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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48304-2020
Plaintiff-Respondent,)	
)	BANNOCK COUNTY NO. CR03-19-12662
v.)	
)	
ERIC CHAVEZ,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Eric Chavez pled guilty to possession of methamphetamine, the district court sentenced him to seven years, with five years fixed, and retained jurisdiction. The district court later relinquished jurisdiction and executed his seven-year sentence. On appeal, Mr. Chavez argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

Officers were called to a Taco Bell parking lot to investigate a reported disturbance involving Mr. Chavez. (PSI, p.4; R., p.12.) The reporting party informed the officers that

Mr. Chavez could be found at an apartment complex, and the officers headed there to speak with him. (PSI, pp.4-5; R., p.12.) When one of the officers arrived at the apartment complex, she saw Mr. Chavez and another man standing on the stoop, and called out to them. (PSI, p.5; R., p.12.) Mr. Chavez began to walk away from the officers. (PSI, p.5; R., p.12.) When the officer again called out to him, he turned and ran. (PSI, p.5; R., p.12.) Mr. Chavez was eventually arrested for resisting and obstructing officers. (PSI, p.5; R., p.12.) After being advised of his *Miranda*¹ rights, officers searched him, and discovered a syringe containing methamphetamine residue in his pant pocket. (PSI, p.5; R., p.12.)

The State filed a complaint against Mr. Chavez for possession of methamphetamine in November 2019. (R., pp.8-9.) After he waived his preliminary hearing, the magistrate judge bound him over to district court, and he was charged by information with possession of methamphetamine. (R., pp.33-34, 36-37.) The State also charged Mr. Chavez with being a persistent violator of the law. (R., pp.38-39.) Pursuant to a plea agreement, Mr. Chavez pled guilty to possession of methamphetamine, and the State dismissed the persistent violator enhancement. (R., pp.77-78; 2/3/20 Tr.,² p.5, L.7 – p.8, L.25.)

A sentencing hearing was held in May 2020. (*See* 5/4/20 Tr.) At that hearing, the State recommended that the district court sentence Mr. Chavez to five years, with two years fixed, and retain jurisdiction (“a rider”). (5/4/20 Tr., p.13, Ls.16-17, p.14, Ls.10-14.) Defense counsel recommended that the district court put him on probation. (5/4/20 Tr., p.14, Ls.19-20.) The

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

² The Reporter’s Transcript consists of two separately-paginated transcripts in one electronic document (ten pages of the overall document). Each will be cited with reference to its internal pagination. The first transcript, cited as “2/3/20 Tr.,” contains the change of plea hearing held on February 3, 2020 (pages five to nine). The second transcript, cited as “5/4/20 Tr.,” contains the sentencing hearing held on May 4, 2020 (pages ten to twenty-three).

district court exceeded even the State's recommendation, and sentenced Mr. Chavez to seven years, with five years fixed, and retained jurisdiction. (5/4/20 Tr., p.17, Ls.8-14; R., pp.91-93.)

A few months later, Mr. Chavez was removed from the rider program for a physical altercation with another inmate. (PSI, p.44.) The district court relinquished jurisdiction. (R., pp.96-97.) Mr. Chavez appealed timely from the relinquishment order. (R., pp.96-97.)

ISSUES

Did the district court abuse its discretion when it imposed an excessive sentence of seven years, with five years fixed, upon Mr. Chavez?

ARGUMENT

The District Court Abused Its Discretion When It Imposed An Excessive Sentence of Seven Years, With Five Years Fixed, Upon Mr. Chavez

Mr. Chavez asserts that, given any view of the facts, his sentence of seven years, with five 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 giving consideration to 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).

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, 577 (1979)). Mr. Chavez does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, he 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.*

Appellate courts use a four-part test for determining whether a district court abused its discretion: 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).

Here, Mr. Chavez asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment in light of the mitigating factors, including his troubled childhood, his substance abuse and its longstanding impact on his life, his amenability to treatment, and his mental health issues.

