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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 48041-2020
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR28-20-0882
)	
JOSEPH ROBERT CHURICH,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Church failed to establish that the district court abused its discretion by imposing a sentence of five years, with two years fixed, with retained jurisdiction, for possession of a controlled substance (methamphetamine)?

Church Has Failed To Establish That The District Court Abused Its Sentencing Discretion

According to the Presentence Report (“PSI”), a Walmart security officer reported to police dispatch that there were multiple people in a car in the parking lot who were smoking marijuana.¹

¹ PSI page numbers correspond with the page numbers of the electronic file “Confidential Exhibits Appeal 47769-2020.pdf.” All documents in that electronic file will be identified as “PSI.”

(PSI, p.25.) The security officer said that two men in the car each possessed a knife and a BB gun they had stolen from the store. (Id.) Upon arrival at the scene, a Post Falls Police Officer saw the occupants of the car making furtive movement after noticing him. (Id.) The officer obtained the identities of the four occupants of the car (two men, two women) through “state driver’s license returns, social security numbers and picture photographs.” (PSI, p.26.) The man who sat in the right rear passenger side identified himself as Michael J. Sciume. (Id.) The occupants of the car “would struggle at times to keep their eyes open, their eyes were bloodshot/glassy, their speech was slow/delayed and they had scabs/pick marks.” (Id.) The officer was unable to “find a picture for the male who identified himself as Michael.” (Id.) When the officer opened the door where Michael was seated, he saw “what appeared to be a firearm tucked under his right thigh” and he “removed the weapon from the male[.]” (Id.) After being removed from the car, Michael said had several knives on his person, and the officer removed them during a pat down for weapons. (Id.) The officer discovered and removed a syringe, which had a small amount of blood near the needle, from Michael’s pocket. (Id.) When the officer removed the two women from the car,² he saw “numerous syringes scattered throughout the car, empty baggies with residue, cotton balls, torch lighters, foil, blood draw tourniquets and alcohol swabs[,]” and noted that “most of these items were in plain view from the outside of the vehicle as well.” (Id.) In the rear passenger side area were two baggies containing a white crystal like substance and two syringes. (PSI, p.27.)

After waiving his *Miranda* rights, Michael said that the syringe from his pocket could have illegal narcotic residue on it, and, upon being shown the items found in the rear passenger side seat area, he “agreed the baggie with white crystal substance was meth and the baggie with residue was meth as well.” (PSI, p.28.) Michael admitted that the baggie with meth and the baggie with meth

² One of the women in the car was Sarah Zumwalt, Churich’s wife. (PSI, pp.26, 35.)

residue, which were located in the door where he had been seated, belonged to him. (PSI, p.28.) Michael then told the officer that he had given him his brother's name, and that he (Michael) had warrants. The officer ran Michael's real name through dispatch – Joseph R. Churich – and dispatch confirmed he had a warrant outstanding from Kootenai County. (Id.)

The state charged Churich with possession of methamphetamine, possession of drug paraphernalia, and providing false information to law enforcement. (R., pp.25-27.) Pursuant to a plea agreement, Churich pled guilty to possession of methamphetamine and the remaining charges were dismissed. (R., pp.35-37, 40-41; see generally 8/10/20 Tr.³) The district court sentenced Churich to five years, with two years fixed, and retained jurisdiction for up to one year. (R., pp.42-44.) Churich filed a Rule 35 Motion for Reduction of Sentence (R., pp.47-49), which, in the absence of any order on that motion in the appellate record, was presumably denied. Churich filed a timely notice of appeal from the “Sentencing Disposition and Notice of Right to Appeal” (sub-captioned “Judgment and Sentence/Order for Retained Jurisdiction”). (R., pp.42-44, 50-53.)

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is

³ The August 10, 2020 plea entry hearing is located in the computer file labeled “Appeal 48041A.PDF.”

