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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48094-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-34348
v.)	
)	
EMILIO ZAVALA,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Emilio Zavala appeals contending the district court abused its discretion by not retaining jurisdiction when it imposed the sentence in his case. As such, this Court should vacate the judgment of conviction and remand this case for a new sentencing hearing.

Statement of the Facts & Course of Proceedings

Mr. Zavala was involved in a car accident when he tried to improperly pass another car and then clipped that car when he tried to merge back in. (Presentence Investigation Report (*hereinafter* PSI), p.3.) This caused his car to roll. (PSI, p.3.) A gun was ejected from his car during that accident. (PSI, p.3.) Mr. Zavala explained he was borrowing the car from his in-

laws and the gun also belonged to them. (PSI, p.4; Tr., p.11, Ls.1-6.) Officers confirmed Mr. Zavala had prior felony convictions, and, after giving him *Miranda* warnings,¹ Mr. Zavala admitted he knew the gun was in the car. (PSI, p.3; Tr., p.11, Ls.7-8.) As such, he was charged, *inter alia*, with felon in possession of a firearm. (R., pp.29-30.) Pursuant to a plea agreement, he pled to the felon in possession charge and other charges were dismissed. (R., pp.57-58.) He also agreed to pay restitution on all the dismissed charges. (R., p.57; *see also* Tr., p.14, Ls.11-18 (Mr. Zavala not objecting to the restitution request for the damage to the other car).)

Mr. Zavala acknowledged his long criminal history, explaining to the PSI author that it stemmed from his struggles with his mental health issues, drug abuse, and childhood abuse. (PSI, pp.13-14.) Mr. Zavala reported he was diagnosed with paranoid schizophrenia, post-traumatic stress disorder, mood swings, anxiety, and depression when he was [REDACTED] (PSI, pp.18-19; *compare* PSI, p.39 (the GAIN evaluation only diagnosing Mr. Zavala with major depressive disorder and generalized anxiety disorder, in addition to substance use disorders).) He explained that, when his prescribed medications ran out, he would begin self-medicating with drugs, and then, he would engage in various criminal conduct to support his drug addiction. (PSI, p.14; Tr., p.20, L.23 - p.21, L.4.)

Mr. Zavala also explained he had moved to Idaho for a fresh start and met his wife here. (PSI, p.23.) However, he continued to struggle, as he was arrested several times in addition to the instant offense in the short time since moving to Idaho. (PSI, p.23.) Nevertheless, his wife and other family members have expressed their continuing support for Mr. Zavala, and each noted his particular need for mental health treatment. (PSI, pp.44-51.) The PSI author

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

ultimately recommended the district court retain jurisdiction in this case. (PSI, p.23; *see also* PSI, p.38 (the GAIN evaluation recommending intensive outpatient treatment).)

At the sentencing hearing, defense counsel noted that it did not appear Mr. Zavala had been afforded “much opportunity for him to have a dual treatment.” (Tr., p.20, Ls.4-5.) However, he reported that the mental health medications provided by the jail were beginning to take effect and Mr. Zavala was motivated to make a positive change in his life. (Tr., p.19, Ls.10-15.) As such, defense counsel joined the PSI author’s recommendation for a period of retained jurisdiction. (Tr., p.20, Ls.12-17.) He explained that option would allow Mr. Zavala to get the needed treatment for his dual diagnosis in a timely fashion. (Tr., p.20, Ls.8-11 (“[T]he more we delay his involvement in treatment, the more difficult it is for him to get -- or to maintain that attitude of wanting to change.”).)

However, the district court rejected that recommendation. While it acknowledged Mr. Zavala’s rehabilitative potential, particularly with a renewed commitment to staying on proper medications (Tr., p.24, Ls.18-24), it ultimately felt that those rehabilitative efforts would require a longer term than the rider program would provide. (Tr., p.26, Ls.6-12.) As such, it imposed and executed a unified sentence of five years, with three years fixed, as recommended by the prosecutor. (Tr., p.26, Ls.13-20; *see* Tr., p.25, L.18 - p.26, L.2 (noting he had expected the prosecutor to recommend a full-fixed sentence based on his record, but even the prosecutor had recognized some leniency was appropriate in this case).)

Mr. Zavala filed a notice of appeal timely from the resulting judgment of conviction. (R., pp.61, 71.)

ISSUE

Whether the district court abused its discretion by not retaining jurisdiction over Mr. Zavala.

ARGUMENT

The District Court Abused Its Discretion By Not Retaining Jurisdiction Over Mr. Zavala

Sentencing decisions are committed to the district court's discretion. *State v. Reinke*, 103 Idaho 771, 771 (Ct. App. 1982). 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 id.* at 772. Accordingly, in order to show an abuse of discretion in the district court's sentencing decision, he must show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997); *see Lunneborg v. My Fun Life*, 163 Idaho 856, 863-64 (2018) (articulating the standard for reviewing whether the district court abused its discretion). The governing criteria, or sentencing objectives, 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. *State v. Charboneau*, 124 Idaho 497, 500 (1993).