██████████ Mr. Chavez grew up with two alcoholic parents. (PSI, p.12.) His father eventually passed away from alcohol abuse when he was around eleven or twelve years-old. (PSI, p.11.) He stated he was first arrested at ██████████ for burglary, and reported being in and out of detention, on juvenile probation, and in group homes or foster care, until the ██████████ ██████████ (PSI, pp.11, 18.) 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). Mr. Chavez stated that he was either removed from his mother's custody or kicked out of the house at ██████████. (PSI, pp.11, 18.) He reported that he joined a gang when he was ██████████. (PSI, p.12.) To his credit, he dropped out of gang life in 2009, but he still has problems due to the tattoos on his body, which are easily recognized by other gang members. (PSI, p.12.) He noted that one of his brothers died in California due to gang

violence. (PSI, p.12.) Mr. Chavez dropped out of high school after the eleventh grade because he was in foster care, and ran away from home. (PSI, p.14.) He stated that he was shot at three times within a few days, and decided to leave California for Idaho to save his life. (PSI, p.13.)

Mr. Chavez has struggled with drug and alcohol abuse from a young age. 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). He reported that he first drank alcohol and used marijuana at [REDACTED]. (PSI, pp.15-16.) He stated that he first used inhalants when he was eleven or twelve, and began using methamphetamine daily at [REDACTED] [REDACTED] (PSI, pp.15-16.) He previously completed substance abuse treatment as a juvenile at the Cinnamon Hills Youth Crisis Center in 1997. (PSI, p.16.) The Global Appraisal of Individual Needs ("GAIN") evaluator diagnosed Mr. Chavez with Severe Stimulant Use Disorder. (PSI, p.22.) Mr. Chavez noted that his longest period of sobriety was fifteen months,³ and he relapsed a few days prior to committing the instant offense. (PSI, p.16.) He reported that he has quit using substances and is 100% ready to remain abstinent. (PSI, p.28.) He acknowledged that treatment is most needed for methamphetamine. (PSI, p.22.)

Mr. Chavez's mental health issues also stand in favor of mitigation. "[T]he defendant's mental condition is simply one of the factors that must be considered and weighed by the court at sentencing." *State v. Delling*, 152 Idaho 122, 132 (2011). Mr. Chavez reported that he was diagnosed with anxiety and depression in prison. (PSI, pp.15, 21.) He recalled receiving mental health treatment as a juvenile, and said he has taken medication off and on over the years because of the side effects. (PSI, p.15.) His mental health examination report concluded he

³ There is conflicting information in the record regarding the length of Mr. Chavez's sobriety. Page sixteen of the PSI states that he was sober for fifteen months, while page seventeen says he was sober for two and a half years.

presents with serious mental health problems and recommended individual or group therapy, psychiatric medication evaluation, management, and education. (PSI, pp.17-18, 36.) His GAIN evaluator diagnosed him with Generalized Anxiety Disorder, Posttraumatic Stress Disorder (“PTSD”) or Acute Stress Disorder or other disorder of extreme stress, and Attention Deficit Hyperactivity Disorder (“ADHD”). (PSI, pp.22, 34.).

Despite Mr. Chavez’s troubled childhood, serious substance abuse, and mental health issues, he has demonstrated a willingness to try and change his behavior and get treatment. He removed himself from gang life, and moved away from California in order to create a better life for himself. Mr. Chavez has acknowledged that his substance abuse has caused problems in his life, and he is ready to remain sober.

Proper consideration of these mitigating factors supported a more lenient sentence of five years, with two years fixed. In light of these facts, Mr. Chavez submits that the district court did not exercise reason, and thus abused its discretion, by sentencing him to serve seven years, with five years fixed.

CONCLUSION

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

DATED this 10th day of March, 2021.

/s/ Kiley A. Heffner
KILEY A. HEFFNER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th 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/ Kylie M. Fournier
KYLIE M. FOURTNER
Administrative Assistant

KAH/kmf