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

ERIK R. LEHTINEN
Chief of the Appellate Unit
I.S.B. #6247
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. 47996-2020
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR28-19-20469
v.)	
)	
JARROD CHRISTOPHER FIFE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Jarrod Fife pled guilty to one count each of trafficking in heroin, unlawful possession of a firearm, misdemeanor resisting and obstructing, and misdemeanor driving under the influence (“DUI”), as well as a “persistent violator” sentencing enhancement. He received a sentence of twenty years, with five years fixed, for trafficking, a concurrent sentence of five years, all fixed, for unlawful possession of a firearm, and sentences of time served for the misdemeanors. Mr. Fife now appeals, asserting the district court abused its discretion by imposing an excessive sentence, and by declining to reduce that sentence in response to Mr. Fife’s motion for a sentence reduction under Idaho Criminal Rule 35.

Statement of the Facts & Course of Proceedings

Just before Christmas 2019, Coeur d'Alene police were called to a parking lot "in reference to possible drug activity in a truck." (R., p.15.) The tipster "observed two subjects in a vehicle with out of state plates possibly smoking drugs." (R., p.15.) When first approached by the police, Mr. Fife, the driver, gave the police a false name and refused to get out of the car. (R., pp.14-15.) Mr. Fife eventually exited the vehicle though, and the officer had him perform field sobriety tests, which he failed. (R., p.16.) Mr. Fife was then arrested for DUI. (R., p.16.)

The officers searched the truck. (R., pp.15-16.) In that search, the officers found "multiple items of paraphernalia and illegal drugs." (R., p.16.) After being transported to the jail, a "drug recognition expert" performed an evaluation and opined that Mr. Fife was under the influence of controlled substances. (R., p.16.) Upon further questioning, Mr. Fife admitted that a red backpack found in the truck, which contained methamphetamine, belonged to him. (R., p.16.) However, he denied knowledge of a gun and a locked safe (containing heroin, methamphetamine, fentanyl, oxycodone, other prescription drugs, and marijuana, as well as drug paraphernalia), also found in the truck. (R., pp.16-17, 19-20.)

Mr. Fife was cited for five misdemeanors: DUI (second offense), possession of drug paraphernalia, resisting or obstructing officers, providing false information to law enforcement, and possession of suboxone. (R., pp.14, 24-26.) In addition, a criminal complaint was filed alleging four felonies: trafficking in heroin (by possessing 2 - 7 g), possession of methamphetamine, possession of fentanyl, and unlawful possession of a firearm, as well as a "persistent violator" sentencing enhancement. (R., pp.10-12.) All of the cases were consolidated. (R., p.70.)

After Mr. Fife waived his right to a preliminary hearing (*see* R., pp.80, 81), an Information was filed charging him with trafficking in heroin (by possessing 7 - 28 g),

trafficking in methamphetamine (by possessing 28 - 200 g), possession of fentanyl, possession of cocaine, unlawful possession of a firearm, misdemeanor DUI (second offense), misdemeanor resisting or obstructing officers, misdemeanor possession of drug paraphernalia, providing false information to law enforcement, and misdemeanor possession of buprenorphine, and a “persistent violator” enhancement.¹ (R., pp.82-86.)

Pursuant to a plea agreement, Mr. Fife agreed to plead guilty to trafficking in heroin (for possessing 2 - 7 g), unlawful possession of a firearm, misdemeanor resisting or obstructing officers, misdemeanor DUI (first offense), and the “persistent violator” enhancement. (R., p.91.) In exchange for his guilty pleas, the State agreed to: dismiss the remaining counts; reduce the alleged trafficking amount; dismiss the second-DUI enhancement and proceed as if the DUI were Mr. Fife’s first; and recommend concurrent sentences on all counts. (R., p.91.) Sentencing recommendations were otherwise open for both parties. (R., p.91.)

At sentencing, the State recommended that Mr. Fife be sentenced as follows: for trafficking heroin, fifteen years, with five years fixed; for unlawful possession of a firearm, five years, all fixed, concurrent with the trafficking count; and, for the two misdemeanor counts, time served, concurrent with the felonies. (Tr., p.27, L.15 – p.28, L.1.) Mr. Fife’s attorney asked that the court impose concurrent sentences of five years, with three years fixed, on the felonies, and time served on the misdemeanors. (Tr., p.29, Ls.18-20, p.31, L.22 – p.32, L.1.)² The court then imposed a sentence of twenty years, with five years fixed, for trafficking in heroin, and a

¹ Mr. Fife was bound over on more/greater offenses than those named in the complaint. Apparently, the State moved to amend the complaint and, at the time set for the preliminary hearing, the defense made no objection to the motion and the district court granted it. (*See* R., pp.4, 80.) It does not appear that either a written motion to amend or an amended complaint were ever filed. (*See* R., p.4.)

