

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

3-4-2021

State v. Allen Appellant's Brief Dckt. 48244

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Allen Appellant's Brief Dckt. 48244" (2021). *Not Reported*. 7042.
https://digitalcommons.law.uidaho.edu/not_reported/7042

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

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

JACOB L. WESTERFIELD
Deputy State Appellate Public Defender
I.S.B. #9841
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. 48244-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-20-11687
v.)	
)	
JOHNNY DEAN ALLEN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Johnny Allen pled guilty to possession of a controlled substance (methamphetamine), the district court sentenced him to seven years, with two years fixed. Mr. Allen appeals, and he argues that the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

In March 2020, the State filed a criminal complaint alleging that Mr. Allen committed possession of a controlled substance (methamphetamine) and possession of drug paraphernalia.

(R., pp.7-8.) According to the Presentence Investigation Report (“PSI”),¹ the police detained Mr. Allen for a warrant from an unrelated felony case. (PSI, pp.4-5.) Investigators from probation and parole subsequently searched Mr. Allen after he was detained, and they found a container with methamphetamine inside on Mr. Allen’s person. (PSI, pp.4-5.)

Mr. Allen waived the preliminary hearing in his case. (R., pp.19-21.) Pursuant to a plea agreement, Mr. Allen pled guilty to possession of a controlled substance (methamphetamine). (Tr., p.13, Ls.20-23; R., pp.24-32.) The State agreed to dismiss the possession of drug paraphernalia charge and to recommend a sentence of seven years, with two years fixed.² (Tr., p.5, Ls.4-21.)

At sentencing, the State recommended a sentence of seven years, with two years fixed, and asked that the sentence be executed. (Tr., p.17, L.21—p.18, L.23.) Mr. Allen requested that the district court retain jurisdiction (a “rider”). (Tr., p.21, Ls.14-20.) The district court sentenced Mr. Allen to serve a term of seven years, with two years fixed, consecutive to any other sentence that Mr. Allen had at the time of sentencing. (Tr., p.23, L.23—p.24, L.19; R., pp.41-44.) Mr. Allen timely appealed from the judgment of conviction.³ (R., pp.51-53.)

¹ Citations to the PSI refer to the 189-page electronic document with the confidential sentencing materials, titled “Confidential Exhibits Appeal.”

² In reference to the possession of drug paraphernalia charge, the Judgment of Conviction and Commitment states that “Count II is hereby dismissed pursuant to the plea agreement.” (R., p.42.)

³ Mr. Allen filed a motion for reconsideration of sentence in this case on November 19, 2020. In that motion, Mr. Allen requested leniency “due to his age and the issues described in his pre-sentencing materials, including the mental health report.” The State filed an objection to that motion on November 19, 2020. The district court subsequently entered an order denying Mr. Allen’s motion on December 2, 2020. Mr. Allen is not challenging the district court’s denial of his motion for reconsideration of his sentence in this appeal, so the documents associated with that motion have not been included in a motion to augment the record.

ISSUES

Did the district court abuse its discretion when it sentenced Mr. Allen to seven years, with two years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Allen To Seven Years, With Two Years Fixed

“Where the sentence imposed by a trial court is within statutory limits, ‘the appellant bears the burden of demonstrating that it is a clear abuse of discretion.’” *State v. Windom*, 150 Idaho 873, 875 (2011) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

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 matter, Mr. Allen’s sentence does not exceed the statutory maximum. See I.C. § 37-2732(c)(1) (seven-year maximum). Accordingly, to show that the sentence imposed was an abuse of discretion, Mr. Allen “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘[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).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

State v. Stevens, 146 Idaho 139, 148 (2008). “A sentence is 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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

In this case, Mr. Allen asserts the district court did not exercise reason and therefore abused its discretion by imposing a sentence that is excessive under any reasonable view of the facts. Specifically, Mr. Allen contends that the district court should have retained jurisdiction in light of the mitigating factors, including his abusive childhood, community support, mental condition, substance abuse issues and amenability to treatment, and his age.

First, Mr. Allen’s abusive childhood supports a more lenient sentence. The Court of Appeals has recognized that a defendant’s “extremely troubled childhood is a factor that bears consideration at sentencing.” *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). Prior to sentencing, a psychological evaluation was conducted on Mr. Allen by Dr. Chad Sombke. (PSI, pp.140-149.) In that evaluation, Mr. Allen disclosed that he was physically abused by his father as a child. (PSI, p.141.) Due to this abuse, Mr. Allen left his home at the [REDACTED] and began to live on his own.⁴ (PSI, p.141.) According to the Global Appraisal of Individual Needs (“GAIN”) assessment, Mr. Allen began amphetamine use at the [REDACTED] as well.⁵ (PSI, p.152.) Mr. Allen was expelled from school in the eleventh grade after he stopped attending school while he was living on his own.⁶ (PSI, p.141.) Mr. Allen also disclosed that he was

⁴ Mr. Allen indicated that he started working with concrete at the [REDACTED]. (PSI, p.141.)

