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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48131-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-20-10425
v.)	
)	
DUSTIN SCOTT GLANDON,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Dustin Glandon pleaded guilty to felony domestic violence and was sentenced to a unified term of ten years, with two and one-half years fixed. Mr. Glandon asserts the district court abused its discretion by failing to place him on probation, in light of the mitigating factors that exist in his case.

Statement of the Facts & Course of Proceedings

The State charged Mr. Glandon with attempted strangulation, felony domestic violence, and misdemeanor injury to a child. (R., pp.58-59.) Pursuant to an agreement with the State, Mr. Glandon pleaded guilty to felony domestic violence; in exchange, the State agreed to dismiss the remaining charges and to recommend the court impose a suspended unified sentence of ten years, with three years fixed, and for Mr. Glandon to be placed on probation. (R., pp.60-72; Tr., p.8. L.15 – p.18, L.20.) During the sentencing hearing, both parties asked the court to impose a suspended sentence of ten years, with three years fixed, and to place Mr. Glandon on probation. (Tr., p.22, L.11 – p.23, L.1; p.25, L.18 – p.27, L.12.) The district court, however, sentenced Mr. Glandon to a unified term of ten years, with two and one-half years fixed, but did not place Mr. Glandon on probation. (R., pp.79-82; Tr., p.34, L.17 – p.35, L.1.) Mr. Glandon filed a timely Notice of Appeal.¹ (R., pp.84-86.)

ISSUE

Did the district court abuse its discretion by failing to place Mr. Glandon on probation, in light of the mitigating factors that exist in his case?

ARGUMENT

In Light Of The Mitigating Factors That Exist In His Case, The District Court Abused Its Discretion By Failing To Place Mr. Glandon On Probation

Mr. Glandon asserts that, given any view of the facts, the district court abused its discretion by failing to place him on probation. A district court's sentencing decisions, including the decision about whether to place a defendant on probation, are reviewed for an abuse of the

¹ Mr. Glandon also filed a timely Rule 35 motion. (R., p.83.) Documents available via iCourt reveal that Mr. Glandon did not support his motion with any new or additional mitigating information, and the district court denied the motion. In light of the relevant standards of review, Mr. Glandon does not raise the denial of his Rule 35 motion as an issue in this appeal.

district court's discretion. 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.

Dustin Glandon joined the United States Navy two months after the 9/11 terrorist attacks, and served honorably on the flight deck of an aircraft carrier during Operation Enduring Freedom. (PSI, p.12.) While in the Navy, Mr. Glandon met the victim in this case, Jennifer Glandon, and the two were married in November of 2004. (PSI, p.10.) Two years later, after a 34-week pregnancy, their daughter was stillborn, and Mr. Glandon has simply been unable to appropriately cope with the loss. (PSI, pp.8, 10.) Mr. Glandon pleaded guilty to two prior misdemeanor incidents of domestic battery, in 2012 and 2018. (PSI, pp.6-7.)

Mr. Glandon began using methamphetamine not long before he committed the instant offense, and his drug use contributed to problems in his marriage and his employment. (PSI, pp.15-16.) His mother described Mr. Glandon as being in a downward spiral beginning in September of 2019, due to his drug use, but Mr. Glandon could not admit that he was using and would not discuss treatment at that time. (PSI, p.8.) Mr. Glandon's employer at Boise Lawn Company, noted that Mr. Glandon had been struggling with drug use and his marriage, and those struggles negatively impacted his work. (PSI, p.13.) Despite his problems, his employer stated that Mr. Glandon would be "eligible for rehire when he 'gets his life back together.'" (PSI, p.13.) Reflecting on his drug use, Mr. Glandon believed that he "was running from everything," and he expressed a desire to stop using. (PSI, pp.15-16.)

Mr. Glandon is not a lost cause. In addition to his employer who is willing to rehire him once he gets his issues sorted out, his long-time friend, Levi Patterson, told the PSI investigator that Mr. Glandon is "professional, polite, and loving." (PSI, p.9.) And while Mr. Patterson does

not condone Mr. Glandon's actions, he believes that Mr. Glandon is a "good person in a terrible marriage," and believes it would be for the best for both of the Glandons if they went their separate ways. (PSI, p.9.) Additionally, Mr. Glandon has shown he is capable of complying with the terms of probation, as he did not have any probation violations stemming from his prior domestic battery convictions. (PSI, p.7.)

While Mr. Glandon's sorrow and drug use help explain his actions, he recognizes that they do not excuse what he did. He expressed that he was both sorrowful and ashamed of his actions. (PSI, pp.4, 17.) During the sentencing hearing, Mr. Glandon told the court, "I'm sorry for what I've done. I'm not making excuses, my substance abuse is a factor, yes, but not an excuse." (Tr., p.30, L.25 – p.31, L.2.)

Idaho courts recognize that prior military service, substance abuse and the desire to stop using, support from friends and employers, and remorse for one's conduct, are all mitigating factors that should counsel a district court to impose a less-severe sentence. *See, e.g., State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). In light of the mitigating factors that exist in this case, Mr. Glandon asserts that the district court abused its discretion by failing to place him on probation.

CONCLUSION

Mr. Glandon respectfully requests that this Court vacate his sentence and remand his case to the district court with instructions to place him on probation, or for whatever other relief this Court deems appropriate.

DATED this 28th day of December, 2020.

/s/ Jason C. Pintler
JASON C. PINTLER
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:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCP/eas