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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48135-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-27758
v.)	
)	
CHARLES LYNN SACOLICK,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Charles Sacolick pled guilty to one count of possession of methamphetamine. He received a unified sentence of five years, with one and one-half years fixed.

On appeal, Mr. Sacolick contends that this sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts. He further contends that the district court abused its discretion in failing to reduce his sentence in light of the additional information submitted in conjunction with his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion.

Statement of the Facts & Course of Proceedings

On July 8, 2019, federal probation officers discovered methamphetamine and drug paraphernalia in the house Charles Sacolick occupied with a roommate. (Presentence Investigation Report (*hereinafter*, PSI),¹ p.3.) Mr. Sacolick calmly cooperated with the officers and answered all of their questions. (PSI, pp.3, 46-47.) He told the officers that he was giving his roommate methamphetamine. (PSI, pp.3, 45.) The weight of the methamphetamine found on Mr. Sacolick's roommate's bed was less than 0.1 grams. (PSI, pp.45-46, 50.)

Based on these facts, Mr. Sacolick was charged by Information with one count of delivery of a controlled substance. (R., pp.25-29.) Pursuant to a plea agreement, Mr. Sacolick pled guilty to an amended information charging him with possession of methamphetamine. (Tr., p.16, Ls.18-21; R., pp.39-53.) In exchange, the State agreed not to file a persistent violator sentencing enhancement and to recommend a sentence of five years, with one and one-half years fixed. (Tr., p.7, Ls.1-10; R., p.52.)

At the sentencing hearing, the State asked the district court to sentence Mr. Sacolick to a unified sentence of five years, with one and one-half years fixed. (Tr., p.28, Ls.5-9.) Mr. Sacolick's counsel asked the district court to sentence him to three years, with one year fixed. (Tr., p.29, Ls.8-12.) Mr. Sacolick was sentenced to five years, with one and one-half years fixed. (Tr., p.35, Ls.3-10; R., pp.60-63.)

Mr. Sacolick then filed a timely Rule 35 motion asking the district court to reconsider the sentence. (R., pp.67-69.) The State filed an objection to Mr. Sacolick's Rule 35 motion for leniency, claiming that the sentence imposed was appropriate. (R., pp.70-72.) The district court

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

denied Mr. Sacolick's Rule 35 motion without a hearing. (R., pp.80-82.) Mr. Sacolick filed a notice of appeal timely from the judgment of conviction and the district court's order denying his Rule 35 motion. (R., pp.73-75, 83-87.)

ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of five years, with one and one-half years fixed, upon Mr. Sacolick following his plea of guilty to possession of methamphetamine?
- II. Did the district court abuse its discretion when it denied Mr. Sacolick's Idaho Criminal Rule 35 Motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With One And One-Half Years Fixed, Upon Mr. Sacolick Following His Plea Of Guilty To Possession Of Methamphetamine

Mr. Sacolick asserts that, given any view of the facts, his unified sentence of five years, with one and one-half years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

Mr. Sacolick does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by the exercise of reason, Mr. Sacolick must show that in light of the governing criteria, the sentence was 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.*

In light of the mitigating factors present in this case, Mr. Sacolick's sentence is excessive considering any view of the facts.

Mr. Sacolick has been diagnosed with anxiety, depression, attention deficit disorder, and PTSD. (PSI, pp.14-15, 21.) He was prescribed mental health medications, but felt a further mental health evaluation would be beneficial. (PSI, p.15.) The Idaho Supreme Court has held that the trial court must consider a defendant's mental illness as a factor at sentencing. *Hollon v. State*, 132 Idaho 573, 581 (1999).