⁵ In the GAIN assessment, Mr. Allen also “reported first using any alcohol or other drugs at [REDACTED].” (PSI, p.152.)

⁶ Mr. Allen was administered the Rapid Estimate of Adult Literacy in Medicine (REALM) and Shipley-2 tests as part of his psychological evaluation. (PSI, pp.143-44.) The evaluator found that Mr. Allen’s results on the REALM test “places his reading level at the 4th to 6th grade level.” (PSI, p.144.) Mr. Allen scored in the three-percentile range on the Shipley-2 test, which would place his estimated level of intelligence from that test in the “Well Below Average” range. (PSI, p.144.)

molested by a female babysitter when he was young. (PSI, p.141.) Mr. Allen's troubled childhood, as well as its impact on his criminal conduct, is a mitigating factor in support of his request for a rider.

Second, Mr. Allen's community support and work history stand in favor of mitigation. *See State v. Shideler*, 103 Idaho 593, 594–95 (1982) (reducing defendant's sentence upon a finding of family support and good character as mitigation); *State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (finding that the district court acknowledged family and friend support as mitigating circumstances); *State v. Mitchell*, 77 Idaho 115, 118 (1955) (recognizing gainful employment as a mitigating factor). Mr. Allen's longtime partner, Iva Harris, prepared a letter for the district court on Mr. Allen's behalf prior to sentencing. (Aug. PSI,⁷ pp.1-2.) In that letter, Ms. Harris explained that Mr. Allen had repaired an old condominium that was owned by a person with polio a few years prior to sentencing in this case. (Aug. PSI, p.2.) According to Ms. Harris, Mr. Allen painted the entire unit, found someone to lay new carpet, replaced the plumbing, and set up a new furnace in the condominium. (Aug. PSI, p.2.) Mr. Allen even gave blood twice a week to obtain the funds that were needed for the repairs. (Aug. PSI, p.2.) Ms. Harris indicated that she would continue to provide support for Mr. Allen in the community. (Aug. PSI, pp.1-2.)

Mr. Allen also has a lengthy work history, including being previously self-employed as a concrete contractor. (PSI, pp.21-22.) According to defense counsel, "Mr. Allen has worked all his life and he has marketable skills. He has long experience in construction and concrete work." (Tr., p.19, Ls.22-24.) Mr. Allen's community support and work history are mitigating factors that support his request for a rider.

⁷ Citations to the "Aug. PSI" refer to the 2-page electronic document included with the supplemental confidential materials titled "Appeal Supplemental Confidential Exhibit."

Third, Mr. Allen's mental condition is a significant mitigating factor that supports leniency in sentencing. The Idaho Supreme Court has recognized that Idaho Code § 19-2523 not only suggests, but requires, the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). If a defendant's mental condition is a significant factor, then Idaho Code § 19-2523 requires the court to consider factors such as: (a) the extent to which the defendant is mentally ill; (b) the degree of illness or defect and level of functional impairment; (c) the prognosis for improvement or rehabilitation; (d) the availability of treatment and level of care required; (e) any risk of danger which the defendant may create for the public if not incarcerated, or the lack of such risk; and (f) the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law at the time of the offense charged. "The factors listed in Idaho Code § 19-2523 provide a manner in which to evaluate the mental health information presented to the sentencing court." *Strand*, 137 Idaho at 461.

Mr. Allen's mental health was evaluated in the psychological evaluation previously mentioned. (PSI, pp.140-49.) In that evaluation, Dr. Sombke noted that "[i]t is likely that Mr. Allen is experiencing some Posttraumatic Stress Disorder (PTSD) symptoms from the trauma he has experienced throughout his life." (PSI, p.142.) Dr. Sombke also indicated that Mr. Allen "does appear willing to accept treatment at this time because he frequently stated that he is tired of living this way, but he does not know how to live normally in society the way he is now." (PSI, p.142.) In addition to PTSD, Dr. Sombke found that Mr. Allen could also be considered to have an antisocial personality disorder and that Mr. Allen's functional impairment from both his PTSD and antisocial personality disorder is moderate. (PSI, p.146.) Dr. Sombke indicated that treatment was available in the community for both Mr. Allen's PTSD and

antisocial personality disorder, but that Eye Movement Desensitization and Reprocessing treatment for Mr. Allen's PTSD would likely not be available in an incarcerated setting. (PSI, pp.146-47.) According to Dr. Sombke, Mr. Allen's risk to the community at large would increase without proper treatment of his psychiatric and personality disorder issues. (PSI, p.147.)

