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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48041-2020
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR28-20-882
v.)	
)	
JOSEPH ROBERT CHURICH,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Joseph Churich pled guilty to possession of a controlled substance, the district court sentenced him to five years, with two years fixed, and retained jurisdiction. Mr. Churich appeals, and he argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In January 2020, the State filed a Criminal Complaint alleging that Mr. Church committed the crime of possession of a controlled substance (methamphetamine).¹ (R., pp.8-9.) According to the probable cause declaration, law enforcement was dispatched to a Walmart parking lot after receiving a call about drug use in a vehicle parked there. (R., p.11-12.) During law enforcement's investigation of the vehicle, Mr. Church told an officer that there was methamphetamine in the vehicle and that it belonged to him. (R., p.14.)

Mr. Church waived his preliminary hearing, and the magistrate bound Mr. Church over to the district court. (R., p.24.) Pursuant to a plea agreement, Mr. Church pled guilty to possession of a controlled substance (methamphetamine).² (R., p.37; Tr. Vol. I,³ p. 3, Ls.7-15, p.5, L.24—p.6, L.3, p.8, Ls.16-25.) Pursuant to the plea agreement, the State agreed to recommend a sentence not to exceed a retained jurisdiction. (R., p.37; Tr. Vol. I, p.3, Ls.7-12, p.7, Ls.15-19.)

At sentencing, Mr. Church's trial attorney moved for a continuance so that Mr. Church could begin a dual diagnosis inpatient treatment program that he had been accepted into. (Tr. Vol. II, p.9, L.2—p.10, L.23.) The district court denied that motion. (Tr. Vol. II, p.10, Ls.20-23.) The State recommended a withheld judgment, three years of probation, and that Mr. Church apply for mental health court and enter into it if accepted. (Tr. Vol. II, p.10, Ls.15-19, p.11, Ls.18-24.) Alternatively, the State recommended that the district court continue the sentencing hearing and set it for a status conference after Mr. Church had an opportunity to

¹ This case was later consolidated with a criminal citation alleging that Mr. Church possessed drug paraphernalia and provided false information to law enforcement during this same investigation. (R., pp.21, 25-27.)

² The misdemeanor charges were dismissed pursuant to this plea agreement. (R., pp.40-41.)

³ There are two transcripts on appeal. The first, referred to as "Tr. Vol. I", contains the entry of plea hearing held on March 10, 2020. The second, referred to as "Tr. Vol. II", contains the sentencing hearing held on May 12, 2020.

begin treatment through the dual diagnosis inpatient treatment program. (Tr. Vol. II, p.13, L.20—p.14, L.12.) Mr. Churich requested a withheld judgment, probation, and an opportunity to participate in the aforementioned inpatient treatment program. (Tr. Vol. II, p.14, L.14—p.15, L.14.) The district court sentenced Mr. Churich to five years, with two fixed, and retained jurisdiction (a “rider”). (R., pp.42-44; Tr. Vol. II, p.17, L.19—p.18, L.6.) Mr. Churich filed a timely notice of appeal from the judgment of conviction. (R., pp.50-53.)

Mr. Churich also filed a timely motion to reduce sentence pursuant to Idaho Rule 35 in May 2020.⁴ (R., pp.47-49.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Churich to five years, with two years fixed, for possession of methamphetamine?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Churich To Five Years, With Two Years Fixed, For Possession Of Methamphetamine

“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.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018). In this matter, Mr. Churich’s sentence does not exceed the statutory maximum. See I.C. § 37-2732(c)(1) (seven-year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Churich “must show that

⁴ There has been no hearing or ruling on the motion to reduce sentence.

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. Churich 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. Churich contends the district court should have sentenced him to probation in light of the mitigating factors present in this case, including his abusive childhood, substance abuse issues, and mental illness.

