. Nice*, 103 Idaho 89, 91 (1982); *see also State v. Mitchell*, 77 Idaho 115, 118 (1955) (finding that it was error for the court to fail to consider, *inter alia*, a defendant's military service when determining the appropriate sentence.) Mr. Anderson served in the U.S. Army from 1996 until 2002. (PSI, p.22). There is no indication in the record that the district court gave adequate consideration to Mr. Anderson's military record, and the lengthy prison sentence imposed suggests it did not. Mr. Anderson's military service stands in favor of leniency in this case, especially since both of Mr. Anderson's prior felonies occurred shortly after his discharge from the military. (PSI, pp.15-

17.) In particular, Mr. Anderson explained that he had difficulty adjusting to civilian life after his time in the military. (PSI, p.17.)

Fourth, Mr. Anderson's substance abuse issues, the impact of his substance abuse on his behavior, and his need for treatment are strong factors in mitigation. A sentencing court should give "proper consideration of the defendant's alcoholic problem, the part it played in causing [the] defendant to commit the crime and the suggested alternatives for treating the problem." *Nice*, 103 Idaho at 91. 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). During the presentence investigation, Mr. Anderson reported that he had begun drinking alcohol at the [REDACTED], and that he had an ongoing alcohol problem that had caused issues with his relationships. (PSI, p.16.) Mr. Anderson informed the investigator that both E.R. and he had been drinking prior to the criminal conduct in this case occurring. (PSI, pp.2, 15; R., p.13.) The investigator stated that Mr. Anderson had a long history of alcohol use without prior alcohol treatment, and that Mr. Anderson wanted to quit drinking and live a sober life. (PSI, p.28.)

Mr. Anderson obtained a Domestic Violence Evaluation prior to sentencing. (PSI, pp.1-8.) In that evaluation, that evaluator wrote that Mr. Anderson has an alcohol use disorder. (PSI, p.6.) Mr. Anderson's substance use was evaluated as part of his Global Appraisal of Individual Needs ("GAIN") assessment. (PSI, pp.173-82.) Mr. Anderson self-reported symptoms that were sufficient to meet the criteria for moderate alcohol use disorder. (PSI, p.175.) Mr. Anderson indicated that he is motivated for treatment. (PSI, pp.178, 181.) Mr. Anderson's substance use issues and willingness to participate in treatment stands in favor of mitigation and leniency in this case.

Fifth, Mr. Anderson's mental illness is a significant mitigating factor that supports leniency in sentencing. The Idaho Supreme Court has recognized that Idaho Code § 19-2523 not only suggests, but requires, the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). If a defendant's mental condition is a significant factor, then Idaho Code § 19-2523 requires the court to consider factors such as: (a) the extent to which the defendant is mentally ill; (b) the degree of illness or defect and level of functional impairment; (c) the prognosis for improvement or rehabilitation; (d) any risk of danger which the defendant may create for the public if not incarcerated, or the lack of such risk; and (f) the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law at the time of the offense charged. "The factors listed in Idaho Code § 19-2523 provide a manner in which to evaluate the mental health information presented to the sentencing court." *Strand*, 137 Idaho at 461.

Mr. Anderson's mental health was evaluated as part of his GAIN assessment. (PSI, pp.173-82.) Mr. Anderson scored in the high range of the Internal Mental Distress Scale used for this assessment. (PSI, p.177.) Mr. Anderson also reported severe emotional, behavioral, or cognitive problems within the last ninety days prior to the GAIN assessment, and that he had not received services to address those problems while incarcerated. (PSI, p.178.)

In addition, pursuant to Idaho Code § 19-2524, a DHW Mental Health Examination Report was prepared for Mr. Anderson. (PSI, pp.186-89.) The mental health report expressed the following concerns regarding Mr. Anderson's mental health: (1) symptoms consistent with the possible existence of a stress disorder; (2) a high score on the Emotional Conditions Scale; (3) a history of having suicidal thoughts; (4) self-reported prior diagnoses of: anxiety or phobia disorder; major depression; depression, dysthymia, bipolar, or other mood disorder; and post or

acute traumatic stress disorder (“PTSD”); (5) prior treatment for mental health; (6) a risk of relapse, continued alcohol use, or potential problems; (7) a history of physical, sexual, and emotional abuse; (8) a high score on the Trauma Scale; and (9) other environmental risk factors. (PSI, pp.34-35.)

According to the mental health report, Mr. Anderson presented with a serious mental illness or other mental health needs. (PSI, p.188.) The mental health report recommended mental health treatment if Mr. Anderson was released to the community, in order to minimize the risk of further deterioration of Mr. Anderson’s daily functioning. (PSI, p.188.) Finally, the report stated that without treatment, Mr. Anderson would continue to struggle with symptoms and his problems may increase. (PSI, p.188.)