² The fixed portion of the sentence recommended by the defense would represent the mandatory minimum for trafficking between two and seven grams of heroin. I.C. § 37-2732B(a)(6)(A).

concurrent sentence of five years, all fixed, for unlawful possession of a firearm. (Tr., p.34, L.15 – p.35, L.6; R., p.105.) The court sentenced Mr. Fife to time served for each of the two misdemeanor counts. (Tr., p.34, Ls.1-10; R., pp.107, 108.)

Shortly after entry of the judgment of conviction, Mr. Fife filed a timely motion for a sentence reduction under Idaho Criminal Rule 35. (*See* R., pp.117-19.) Mr. Fife asked that the aggregate sentence be reduced to fifteen years, with five years fixed. (R., p.118.)

The district court held a hearing on Mr. Fife’s motion. At that hearing, Mr. Fife testified he had not had any disciplinary issues since going to prison (Rule 35 Tr., p.7, Ls.2-4)³; he testified to some of his rehabilitative efforts since going to prison (Rule 35 Tr., p.5, Ls.13-20, p.6, Ls.2-3); and he expressed a desire to use his time in prison productively (Rule 35 Tr., p.6, Ls.14-20). Ultimately, he requested that the court at least reduce the indeterminate portion of his sentence—by five years.⁴ He indicated that with a shorter “tail,” he would be eligible to go to a work camp sooner. (Rule 35 Tr., p.7, Ls.12-24, p.8, Ls.7-11.)

The district court denied Mr. Fife’s motion. (R.35 Tr., p.10, L.18 – p.13, L13.; Aug. p.3.)

³ On July 10, 2020, the Supreme Court granted Mr. Fife’s motion to augment the record on appeal with the court minutes from the June 24, 2020 hearing on Mr. Fife’s Rule 35 motion, the transcript of that hearing, and the district court’s June 25, 2020 order denying that motion.

⁴ Mr. Fife vacillated repeatedly in terms of the specific sentence reduction he sought. First, he asked for a five-year reduction of the indeterminate portion of his sentence. (Rule 35 Tr., p.7, Ls.17-20.) Then he asked for that, as well as a two-year reduction of the fixed portion of the sentence (down to the mandatory minimum). (Rule 35 Tr., p.8, Ls.2-4.) Then he indicated he was not seeking “serious leniency,” just a reduction in the indeterminate portion of the sentence. (Rule 35 Tr., p.8, Ls.6-9.) Finally, returned to his request for the minimum fixed sentence. (Rule 35 Tr., p.8, Ls.11-12.) His counsel went on to clarify that the request—as in the written Rule 35 motion—was simply for a five-year reduction in the indeterminate portion of the sentence. (Rule 35 Tr., p.9, Ls.22-24.)

In the meantime, Mr. Fife filed a notice of appeal timely from the judgment of conviction. (R., pp.113-15.) On appeal, Mr. Fife contends the district court abused its discretion by imposing an excessive sentence and by denying his Rule 35 motion.

ISSUES

- I. Did the district court abuse its discretion when it imposed upon Mr. Fife an aggregate sentence of twenty years, with five years fixed?
- II. Did the district court abuse its discretion when it denied Mr. Fife's motion for sentence reduction?

ARGUMENT

I.

The District Court Abused Its Discretion When It Imposed Upon Mr. Fife An Aggregate Sentence Of Twenty Years, With Five Years Fixed

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573 (1979)).

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 case, Mr. Fife contends the district court abused its discretion by failing to exercise reason in its ultimate sentencing decision. “[R]easonableness is a fundamental requirement.” *State v. Nice*, 103 Idaho 89, 90 (1982). “[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).

The record in this case reflects a wealth of mitigating evidence that should have weighed in favor of the district court imposing a lesser sentence. That evidence includes Mr. Fife’s abusive childhood, his amenability to drug rehabilitation, and the impact of substance abuse throughout his life.

