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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 47948-2020, 47949-2020, & 48000-2020
Plaintiff-Respondent,)	
)	CASSIA COUNTY NOS. CR16-19-5040 &
v.)	CR16-19-9391
)	
ROBERT LOREN BATISTA,)	MINIDOKA COUNTY NO. CR34-19-3000
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

In three separate cases, [REDACTED] Robert Loren Batista pleaded guilty to, respectively, possession of stolen property, fleeing or attempting to elude a peace officer, and possession of a controlled substance. For possession of stolen property, the district court imposed a unified sentence of six years, with three years fixed. For eluding, the district court imposed a concurrent unified sentence of five years, with two years fixed. For possession of a controlled substance, the district court imposed a concurrent unified sentence of seven years, with three years fixed. The district court also retained jurisdiction in all three cases.

In this consolidated appeal, Mr. Batista asserts that the district court abused its discretion when it imposed his concurrent sentences.

Statement of the Facts & Course of Proceedings

Corporal Potter of the Cassia County Sheriff's Department responded to a report that a subject was attempting to pawn stolen jewelry at a pawnshop. (*See* Presentence Report, 3/3/2020 (*hereinafter*, PSI), p.3.) The reporting party, Steve Ashcraft, had gone to the pawnshop earlier that day, reported a theft of jewelry, and advised them to call if someone came in to pawn the jewelry. (*See* PSI, p.3.) At the pawnshop, Corporal Potter contacted Mr. Ashcraft, as well as Mr. Batista, who the corporal knew from prior encounters. (*See* PSI, p.3.) Mr. Ashcraft informed Corporal Potter that Mr. Batista was attempting to pawn for cash items stolen from Mr. Ashcraft's residence, including a class ring worth \$580. (*See* PSI, p.3.) Mr. Batista stated he received the items by trading tools with Craig Zimmerman, because Mr. Batista needed cash to finish some sprinkler jobs. (*See* PSI, p.3.) When Corporal Potter asked if he thought the jewelry was questionable, Mr. Batista stated he figured Mr. Zimmerman was involved with something, but he needed the money. (*See* PSI, p.3.) Mr. Batista stated he thought he could get \$100 from pawning the items. (*See* PSI, p.3.)

Corporal Potter arrested Mr. Batista for possession of stolen property. (PSI, p.3.) The corporal searched Mr. Batista incident to the arrest, and found a clear baggie with a white crystal-like substance inside. (*See* PSI, p.3.) Mr. Batista stated he did not know what the substance was. (*See* PSI, p.3.) After securing Mr. Batista in his patrol car, Corporal Potter spoke with Jose Ruiz Vega, the passenger in the vehicle Mr. Batista had been driving. (*See* PSI, pp.3-4.) Mr. Vega told Corporal Potter he did not have any stolen items on him. (*See* PSI, p.4.) While searching Mr. Vega, Corporal Potter found four white pills, which Mr. Vega stated were

“soma.” (See PSI, p.4.) The pills were later identified as carisoprodol, a Schedule Four controlled substance. (PSI, p.4.) The corporal arrested Mr. Vega and took Mr. Vega and Mr. Batista to the Mini-Cassia Jail. (See PSI, p.4.)

In Cassia County No. CR16-19-5040 (*hereinafter*, the stolen property case), the State charged Mr. Batista by Information with felony theft by possession of stolen property, burglary, and possession of a controlled substance. (No. 74948 R., pp.24-26.) Mr. Batista entered a plea of not guilty to the charges. (No. 74948 R., p.27.) The district court released Mr. Batista on his own recognizance. (No. 74948 R., pp.18-19.)