First, Mr. Churich’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. Churich disclosed that he was sexually abused by a family friend beginning at the [REDACTED]. (PSI,⁵ p.35.) Mr. Churich also informed the district court that he was “jumped” and “kidnapped” when he was [REDACTED] (PSI, p.64.) Mr. Churich’s

⁵ Citations to the “PSI” refer to the 95-page electronic document submitted with the confidential sentencing materials labeled “Confidential Documents Volume 1.”

step-father also “started beating the crap outta [him]” when he was a teenager due to Mr. Churich’s behavior prior to being diagnosed with mental health issues. (PSI, p.64.) Mr. Churich’s troubled childhood, as well as its impact on his criminal conduct, is a mitigating factor in support of a lesser sentence.

Second, Mr. Churich’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.” *State v. Nice*, 103 Idaho 89, 91 (1982). 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. Churich reported that he began drinking alcohol at the [REDACTED] and regularly used alcohol starting when he was [REDACTED] (PSI, pp.38-39.) Mr. Churich also informed the investigator that he had been injecting methamphetamine daily prior to his arrest. (PSI, pp.38-39.)

Mr. Churich’s substance use was evaluated as part of his Global Appraisal of Individual Needs (“GAIN”) assessment. (PSI, pp.7-22.) Mr. Churich self-reported symptoms that were sufficient to meet the criteria for severe alcohol use disorder and severe amphetamine use disorder. (PSI, pp7-10.) Mr. Churich disclosed that he had been injecting methamphetamine three to four times a day for four years prior to his arrest. (PSI, p.9.) He also reported that he consumed alcohol daily for a six- or seven-year period, and that he would drink to the point of passing out. (PSI, p.9.) The GAIN evaluator found that Mr. Churich’s responses indicated moderate motivation for treatment and recommended “Level 3.5 Clinically Managed High Intensity Residential Services.” (PSI, pp.15, 20.)

Mr. Churich voluntarily disclosed that he had relapsed and used methamphetamine while awaiting sentencing. (PSI, p.68.) Mr. Churich reported that he had been engaging in intensive outpatient treatment while awaiting sentencing after he was unable to participate in an inpatient treatment program due to facilities not accepting patients after the outbreak of COVID-19. (PSI, p.65.) Mr. Churich completed a substance use disorder assessment as part of his application for treatment, which diagnosed him with severe amphetamine use disorder and also recommended “Level 3.5 Clinically Managed High-Intensity Residential Services.” (PSI, pp.71-95.) Prior to sentencing, Mr. Churich applied for and was accepted into a dual diagnosis inpatient treatment program that could address both his mental health and substance abuse issues. (Tr. Vol. II, p.9, Ls.2-22.)

Despite Mr. Churich’s significant substance abuse issues, the presentence investigator recommended that Mr. Churich be given an opportunity for supervised probation. (PSI, p.43.) Mr. Churich’s substance abuse issues and willingness to participate in treatment stands in favor of leniency in this case.

Third, Mr. Churich’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. Churich disclosed during the presentence investigation that he had been diagnosed with bipolar disorder, attention deficit disorder, posttraumatic stress disorder (“PTSD”), and borderline personality disorder when he was [REDACTED] (PSI, pp.37-38, 64.) Mr. Churich explained that he was sent to a psychiatric ward prior to this diagnosis. (PSI, p.64.) Mr. Churich also informed the district court that he had been sexually abused in 2016. (PSI, p.65.) At sentencing, the State recommended that Mr. Churich apply for and participate in a mental health court program due to the prosecutor’s concerns about Mr. Churich’s mental illness and its impact on his behavior. (Tr. Vol. II, p.11, L.22—p.14, L.12.)

Mr. Churich asserts that the district court did not give adequate weight to his mental health problems. “The sentencing court is not required to recite each of the factors listed.” *Strand*, 137 Idaho at 461. However, the lengthy prison sentence imposed suggests that the district court did not adequately consider Mr. Churich’s mental illness. Mr. Churich’s mental health issues stand in favor of leniency in this case.

In sum, Mr. Churich 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. Churich submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Church 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 15th day of September, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 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
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/s/ Teal M. Vosburgh
TEAL M. VOSBURGH
Administrative Assistant

JLW/tmv