The impact of an abusive childhood is one mitigating factor. *See, e.g., State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001); *State v. Gonzales*, 123 Idaho 92, 93-94 (Ct. App. 1993). Mr. Fife experienced a horrendous childhood. He was sexually abused by one of his uncles when he was around [REDACTED], which “caused him to have an ‘identity crisis.’” (PSI, p.22.) This experience was so traumatic that even now, over 40 years later, he struggles talking about it. (*See* PSI, p.22 (“[W]hen I pressed him for details, he simply repeated, ‘no comment.’”)) Another one of his uncles introduced him to drugs and alcohol between the ages of ten and eleven. (PSI, pp.26-27; Tr., p.21, L.18 – p.22, L.4.) He never knew his birth father, and his stepfather died when he was fourteen. (PSI, p.21.) He dropped out of school around the same time and “did not return until later in his adult life.” (PSI, p.22.) During that time Mr. Fife said he “lived on the streets, got addicted to meth – then coke – then found heroin.” (PSI, p.21.) Mr. Fife wants help coping with the horrendous trauma he experienced as a child; he asked the court “if [it] had any solutions to, you know, [the] underlying issues that [he has] been having.” (Tr., p.33, Ls.16-18; *see generally* Tr., p.32, L.5 – p.33, L.23.)

The impact of substance abuse on the defendant’s criminal conduct is also “a proper consideration in mitigation of punishment.” *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). Mr. Fife has been struggling with drugs for over thirty years. (*See* PSI, pp.26-27.) He admitted

that when he was arrested, “he was under the influence of ‘meth, heroin, oxycodone, benzo’s, and crack.’” (PSI, p.8.) Everyone in Mr. Fife’s life recognizes he has a problem with drugs, especially heroin. His mother told the presentence investigator that her son “has trouble with drugs and has a terrible heroin addiction.” (PSI, p.22.) She told the investigator that if Mr. Fife were to address his drug addiction, “he would do much better.” (PSI, p.22.)

Courts should also look at “a willingness to seek treatment for an alcohol [or drug] problem” as a mitigating factor. *State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008). Mr. Fife said that his crime was “[s]tupid [and] selfish,” but he is grateful he is now “getting help through IDOC.” (PSI, p.8.) As previously discussed, he wants help so badly he was willing to ask the court for any suggestions it might have for him to get that help while incarcerated. (*See* Tr., p.32, L.5 – p.33, L.23.) Mr. Fife “seems to genuinely want to change his life at this point.” (Tr., p.30, Ls.17-18.) He wants to take the struggles he has experienced in his life and use them to help keep children and young adults from making the same mistakes he has made by becoming a “chemical dependency counselor.” (PSI, p.24.) Mr. Fife asserts he is ready to change and make a positive impact on the community, but he cannot do that with a prison sentence that could potentially keep him incarcerated until he is almost [REDACTED]. Accordingly, he asserts the district court did not exercise reason, and thus abused its discretion, when it imposed an aggregate sentence of twenty years, with five years fixed.

II.

The District Court Abused Its Discretion When It Denied Mr. Fife’s Rule 35 Motion

“When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in

support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007). Such a motion “is a plea for leniency,” the denial of which is reviewed for an abuse of discretion. *Id.*

Even if the indeterminate portion of Mr. Fife’s sentence was not excessive as originally imposed, it became excessive in light of the new/additional mitigation evidence Mr. Fife presented with his Rule 35 motion. At the Rule 35 hearing, Mr. Fife testified that he had not had any disciplinary issues whatsoever since going to prison. (Rule 35 Tr., p.7, Ls.2-4.) He also testified about his rehabilitative efforts since he was sentenced. (Rule 35 Tr., p.5, Ls.13-20, p.6, Ls.2-3.) Specifically, he testified that: he had been attending Narcotics Anonymous regularly (Rule 35 Tr., p.5, Ls.19-20); he recently signed up for a computer class (Rule 35 Tr., p.6, Ls.2-3); and he was on the waiting list to start working for Correctional Industries, where he hoped to gain welding and/or graphic design skills and experience (Rule 35 Tr., p.5, Ls.15-19). Finally, consistent with the proactive steps he had already taken, Mr. Fife expressed a commitment to using his time in prison productively, such as by also taking parenting classes. (Rule 35 Tr., p.6, Ls.14-20).

In light of the foregoing, as well as all of the mitigation evidence before the court at sentencing, the district court failed to exercise reason, and therefore abused its discretion, when it denied Mr. Fife’s motion for a sentence reduction.

CONCLUSION

Mr. Fife respectfully requests that this Court reduce the indeterminate portion of his trafficking sentence to ten years.

DATED this 8th day of March, 2021.

/s/ Erik R. Lehtinen
ERIK R. LEHTINEN
Chief of the Appellate Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of March, 2021, 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

ERL/eas