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. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

Church specifically “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. (Appellant’s brief, p.4.) Church asserts that the court did not exercise reason at sentencing because it failed to give adequate weight to those mitigating factors. (Appellant’s brief, p.7.) Contrary to Church’s arguments, the court gave proper consideration to those factors, and sentenced him within the boundary of its reasonable discretion.

The maximum prison sentence for unlawful possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a sentence of five years, with two years fixed, which falls within the statutory guidelines. (R., pp.42-44.) This is Church’s first adult felony conviction. However, he has been convicted of eight misdemeanors, including possession of drug paraphernalia, driving under the influence, and possession of marijuana. (PSI, pp.30-33.) Church told his GAIN-I evaluator that he had been charged with “a lot of possession of

paraphernalia, marijuana, DUI, MIC, theft, [and] 2 DUIs in South Dakota[.]” (PSI, p.14.) Although the presentence investigator could not locate Church’s juvenile records, Church reported that “he was in ‘juvie’ for four to five months, was then transferred to a ‘lock down’ facility for eight months, followed by a group home for six months.” (PSI, p.33.) When asked about how he viewed his experience while on probation, Church told the presentence investigator, “‘horrible, was going thru a lot was doing what I was supposed to do kept constant contact and had unsympathetic help from officer.’ He indicated he violated his probation for ‘not showing up for pee tests (couldn’t afford them).’” (PSI, p.33 (verbatim).) The presentence investigator stated that Church’s “criminal history spans across four states; Idaho, Nevada, South Dakota, and Washington.” (Id.) Church’s LSI-R (Level of Service Inventory-Revised) score was 32, “which places him in the high-risk category” to reoffend. (PSI, p.41.)

Church’s abusive childhood and mental health issues are mitigating factors in his case. While substance abuse may be considered as a mitigating factor, State v. Nice, 103 Idaho 89, 645 P.2d 323 (1982), it may also be considered as an aggravating factor, State v. King, 120 Idaho 955, 958, 821 P.2d 1010, 1013 (Ct. App. 1991).

The district court noted that Church’s corrections to the PSI detailed a lot more trauma and abuse than described in his PSI, and explained that he needed to start addressing those issues during his rider. (5/12/20 Tr., p.24, Ls.7-13.) The court informed Church that he would be required to get help for his issues when he completed his rider “because chemical dependency treatment really won’t help over the long run unless [he] start[s] addressing some of those terrifically horrible things that have happened.” (5/12/20 Tr., p.24, Ls.9-18.)

Church has had a serious drug addiction problem – especially with methamphetamine. According to the GAIN-I Recommendation and Referral Summary (GRRS) (“Global Appraisal of

Individual Needs”), he was diagnosed in early 2020 as having (1) “Stimulant Use Disorder - Amphetamine Type, Severe,” (2) “Alcohol Use Disorder, Severe - Sustained Remission,” and (3) “Cannabis Use Disorder, Moderate – Provisional Use of stimulants (cocaine, crack, amphetamines, other stimulants) may exacerbate nervous system problems.” (PSI, pp.7-8.) Church told the GAIN-I evaluator “that he had been using ‘massive shots’ of meth and had been using via injection for the past 4 years.” (PSI, p.11.) Instead of being totally committed to ending his illegal drug use, Church told the GAIN-I evaluator “that he has quit using substances and is about 60% ready to remain abstinent.” (PSI, p.15.) The evaluator recommended Church for “level 3.5 clinically managed high intensity residential services,” commenting that Church “has been engaging in high risk needle use for an extended period of time, does not have an environment conducive to his recovery, uses substances when not in a controlled environment and despite legal interventions, and does not have the skills to refrain from ongoing use without this level of care.” (PSI, p.20 (bolding omitted).)

At the sentencing hearing, Church argued that he needed to be placed on probation to enable him to participate in a dual-diagnosis (substance abuse and mental health) inpatient treatment program to which he had been accepted, but did not yet have a firm start date. (5/12/20 Tr., p.14, L.14 – p.15, L.15.) The district court rejected Church’s request for probation, explaining that he “need[s] some help obviously from a chemical dependency treatment standpoint, and I think the secure setting of a retained jurisdiction is the place to do it[.]” (5/12/20 Tr., p.22, L. 3-10.)