Mr. Sacolick has a substantial history of substance abuse; however, he knows what he needs to do to stay sober and to be successful in the community. (PSI, pp.15-17.) Mr. Sacolick obtained employment and housing after his release from prison, but struggled to deal with his mental health issues and ended up using controlled substances. (PSI, p.17.) To the presentence investigator, Mr. Sacolick said, "I relapsed with meth and with people not supportive of sobriety. I wish I could go back in time and ask for help." (PSI, p.4.) Mr. Sacolick's relapse on methamphetamine resulted in a federal probation violation as well as this State charge. (Tr., p.28, Ls.16-23; p.30, Ls.13-23.) The Idaho Supreme Court has held that substance abuse

should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982).

Mr. Sacolick does have a supportive family to assist him in his rehabilitation. Mr. Sacolick has a good relationship with his mother, his adult sons, his uncle, and his brother-in-law. (Tr., p.31, Ls.12-18; PSI, pp.10, 12.) These individuals wrote letters to the court in support of Mr. Sacolick. (PSI, pp.25-28.) He has sober living opportunities in the community, and he identified additional funding which would allow him to access residential treatment in the future. (Tr., p.31, Ls.13-18.) He has support in the community. (Tr., p.32, Ls.18-19.) *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts).

Further, Mr. Sacolick expressed considerable remorse and accepted responsibility for his actions. (Tr., p.16, Ls.18-21; p.32, L.4 – p.33, L.2; PSI, p.16.) At his sentencing hearing, Mr. Sacolick expressed regret and told the court,

I've been in prison, I've spent a lot of time in there, obviously, 15 years. I believe I was overwhelmed when I got out. I've got that out of my system. To be honest, I thought it was going to be a lot easier getting back to real life, and it wasn't as easy as I thought, it was a lot more complicated, and I took the wrong route.

But I see my mistakes, I would like to make amends for that and get back to working and taking care of my life and my family. My mother is not getting any younger. As we all have family, I realize they're very important and I'd like to get back to being a part of their lives, I've been out of their lives for a long time.

I have a lot of valuable support in the community. I have a good community here. I believe in Idaho, and I believe in a chance to do this for Idaho, provided I don't spend too much time in prison, your Honor; it's taken a lot out of me as it is. I understand you have to do what you have to do, and I respect that, but it was a simple relapse. I've had enough of it. I'm getting too old for this. I'm ready to do something different. I'd like that opportunity, sir.

(Tr., p.32, L.4 – p.33, L.2.) Idaho courts recognize that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *Shideler*, 103 Idaho at 595; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Mr. Sacolick asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his considerable remorse, mental health conditions, and his family and community support, it would have imposed a less severe sentence.

II.

The District Court Abused Its Discretion When It Denied Mr. Sacolick's Rule 35 Motion For A Sentence Reduction In Light Of The New Information Offered In Support Of His Rule 35 Motion

Although Mr. Sacolick contends that his sentence is excessive in light of the information in front of the district court at the time of his May 18, 2020 sentencing hearing (*see* Part I, *supra*), he asserts that the excessiveness of his sentence is even more apparent in light of the new information submitted in conjunction with Mr. Sacolick's Rule 35 motion. Mr. Sacolick asserts that the district court's denial of his motion for a sentence modification represents an abuse of discretion.

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* "If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.*

In support of his motion for a sentence reduction, Mr. Sacolick submitted new or additional information regarding his plans upon his release from custody. (R., pp.67-68.) Mr. Sacolick has arranged for employment with his brother-in-law's landscaping business. (R., p.68.) He would be making \$18 per hour. (R., p.68.) Mr. Sacolick asked the court to reduce his sentence to five years, with one year fixed, but to place him on probation with the requirement that he complete certain programs in the Ada County Jail prior to his release on probation. (R., pp.67-68.)

In light of Mr. Sacolick's plans upon his release from custody, and his desire to obtain additional programming to better himself before his release onto probation, the district court should have reduced his sentence. Based on the foregoing, in addition to the mitigating evidence before the district court at the time of sentencing, it is clear the district court abused its discretion by failing to reduce Mr. Sacolick's sentence in response to his Rule 35 motion.

CONCLUSION

Mr. Sacolick respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 23rd day of December, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
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

SJC/eas