About a week after Mr. Batista entered his not guilty plea in the stolen property case, Minidoka County Sheriff’s Department Sergeant Murphy contacted Mr. Batista. (See PSI, p.4.) Officers saw Mr. Batista while they were arresting Jennifer Beller on an outstanding warrant and conducting a probation search of David Prano’s camp trailer. (See PSI, p.4.) The sergeant first contacted Mr. Batista while he was coming out of the camp trailer with Ms. Beller. (PSI, p.4.) Sergeant Murphy did not detain Mr. Batista at that time, and when Mr. Batista asked if he could leave, Sergeant Murphy told him he was free to go. (See PSI, p.4.) Sergeant Murphy asked if he could search Mr. Batista before he left, and Mr. Batista declined. (PSI, p.4.)

Detective Love then told Sergeant Murphy he had found a meth pipe, and what appeared to be a large amount of methamphetamine, in the rear of the trailer. (See PSI, p.4.) Sergeant Murphy had seen Ms. Beller and Mr. Batista exit from the rear of the trailer. (See PSI, p.4.) Sergeant Murphy advised Mr. Batista that he was being detained and was no longer free to leave, based on the drugs being found. (See PSI, p.4.) Mr. Batista became agitated, and officers handcuffed him. (See PSI, p.4.) Sergeant Murphy told Mr. Batista that if he cooperated and gave up whatever he had on his person, he would not have to go to jail that day. (See PSI, p.4.)

Mr. Batista told Sergeant Murphy to check his right front pants pocket. (*See* PSI, p.4.) Sergeant Murphy reached inside the pocket and found a large baggie containing a white crystal-like substance. (PSI, p.4.) The sergeant also found a smaller baggie containing a white crystal-like substance inside Mr. Batista's right coin pocket. (PSI, p.4.) Sergeant Murphy removed the handcuffs and told Mr. Batista he was free to leave, but Mr. Batista chose to stay. (*See* PSI, p.4.) After the officers arrested Ms. Beller and Mr. Prano, Sergeant Murphy told Mr. Batista he wanted to have a conversation about the items found on him. (*See* PSI, p.5.) Mr. Batista eventually stated he brought the smaller baggie to the trailer, and he grabbed the larger baggie and put it in his pocket when Mr. Prano announced the officers had arrived. (*See* PSI, p.5.) Mr. Batista did not provide detailed information about the drugs, but Sergeant Murphy allowed him to leave. (*See* PSI, p.5.) Later, Sergeant Murphy arrested Mr. Batista. (*See* PSI, p.5.)

In Minidoka County No. CR34-19-3000 (*hereinafter*, the controlled substance case), the State charged Mr. Batista by Information with felony possession of a controlled substance with the intent to deliver. (No. 48000 R., pp.42-44.) Mr. Batista entered a not guilty plea. (No. 48000 R., p.45.) The magistrate had released Mr. Batista on his own recognizance. (*See* No. 48000 R., p.35.) However, the district court later revoked the release and issued a warrant for Mr. Batista willfully violating his release conditions. (No. 48000 R., pp.56-58.) The district court in the stolen property case also issued a warrant for Mr. Batista's arrest. (*See* PSI, p.5.)

Over a month after the district court in the controlled substance case issued the warrant, Detective Love and Corporal Potter saw Mr. Batista standing in the doorway of a trailer. (*See* PSI, p.5.) They set up different observation points around the trailer, and Corporal Potter later saw Mr. Batista and Willy Sanchez Rivera get into a vehicle. (*See* PSI, p.5.) The corporal saw Mr. Batista walk around the vehicle to the driver's side door, before the vehicle left the trailer.

(See PSI, p.5.) Later, the vehicle turned without using a turn signal, and Corporal Potter caught up to it and turned on his emergency lights to initiate a traffic stop. (See PSI, p.5.)

The vehicle continued driving, as other officers activated their own emergency lights. (See PSI, p.5.) When the vehicle turned eastbound, the officers activated their sirens. (See PSI, p.5.) Officers saw the vehicle reach 45 mph in a 25 mph speed limit zone. (See PSI, p.5.) The vehicle then traveled towards a hospital, driving onto the hospital's lawn before running the posted stop sign in front of the ER. (See PSI, pp.5-6.) The vehicle continued, running red lights and another stop sign, and driving into oncoming traffic. (See PSI, p.6.) Officers lost sight of the vehicle and began searching for it. (See PSI, p.6.)