During the GAIN assessment, Mr. Allen self-reported symptoms consistent with a diagnosis of Generalized Anxiety Disorder. (PSI, p.154.) Mr. Allen also disclosed that he had been diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD) as a child, and that he has continued to have problems due to that disorder. (PSI, pp.150, 154-55.) Based on these provision diagnoses, a mental health examination report was prepared for Mr. Allen pursuant to I.C. § 19-2524. (PSI, pp.161-64.) In that report, the examiner recommended that Mr. Allen receive mental health treatment "to avoid deterioration of function and to monitor for any ongoing risk." (PSI, p.163.) The examiner indicated that, "[w]ithout some form of treatment, it is likely [Mr. Allen] will continue to struggle with symptoms and problems may increase." (PSI, p.163.)

At sentencing, defense counsel indicated that Mr. Allen "does have mental health issues, per his 19-2524 evaluation, and Mr. Allen is at a point and has reached an age where he is ready to deal with these issues that's [*sic*] he's swept under the rug for a lot of years." (Tr., p.19, Ls.9-13.) Mr. Allen's defense counsel further stated that Mr. Allen "acknowledges he needs more structure and accountability when he gets out. He has never been on mental health medications and thinks that that is something that he needs to attempt in order to start putting his life together." (Tr., p.19, Ls.14-18.) Mr. Allen requested that he be given an opportunity for

treatment for his mental health issues in the community and indicated that he had begun making arrangements for that community treatment. (Tr., p.22, Ls.1-13.)

Mr. Allen asserts that the district court did not adequately consider his mental health as a factor at sentencing as required under Idaho Code § 19-2523. Mr. Allen's mental health was a significant factor, and there were substantial concerns listed if Mr. Allen does not receive adequate treatment for his mental health needs. Furthermore, some of the recommended treatment, specifically the Eye Movement Desensitization and Reprocessing program for PTSD, was likely not available for Mr. Allen in an incarcerated setting. "The sentencing court is not required to recite each of the factors listed." *Strand*, 137 Idaho at 461. However, Mr. Allen asserts that the district court did not give adequate consideration to the factors listed under Idaho Code § 19-2523, and the lengthy prison sentence imposed suggests it did not. Mr. Allen's mental condition stands in favor of mitigation and leniency in this case.

Fourth, Mr. Allen's substance abuse issues, the impact of his substance abuse on his behavior, and his need for treatment are strong factors in mitigation. The impact of substance abuse on the defendant's criminal conduct is "a proper consideration in mitigation of punishment upon sentencing." *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). In his psychological evaluation, Mr. Allen disclosed that he has had a history of abusing alcohol, marijuana, and methamphetamine. (PSI, p.142.) Dr. Sombke found that "Mr. Allen can first be considered to have a serious substance abuse problem. He has been abusing drugs since he was young and he has been unable to maintain his sobriety in the community. His level of functional impairment from his drug abuse is severe." (PSI, p.146.) Dr. Sombke recommended that Mr. Allen receive substance abuse treatment, and he found that Mr. Allen may be amendable to treatment since

Mr. Allen's "insight into his substance use problem is good and he reportedly wants to finally discontinue his drug use." (PSI, pp.146-47.)

In the GAIN assessment, Mr. Allen disclosed that he had been using methamphetamine daily prior to his arrest. (PSI, p.150.) Mr. Allen self-reported symptoms that were sufficient to meet the criteria for amphetamine use disorder severe. (PSI, pp.151-52.) Despite Mr. Allen's near life-long substance abuse issues, the assessor found that Mr. Allen's "responses indicate high motivation for treatment" and Mr. Allen reported that he "is about 100% ready to remain abstinent." (PSI, pp.155-56.) The assessor found that Mr. Allen met the criteria for Level 2.1 Intensive Outpatient Treatment services. (PSI, p.159.)

At sentencing, Mr. Allen requested that the district court give him an opportunity for treatment in the community for his controlled substance issues. (Tr., p.22, Ls.2-7.) Mr. Allen's substance abuse issues and willingness to participate in treatment stands in favor of mitigation and leniency in this case.

Fifth, Mr. Allen's age and physical health issues are a mitigating factor. *See State v. Cobell*, 148 Idaho 349, 356 (Ct. App. 2009) (acknowledging district court's consideration of defendant's old age and health problems as mitigating factors). At the time of sentencing, Mr. Allen was [REDACTED] (*See, e.g.*, PSI, pp.1, 140-41, 150, 161.) In the presentence investigation report from 2017 that was included with the confidential sentencing materials, Mr. Allen disclosed that he had been diagnosed with high blood platelets, atrial fibrillation for his heart, and migraine headaches. (PSI, pp.22-23, 142.) Mr. Allen also reported that he had surgery due to blood pooling in the top of his heart. (PSI, p.23.) Mr. Allen's age and physical health issues stand in favor of mitigation and leniency in this case.

In sum, Mr. Allen maintains the district court did not exercise reason at sentencing because it failed to give adequate weight to the mitigating factors in his case. Proper consideration of these factors supported his request for a rider. Mr. Allen submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Allen respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 4th day of March, 2021.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th 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

JLW/eas