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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47839-2020
Plaintiff-Respondent,)	
)	BANNOCK COUNTY NO. CR03-19-4233
v.)	
)	
CHRISTOPHER BRAYDEN VOGLER,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Christopher Brayden Vogler appeals from the district court’s Judgment of Conviction. Mr. Vogler was sentenced to a unified sentence of six years, with three years fixed, following his guilty plea to trafficking in heroin. He asserts that the district court abused its discretion when it failed to give proper consideration to the mitigating factors present his case.

Statement of the Facts & Course of Proceedings

On May 7, 2019 a Prosecuting Attorney’s Information was filed charging Mr. Vogler with two counts of trafficking in heroin. (R., pp.38-39.) A Prosecuting Attorney’s Information

Part II was also filed, adding a second or subsequent offense enhancement. (R., pp.40-41.) The charges were the result of sting operation, in which Mr. Vogler sold heroin to a confidential informant. (PSI, p.4.)¹

Pursuant to a plea agreement, Mr. Vogler entered a guilty plea to one count of trafficking in heroin and the remaining charge and the enhancement were dismissed. (R., pp.102-03.) At sentencing, the State recommended a unified sentence of six years, with three years fixed. (Tr., p.16, Ls.16-18.) Defense counsel requested a sentence of three years fixed. (Tr., p.15, L.17 – p.16, L.9.) The district court imposed a unified sentence of six years, with three years fixed. (R., pp.111-13.) Mr. Vogler filed a Notice of Appeal timely from the district court’s Judgment of Conviction. (R., pp.119-21.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Vogler, a unified sentence of six years, with three years fixed, following his plea of guilty to trafficking in heroin?

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Vogler, A Unified Sentence Of Six Years, With Three Years Fixed, Following His Plea Of Guilty To Trafficking In Heroin

Mr. Vogler asserts that, given any view of the facts, his unified sentence of six years, with three 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 giving consideration to 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).

¹ For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as “PSI” and referenced pages will correspond with the electronic page numbers contained in this file.

The Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Vogler does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Vogler must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Appellate courts use a four-part test for determining whether a district court abused its discretion: 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. Vogler asserts that the district court failed to give consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason.

Specifically, he asserts that the district court failed to give proper consideration to his admitted substance abuse problem and desire for treatment. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982).

Mr. Vogler began using alcohol, marijuana, and hallucinogens as a teenager and methamphetamine, cocaine, heroin, and ecstasy in his twenties. (PSI, pp.11-12.) He was diagnosed with opioid use disorder, moderate to severe, in early remission in a controlled environment and stimulant use disorder, amphetamine type, moderate, in early remission in a controlled environment. (PSI, p.18.) The evaluator also noted that Mr. Vogler may meet the criteria for alcohol use disorder, moderate, in early remission, in a controlled environment. (PSI, p.18.) Although the evaluator was not able to make a treatment recommendation, it was recommended that Mr. Vogler obtain an evaluation to determine the appropriate level of care. (PSI, p.19.) Mr. Vogler has never participated in treatment, but it appears he is now willing to do what it will take to turn his life around. (PSI, pp.13-14.)

Mr. Vogler's substance abuse issues are likely the result of his difficult childhood. A troubled childhood including abuse and the early introduction of illegal substances is a mitigating factor that should be considered in determining an appropriate sentence. *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001); *State v. Gonzales*, 123 Idaho 92, 93-94 (Ct. App. 1993). Mr. Vogler's parents fought both physically and verbally when he was young. (PSI, p.8.) Sadly, during one of these fights a gun went off during a struggle and both of his parents were injured; Mr. Vogler's father died as a result of his injuries. (PSI, p.8.) His mother was involved in two significant relationships after Mr. Vogler's father. (PSI, pp.8-9.) Unfortunately, both of these men were verbally and physically abusive towards Mr. Vogler. (PSI, pp.8-9.)

Additionally, Mr. Vogler has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, "In light of Alberts' expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character."

Id. 121 Idaho at 209. Mr. Vogler has expressed his remorse for committing the instant offense noting that, “I do fully regret the decisions I made which lead [sic] to the chain of events that have lead [sic] me to where I am currently.” (PSI, p.5.) He also took accountability for his actions during the sentencing hearing stating, “[w]ell, Your Honor, this has been really hard, and I definitely made some mistakes, but I am here to take accountability for my actions and learn from it and move on.” (Tr., p.17, Ls.21-24.) In his comments to the court in the Presentence Investigation Report he wrote:

I would like to begin by saying that I know the only thing that has put me in this position is the poor choices I have made. [I] would like to take accountability for my actions and use these circumstances to learn from my mistakes and become a better person because of it. My addiction has literally taken everything from me, but the only thing that was most important was that it took my work ethic and desire to earn an honest living. I have always prided myself on my ability to work hard and maintain employment. [Heroin] made me lose sight of that and turned me into someone I have never been. I would like to ask for a sentence that would allow me to utilize an IDOC work center of CRC as soon as possible so I can make the best of this situation and come out a better person.

(PSI, p.14.)

Based upon the above mitigating factors, Mr. Vogler 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 substance abuse, desire for treatment, difficult childhood, and remorse, it would have crafted a less severe sentence.

CONCLUSION

Mr. Vogler 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 19th day of August, 2020.

/s/ Elizabeth Ann Allred
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 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

EAA/eas