Corporal Potter later found the vehicle parked, and he notified other officers. (See PSI, p.6.) Officers then saw Mr. Rivera sitting the passenger seat of another vehicle in the area, and Corporal Potter detained him. (See PSI, p.6.) Mr. Rivera stated that Mr. Batista had let him out, and he did not know how the vehicle ended up parked where it was. (See PSI, p.6.) While searching for Mr. Batista, Corporal Potter spoke with Jamey Temple, who gave the officers permission to search his backyard and garage. (See PSI, p.6.) Detective Williams found Mr. Batista lying face down on the far side of a porch, and took him to the jail. (See PSI, p.6.)

In Cassia County No. CR16-19-9391 (*hereinafter*, the eluding case), the State charged Mr. Batista by Information with felony fleeing or attempting to elude a peace officer. (No. 47949 R., pp.21-23.)

Pursuant to a plea agreement, in the stolen property case, Mr. Batista agreed to plead guilty to amended charges of one count of possession of stolen property. (No. 47948 R., pp.47-61; 1/13/2020 Tr., p.9, L.19 – p.10, L.23.) The State would recommend a unified sentence of seven years, with three years fixed, to run concurrently with the sentences in the controlled

substance and eluding cases. (*See* No. 47948 R., p.48.) Mr. Batista would be free to apply for drug court, and if he were not accepted to drug court, the State would recommend that the district court retain jurisdiction. (No. 47948 R., p.48.)

Under the same plea agreement, in the eluding case, Mr. Batista agreed to plead guilty to fleeing or attempting to elude a peace officer. (No. 47949 R., pp.28-42; 1/13/2020 Tr., p.9, L.19 – p.10, L.23.) The State would recommend a unified sentence of five years, with two years fixed, to run concurrently with the sentences in the other cases. (*See* No. 47949 R., p.29.) The district court in the stolen property and eluding cases accepted Mr. Batista's pleas. (1/13/2020 Tr., p.24, Ls.8-17.)

Meanwhile, in the controlled substance case, Mr. Batista agreed, pursuant to a separate plea agreement, to plead guilty to an amended charge of felony possession of a controlled substance, to-wit, methamphetamine. (No. 48000 R., pp.69-79, 95-98; 1/7/2020 Tr., p.4, L.25 – p.5, L.11.) The State would recommend a unified sentence of seven years, with three years fixed. (No. 48000 R., p.69.) Mr. Batista would apply to drug court, and if he were accepted, the State would limit its recommendation to drug court. (No. 48000 R., p.69.) If he were not accepted, the parties would have open recommendations. (No. 48000 R., p.69.) The district court in the controlled substance case accepted Mr. Batista's plea. (1/7/2020 Tr., p.12, Ls.9-15.)

At the combined sentencing hearing for the stolen property and eluding cases, the district court noted that Mr. Batista would not be accepted into the Mini-Cassia drug court because of a conflict. (*See* No. 47948 R., p.70; No. 47949 R., p.51; No. 48400 R., p.100; 3/9/2020 Tr., p.9, Ls.14-19.) However, Mr. Batista had been referred to the drug court in Jerome County. (*See* No. 47948 R., pp.71-77; No. 47949 R., pp.52-57; No.48400 R., pp.101-09.) That drug court

found him eligible for acceptance, provided the sentencing judge determined he was appropriate for community supervision. (*See* No. 47948 R., p.78; No. 47949 R., p.58; No. 48400 R., p.110.)

The State recommended that the district court impose a unified sentence of five years, with four years fixed, in the stolen property case, impose a concurrent unified sentence of five years, with two years fixed, in the eluding case, and retain jurisdiction. (*See* 3/9/2020 Tr., p.7, L.2 – p.9, L.10.) Mr. Batista recommended that the district court place him on probation. (3/9/2020 Tr., p.12, Ls.1-5.)