Mr. Anderson’s mental health was also examined as part of his domestic violence evaluation. (PSI, pp.3-4, 6-7.) Mr. Anderson scored “severe” on the depression, anxiety, and repetitive thoughts and behaviors categories on the Adult Symptom Measure Inventory section of the DSM-5 Level 1 Cross-Cutting Symptom Measure assessment. (PSI, pp.3-4.) On the Personality Inventory section of the DSM-5, the evaluator expressed concern regarding Mr. Anderson’s thoughts not making sense and Mr. Anderson zoning out. (PSI, p.4.) Mr. Anderson disclosed that he had engaged in self-mutilation in the past, and that his PTSD caused him to have nightmares and flashbacks. (PSI, p.6.) The evaluator recommended that Mr. Anderson receive one year of individual counseling for his substance use disorder and PTSD, and that Mr. Anderson consult with a psychiatric provider to begin taking medication again. (PSI, p. 7.)

Finally, Mr. Anderson’s mental health was evaluated as part of the presentence investigation. (PSI, p.24.) During the presentence investigation, Mr. Anderson disclosed that his

mental health status was below average. (PSI, p.24.) Mr. Anderson also explained that he had previously participated in weekly counseling at a clinic through the Caldwell branch of Veterans Affairs (“VA”) to assist with his depression, paranoia, and suicidal tendencies. (PSI, pp.24, 105-65.) Mr. Anderson acknowledged that he needed further counseling for his mental health. (PSI, p.24.) Upon a review of the of the VA clinic records, the investigator noted that Mr. Anderson initially went to the Caldwell VA clinic in 2011 for a suicide risk assessment. (PSI, pp.24, 163-65.) It was noted by a treating physician that Mr. Anderson seemed to have elements of bipolar disorder and PTSD/Cluster B traits. (PSI, pp.24, 156.) That doctor also expressed concern with Mr. Anderson’s history of self-mutilation, which began when Mr. Anderson was approximately [REDACTED], and he recommended that Mr. Anderson receive ongoing psychotherapy and a prescription for an antidepressant. (PSI, pp.24, 153-58.)

Mr. Anderson’s mental health was brought before the district court at the change of plea hearing. At that hearing, the district court asked for clarification on Mr. Anderson’s response on the guilty plea advisory regarding his mental health. (Tr., p.8, L.5—p.9, L.11; R., p.54.) In his guilty plea advisory, Mr. Anderson listed that he had been previously diagnosed with mental health disorders, that he had been prescribed medication for those disorders, and that he was not presently taking that medication. (R., p.54.)

At sentencing, the victim told the court that Mr. Anderson needed a lot of mental health help, and that Mr. Anderson would not receive that help in jail. (Tr., p.34, L.21—p.35, L.1.) The victim also provided a letter for the district court in which she indicated that Mr. Anderson needed therapy and compassion and requested that Mr. Anderson be released from custody at sentencing. (PSI, p.8.) In addition, Mr. Anderson’s trial attorney explained that Mr. Anderson needed treatment for his mental health. (Tr., p.44, L.2—p.46, L.5.) In particular,

Mr. Anderson's trial attorney emphasized that Mr. Anderson's lack of rationality, if not properly treated, would limit the effectiveness of imprisonment on deterring future criminal conduct since Mr. Anderson would not be capable of properly understanding the severity of punishments for that conduct. (Tr., p.44, L.14—p.45, L.22.) Mr. Anderson directly informed the district court that he needed counseling for his mental health. (Tr., p.48, Ls.5-14.) The district court made no explicit reference to Mr. Anderson's mental health while setting forth its sentence, except that the district court stated that it was taking into consideration Mr. Anderson's "condition". (Tr., p.50, L.8—p.51, L.20.)

Mr. Anderson asserts that the district court did not give adequate weight to his mental health problems. Mr. Anderson's mental health was a significant factor, and there were substantial concerns listed in the evaluations if Mr. Anderson does not receive adequate treatment for his mental health needs. "The sentencing court is not required to recite each of the factors listed." *Strand*, 137 Idaho at 461. However, there is no indication in the record that the district court gave adequate consideration to the factors listed under Idaho Code § 19-2523, and the lengthy prison sentence imposed suggest it did not. Mr. Anderson's mental health issues stand in favor of leniency in this case.

In sum, Mr. Anderson maintains the district court did not exercise reason at sentencing because it failed to give adequate weight to the mitigating factors in his case. Proper consideration of these factors supports leniency in this case. Mr. Anderson submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Anderson 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 27th day of July, 2020.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 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

JLW/eas