The protection of society is the primary objective the court should consider. *Id.* The Idaho Supreme Court has indicated that rehabilitation is usually the first means the district court should consider to achieve that goal. *See State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015); *accord State v. Bickhart*, 164 Idaho 204, 206 (Ct. App. 2018) (noting the preference identified in *McCoy* does not preclude a sentence of incarceration, if that is ultimately the best method to achieve the goals of sentencing). In other words, while the district court may place significant weight on one of the

goals of sentencing, that does not mean it can ignore mitigating factors speaking to one of the other goals as being insignificant or unimportant. *See State v. Knighton*, 143 Idaho 318, 320 (2006) (noting that the failure to sufficiently consider various mitigating factors has resulted in abuses of sentencing discretion in several cases). “The purpose of retaining jurisdiction after imposing a sentence is to afford the trial court additional time for evaluation of the defendant’s rehabilitation potential and suitability for probation.” *State v. Lee*, 117 Idaho 203, 205 (Ct. App. 1990).

Mr. Zavala’s biggest issue when it comes to his rehabilitation is his dual diagnosis. Mr. Zavala acknowledged that, when he is not on his medications, he turns to drugs to self-medicate and then turns to crime to support his drug abuse. (Tr., p.20, L.23 - p.21, L.4.) However, as defense counsel pointed out, the medications provided by the jail were beginning to have a positive effect on Mr. Zavala. (Tr., p.19, L.11- p.20, L.8.) The district court also acknowledged that he has the potential to successfully rehabilitate if he adheres to his mental health treatment and medication regimen. (Tr., p.24, Ls.18-24.)

He has, in fact, begun taking the first steps in that direction. For example, he was now able to take responsibility for his actions. (*See* Tr., p.20, Ls.21-23 (Mr. Zavala apologizing for his conduct); *compare* Tr., p.16, Ls.12-15 (the prosecutor noting Mr. Zavala initially denied responsibility for the car accident despite several eye witnesses and video evidence to the contrary).) Acknowledgment of guilt and acceptance of responsibility by the defendant are critical first steps toward rehabilitation. *See State v. Kellis*, 148 Idaho 812, 815 (Ct. App. 2010).

The record actually shows a few tangible efforts in that direction. For example, the district court noted that Mr. Zavala had begun conforming his behavior to jail expectations. (Tr., p.24, Ls.13-15; *compare* PSI, p.65 (noting Mr. Zavala’s disruptive and threatening behavior

while being booked into jail).) This appears to also correspond with the medications starting to take effect. “The [United States Supreme Court has] emphasized that ‘a defendant's disposition to make a well-behaved and peaceful adjustment to life in prison is itself an aspect of his character that is by its nature relevant to the sentencing determination.’” *Sivak v. State*, 112 Idaho 197, 201-02 (1986) (quoting *Skipper v. South Carolina*, 476 U.S. 1, 7 (1986)). Likewise, Mr. Zavala’s willingness to pay restitution even on the dismissed charges (R., p.57; Tr., p.14, Ls.11-18) also demonstrates he is actually taking these first steps toward rehabilitation. *See State v. Hall*, 114 Idaho 887, 889 (Ct. App. 1988).

Additionally, Mr. Zavala also has the continuing support of his family. (Tr., p.19, Ls.19-25; *see* PSI, pp.44-51.) Family constitutes an important part of a support network, which can help in the rehabilitation process. *See Kellis*, 148 Idaho at 817 (holding that familial support offered to affirm the defendant’s innocence does not equate to familial support offered in consideration of rehabilitation, implying that had the support been offered for rehabilitation, it would be a mitigating factor worthy of consideration).

These initial efforts are an important consideration because, as the district court itself pointed out, if these efforts at rehabilitation take hold, Mr. Zavala has the potential to successfully rehabilitate. (Tr., p.24, Ls.18-24.) Both the Idaho Supreme Court and the Idaho Court of Appeals have recognized that the timing of rehabilitative programming is an important consideration at sentencing. *See, e.g., State v. Dunnagan*, 101 Idaho 125, 126 (1980); *Cook v. State*, 145 Idaho 482, 489-90 (Ct. App. 2008). Thus, as defense counsel pointed out, it was proper to join the PSI author’s recommendation – to strike now, while the iron is hot, and engage in the timely dual treatment specifically available through the rider program. (Tr., p.20, Ls.13-17; PSI, p.23.) This is particularly true, as defense counsel explained, since the rider

program would provide the sort of dual treatment Mr. Zavala needs, but has not yet, apparently, had the opportunity to receive. (Tr., p.20, Ls.4-8.)

Besides, it is not as if the district court would lose the opportunity for longer term in-custody treatment if it retained jurisdiction; it could still relinquish jurisdiction if it determined the rider did not provide enough treatment to merit release onto probation. *See Lee*, 117 Idaho at 205 (reiterating the point of retaining jurisdiction is to provide the district court with more information to more adequately assess the defendant's rehabilitation and determine whether he can safely be released to community supervision). Therefore, a sufficient consideration of the relevant factors demonstrates the district court abused its discretion by executing Mr. Zavala's sentence rather than retaining jurisdiction.

CONCLUSION

Mr. Zavala respectfully requests his case be remanded to the district court for a new sentencing hearing.

DATED this 28th day of December, 2020.

/s/ Brian R. Dickson
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th 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

BRD/eas