In the stolen property case, the district court imposed a unified sentence of six years, with three years fixed. (No. CR16-19-5040, Amended Judgment of Conviction, Order Retaining Jurisdiction, 3/9/2020.). In the eluding case, the district court imposed a unified sentence of five years, with two years fixed, to run concurrently with the sentence imposed in the stolen property case. (No. 47949 R., pp.59-63.) The district court retained jurisdiction in both cases. (No. 47949 R., p.59.) The district court did not think that Mr. Batista “right now is appropriate for community supervision,” but mentioned the possibility that he could enter drug court after the period of retained jurisdiction. (*See* 3/9/2020 Tr., p.21, Ls.1-13.)

At the sentencing hearing for the controlled substance case, the State recommended that the district court impose a unified sentence of seven years, with three years fixed. (3/10/2020 Tr., p.6, Ls.5-7.) Mr. Batista’s counsel informed the district court that, if Mr. Batista had “been granted probation, we would be asking for probation and drug court. Since he was sentenced to a rider, we’re going to ask that the Court run the 3/4/7 concurrent with the sentence that was imposed yesterday.” (3/10/2020 Tr., p.7, Ls.15-21.)

In the controlled substance case, the district court imposed a unified sentence of seven years, with three years fixed, to run concurrently with the sentences imposed in the stolen

property and eluding cases. (No. 48400 R., pp.112-16.) The district court also retained jurisdiction. (No. 48400 R., p.112.)

Mr. Batista filed a Notice of Appeal timely from the Judgment of Conviction, Order Retaining Jurisdiction in each case. (No. 47948 R., pp.83-85; No. 47949 R., pp.66-68; No. 48400 R., pp.124-26.) The Idaho Supreme Court consolidated the three appeals. (No. 47948 R., p.98; No. 47949 R., p.78; No. 48400 R., p.139.)

The district court, after a rider review hearing, suspended the sentence in each case and placed Mr. Batista on supervised probation for a period of four years. (*See, e.g.*, No. CR16-19-5040, Court Minutes, 11/30/2020.)

ISSUE

Did the district court abuse its discretion when it imposed Mr. Batista's concurrent sentences, following his pleas of guilty to possession of stolen property, fleeing or attempting to elude a peace officer, and possession of methamphetamine?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Mr. Batista's Concurrent Sentences Following His Pleas Of Guilty To Possession Of Stolen Property, Fleeing Or Attempting To Elude A Peace Officer, And Possession Of Methamphetamine

Mr. Batista asserts that the district court abused its discretion when it imposed his concurrent unified sentences of, respectively, six years, with three years fixed, in the stolen property case; five years, with two years fixed, in the eluding case; and seven years, with three years fixed, in the controlled substance case. Instead of retaining jurisdiction, the district court should have followed Mr. Batista's recommendations by placing him on probation, so he could attend drug court. (*See* 3/9/2020 Tr., p.12, Ls.1-5; 3/10/2020 Tr., p.7, Ls.15-21.)

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 “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

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) (internal quotation marks omitted). Mr. Batista does not assert that his sentences exceed the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Batista must show that in light of the governing criteria, the sentences were excessive considering any view of the facts. *Id.* 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Further, “The choice of probation, among the available sentencing alternatives, is committed to the sound discretion of the trial court.” *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982). “[D]enial of probation will not be deemed a ‘clear abuse of discretion’ if the decision is consistent with the criteria articulated in I.C. § 19-2521.” *Id.*