As to Church’s mental health, the GAIN-I evaluator summarized:

According to self-report, Joseph was diagnosed with “bipolar, Multiple Personality Disorder, ODD, slight adult ADD” and last received treatment more than 12 months ago. According to ASAM criteria, patient self-report, and clinical observation, *Joseph’s mental health symptoms appear relatively mild, mostly stable, and*

primarily related to either a substance use or other addictive disorder, or to a co-occurring cognitive, emotional or behavioral condition.

(PSI, pp.20-21 (emphasis added).) Although Churich apparently has mental health issues that need to be addressed, according to the GAIN-I evaluator, they are “relatively mild,” and “primarily related to either a substance use or other addictive disorder.” (Id.)

The district court explained to Churich why a retained jurisdiction period was warranted in his case – in contrast to his wife’s case:

So you were at Walmart and there was a lot of stolen property in the car. All the occupants in the vehicle were actively using drugs, some meth like you, some heroin like others, and some meth and heroin. You’re armed with several knives. You’re anticipating trouble. You gave the officer a fake name and a fake I.D., and it was your brother’s. Everyone in the car was honest. Ms. Zumwalt was honest. You gave the officer your brother’s name because you had warrants out – outstanding, and you knew you did.

Looking at your past record, there is a drug or an alcohol case every year for the last decade other than two years, so this has been an ongoing problem, and Ms. Zumwalt’s was one paraphernalia charge back in 2017. Her situation really does look a lot different than yours. You had violated your probation for not showing up for drug tests because you couldn’t afford them, and that’s the same excuse that you gave me for not abiding by my earlier order that you drug test, and I didn’t make my order that you drug test contingent on your ability to pay.^[4]

(5/12/20 Tr., p.22, L.11 – p.23, L.6.) The district court also explained that, in reading about residential treatment programs, it appears they are no more effective than sustained outpatient treatment programs. (5/12/20 Tr., p.24, L.19 – p.25, L.2.) The court continued, “so if this program is 28 days in Western Washington, I think you would be much better suited by the help that you can get on the retained jurisdiction. Even if it’s a 60-day program over there in Port Angeles, I think a rider would be in your best interest[.]” (Id.)

⁴ The district court noted that Churich could have asked it for funds for drug testing by merely calling his attorney and they could have solved the money issue. (5/12/20 Tr., p.23, Ls.14-19.)

In its sentencing order, the district court included the following recommendations as part of its order placing Church on a rider:

THE COURT RECOMMENDS for the defendant CHEMICAL DEPENDENCY TREATMENT, COGNITIVE RESTRUCTURING, NEEDS HELP DEALING WITH SIGNIFICANT PAST TRAUMA. Defendant must plan on Mental Health Court following his retained jurisdiction. IDOC NEEDS TO BE AWARE HE HAS A MENTAL HEALTH MEDICATION, [naming the specific drug and daily dosage].

(R., p.43.)

Although the court did not discuss the primary sentencing objective of protecting society or the related factors of deterrence, rehabilitation, and retribution, see McIntosh, 160 Idaho at 8, 368 P.3d at 628, the court plainly emphasized the need for Church to address his physical/sexual abuse victimization, his substance abuse, and his mental health issues for the protection of both society and Church himself, implicating the needs for deterrence and rehabilitation.

Based on the district court's overriding concern that Church be successful in addressing his various issues in order to become a law abiding citizen, it cannot have abused its sentencing discretion by sentencing Church to five years, with two years (fixed), and placing him on a rider – instead of probation. Church has failed to show any abuse in the district court's sentencing discretion.

Conclusion

The state respectfully requests this Court to affirm Church's conviction and sentence.

DATED this 25th day of November, 2020.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of November, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ John C. McKinney
JOHN C. McKINNEY
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JCM/dd