Mr. Batista asserts his sentences are excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider Mr. Batista’s remorse and acceptance of responsibility. With regard

to the eluding case, during the presentence investigation Mr. Batista wrote that he “chose to put my life & the lives of those around me in danger by driving over the curb, across the lawn of the hospital and didn’t even think about the dangers. . . .” (See PSI, pp.8-9.) He acknowledged that, when he ran the stop sign, he again placed “myself & others at the risk of death or injury” (See PSI, p.9.) He wrote, “I can’t believe that I chose to Drive in the [incoming] Traffic Lane,” and, “I never gave a Second thought of the danger I posed my passenger, the gen public or myself.” (PSI, p.9.) He concluded, “I can’t believe no one was hurt for my actions [I] gave no concern for the welfare of those around me. I caused potential harm, & caused the law to work [excessive] time when I could have just pulled over. Or better yet I could have turned myself in when I [found] I had a warrant!!!” (PSI, p.9.)

At the first sentencing hearing, Mr. Batista told the district court, “I did commit these crimes. I don’t deny it.” (3/9/2020 Tr., p.13, Ls.9-10.) While he stated that he “did not enter a man’s house and steal his belongings,” he acknowledged that he “showed up at a pawn shop with them.” (See 3/9/2020 Tr., p.13, Ls.11-12.) Regarding Mr. Ashcraft, the victim in the stolen property case, Mr. Batista indicated that he would do “whatever I have to do to the man that served our country in Vietnam to repay that.” (See 3/9/2020 Tr., p.13, Ls.13-14.) He also told the district court, “Did I knowingly possess? Did I know that these were probably stolen goods? I can’t deny it. They were handed to me and I took them to a pawn shop, and I pled guilty to that, Your Honor.” (3/9/2020 Tr., p.13, Ls.18-21.)

Further, Mr. Batista stated, “What I’ve taken from this community, I would like to give back to the community. The community has given me the opportunity to start a business here, has supported me through some hard times.” (3/9/2020 Tr., p.13, Ls.22-23.) He explained that he had built up personal relationships with some of his customers for his lawn sprinkler business

in the last five years, and one of his customers had even visited him in jail. (*See* 3/9/2020 Tr., p.14, Ls.1-9.) Mr. Batista’s counsel informed the district court that the customer had indicated he would help Mr. Batista obtain an apartment and get back on his feet. (*See* 3/9/2020 Tr., p.12, Ls.12-15.)

Returning to Mr. Ashcraft, Mr. Batista stated, “I could go to work, build my business, and pay the restitution that he’s asked. I owe that. I’ll go to work for the man. I can’t deny it.” (*See* 3/9/2020 Tr., p.15, Ls.11-13.) Defense counsel noted that Mr. Batista needed to be out of custody to complete his plans to sell his lawn sprinkler business to a nursery, which would have kept him employed. (*See* 3/9/2020 Tr., p.12, Ls.6-12.) Mr. Batista additionally indicated that, with respect to another case where the State ultimately did not file charges as part of plea negotiations, “I’m not part of that, but I know what happened and I can work it out, but I can’t do it locked up.” (*See* 3/9/2020 Tr., p.8, Ls.19-24, p.15, Ls.13-17.)

The district court also did not adequately consider Mr. Batista’s mental health issues. During the presentence investigation, Mr. Batista stated that he was “depressed” and had “anxiety through the roof,” and he explained that he had a history of being diagnosed with depression, anxiety, and ADHD. (*See* PSI, p.16.) He also stated that he had attended Preferred Family Services for Domestic Violence Court for a year. (PSI, p.16.) At the first sentencing hearing, defense counsel informed the district court that Mr. Batista “was very compliant, didn’t have any problems, successfully completed domestic violence court, which I think is an indicator of what Mr. Batista would do on probation.” (*See* 3/9/2020 Tr., p.10, Ls.4-9.)

Mr. Batista’s § 19-2524 DHW Mental Health Examination Report contained provisional diagnoses for: “Major Depressive Disorder, Recurrent, With Psychotic Features”; “Generalized Anxiety Disorder”; “Posttraumatic Stress Disorder” or “Acute Stress Disorder or other disorder

of extreme stress”; and “Additional Deficit/Hyperactivity Disorder – Combined presentation.” (§ 19-2524 DHW Mental Health Examination Report, 2/3/2020, p.1.) The report stated that Mr. Batista “is currently receiving mental health services and further mental health treatment is recommended to minimize risk of deterioration of daily functioning” (§ 19-2524 DHW Mental Health Examination Report, 2/3/2020, p.3.)

Additionally, the district court did not give adequate consideration to Mr. Batista’s problems with substance abuse, which are related to his mental health issues. During the presentence investigation, Mr. Batista wrote that his drug use began when he was [REDACTED] [REDACTED] after his best friend was shot and killed. (*See* PSI, p.12.) He reported he had used drugs intravenously for the past thirteen years, and his use was at its highest around the time of the instant offenses. (*See* PSI, p.17.) His tolerance for drugs and alcohol had increased in the past year. (*See* PSI, p.18.) He stated that his substance use has stripped him of his morals and ethics, and “robbed” him of his values. (PSI, p.17.) Mr. Batista wanted to stop using drugs, but was unsuccessful in his last attempt and did not know how to stop. (*See* PSI, pp.17-18.) He also reported that he suffered from withdrawals, which included “anxiety through the roof.” (*See* PSI, p.18.)

Mr. Batista’s GAIN assessment diagnosed him with “Stimulant Use Disorder – Amphetamine Type, Severe,” and “Cannabis Use Disorder, Moderate,” and it recommended intensive outpatient treatment for him. (*See* GAIN-I Recommendation and Referral Summary (GRRS), 1/24/2020, pp.1-2, 14-15.) Mr. Batista had participated in intensive outpatient treatment while completing the Preferred Family Services program, and he was sober for fourteen months. (*See* PSI, p.18.) However, he relapsed after he left his wife, stopped attending NA, and stopped speaking with his sponsor. (PSI, p.18.)

At the first sentencing hearing, defense counsel told the district court the instant offenses “are all drug related.” (*See* 3/9/2020 Tr., p.10, Ls.10-13.) During the presentence investigation, Mr. Batista wrote that he received the jewelry from a woman, “in trade for me getting her high.” (*See* PSI, p.8.) He also related that he went into the trailer involved in the controlled substance case to get high. (*See* PSI, p.8.) As for the eluding case, Mr. Batista wrote that, before he decided to run from the police, he was very isolated and using an increased amount of methamphetamine. (*See* PSI, pp.8-9.) He wanted to see his mother in Wyoming for Christmas, and planned to turn himself in after he visited her, which is why he planned on running if pursued by the police. (*See* PSI, p.9.)

Mr. Batista explained at the first sentencing hearing, “I have a length of time where I was clean, and then I went through a divorce where I relapsed, and because of the relapse and through the divorce and the order in the divorce, I couldn’t provide a clean hair follicle so I couldn’t see my two little children.” (3/9/2020 Tr., p.14, Ls.18-23.) While he received supervised visitation, “things were going well until my ex saw that I had not done a hair follicle, and I wouldn’t be able to provide one for another month and a half. I had a month and a half clean at that point. And so I went off the deep end.” (3/9/2020 Tr., p.14, L.24 – p.15, Ls.5.) Mr. Batista assured the district court, “Today I can do a clean hair follicle,” and if he were released from custody, he would go to misdemeanor probation and “give them a hair follicle because then I could see those two little ones.” (3/9/2020 Tr., p.15, Ls.5-10.)

Because the district court did not adequately consider the above mitigating factors, Mr. Batista’s sentences are excessive considering any view of the facts. Thus, Mr. Batista asserts that the district court abused its discretion when it imposed his concurrent unified

sentences. Instead of retaining jurisdiction, the district court should have followed Mr. Batista's recommendations by placing him on probation, so he could attend drug court.

CONCLUSION

For the above reasons, Mr. Batista respectfully requests that this Court reduce his sentences as it deems appropriate.

DATED this 23rd day of December, 2020.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 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

BPM/eas