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

KILEY A. HEFFNER
Deputy State Appellate Public Defender
I.S.B. #10999
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,)	
)	
Plaintiff-Respondent,)	NO. 48368-2020
)	
v.)	ADA COUNTY NO. CR01-19-53721
)	
BERNARDO BRAVO-VASQUEZ,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Bernardo Bravo-Vasquez pled guilty to felony driving under the influence, the district court imposed a sentence of ten years, with four years fixed. On appeal, Mr. Bravo-Vasquez argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

According to the presentence investigation report (“PSI”), officers received a call about a suspected drunk driver. (PSI, p.42; R., p.11.) The caller reported that a man had been refused alcohol at one gas station, then got into his truck and drove, and was swerving all over the road.

(R., p.11.) The truck then parked at another gas station, a Chevron. (PSI, p.42; R., p.11.) When officers arrived at the Chevron, they saw Mr. Bravo-Vasquez standing near the driver's side of the truck, and walked over to speak with him. (PSI, p.2; R., p.11.) Mr. Bravo-Vasquez denied drinking any alcohol that day, and told officers that he drove from his house to the store to get a soda. (PSI, p.42; R., p.11.) Officers performed the Horizontal Gaze Nystagmus test, the Walk and Turn test, and the One Leg Stand test, and Mr. Bravo-Vasquez failed all three tests. (PSI, p.42; R., p.11.) He also gave two breath samples that measured a blood alcohol content of .204 and .210. (PSI, p.42; R., p.11.) Mr. Bravo-Vasquez was then arrested for driving under the influence. (PSI, p.42; R., p.11.)

The State filed a complaint against Mr. Bravo-Vasquez for felony driving under the influence. (R., pp.8-9.) He was charged with a felony due to the fact that he had two prior felony driving under the influence convictions within the past ten years. (R., pp.3, 11.) After Mr. Bravo-Vasquez waived his preliminary hearing, he was bound over to district court, and charged by information with felony driving under the influence. (R., pp.26, 29-30.) Mr. Bravo-Vasquez entered into a plea agreement with the State and pled guilty to driving under the influence in exchange for the State's sentencing recommendation of ten years, with five years fixed. (2/27/20 Tr.,¹ p.4, L.12 – p.6, L.13; R., pp.34-44.) Under the terms of the plea agreement, the State also agreed not to file an Information Part Two charging him with being a persistent violator of the law.² (2/27/20 Tr., p.6, Ls.5-9.)

¹ The Reporter's Transcript consists of two separately-paginated transcripts in one electronic document. Each will be cited with reference to its internal pagination. The first transcript, cited as "2/27/20 Tr.," contains the entry of plea hearing, held on February 27, 2020 (pages one to ten of the overall document). The second transcript, cited as "10/13/20 Tr.," contains the sentencing hearing, held on October 13, 2020 (pages eleven to twenty-one of the overall document).

² The State also filed a motion to consolidate Mr. Bravo-Vasquez's two pending cases with his current case, for purposes of sentencing. (R., p.45.)

A sentencing hearing was held in October 2020. (*See generally* 10/13/20 Tr.) Following the terms of the plea agreement, the State recommended the Court impose a ten-year sentence, with five years fixed. (10/13/20 Tr., p.10, L.24 – p.11, L.2.) Defense counsel asked the district court to impose a sentence of seven years, with two years fixed, and retain jurisdiction. (10/13/20 Tr., p.18, L.21 - p.20, L.5.) The district court sentenced him to ten years, with four years fixed.³ (10/13/20 Tr., p.26, Ls.23 – p.27, L.18; R., pp.59-69.)

ISSUE

Did the district court abuse its discretion when it imposed an excessive sentence of ten years, with four years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Imposed An Excessive Sentence Of Ten Years, With Four Years Fixed

Mr. Bravo-Vasquez asserts that, given any view of the facts, his sentence of ten years, with four years fixed, without retained jurisdiction, 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. Bravo-Vasquez does not allege that his sentence exceeds the statutory

³ In case nos. CR-MD-2010-12138 and CR-MD-2014-3646, the district court commuted both of Mr. Bravo-Vasquez’s sentences to time served. (10/13/20 Tr., p.25, L. 2 – p.26, L.6.)

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. Bravo-Vasquez 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, or alternatively, retained jurisdiction, in light of the mitigating factors, including Mr. Bravo-Vasquez's substance abuse issues and their impact on his life, his amenability to treatment, a language barrier that impeded prior rehabilitative efforts, and his family support.

██████████ Mr. Bravo-Vasquez was born in Penjamo, Guanajuato, Mexico. (PSI, p.8.) He first began using drugs or alcohol at ██████████. (PSI, p.23.) He reports symptoms sufficient to meet criteria for severe Alcohol Use Disorder. (PSI, pp.24, 34.) When sentencing a defendant, the trial court must "give proper consideration [to] the defendant's alcoholic problem, the part it played in causing defendant to commit the crime, and the suggested alternatives for treating the problem." *State v. Nice*, 103 Idaho 89, 91 (1982). Mr. Bravo-Vasquez reported six lifetime problems specific to Alcohol Use Disorder. (PSI, p.24.) He stated that he

was treated in an emergency room for substance abuse more than a year ago, and was ordered to attend substance abuse treatment. (PSI, p.26.) He admitted that “driving with alcohol” has contributed to his history of legal problems. (PSI, p.6.) He stated that he feels alcoholism due to divorce from his wife has contributed to his criminal behavior. (PSI, p.17.) Mr. Bravo-Vasquez reported that he has quit using substances and is ready to remain sober. (PSI, p.27.) He reports being 100% ready to maintain abstinence, acknowledges his substance abuse problems, and is ready to attend treatment. (PSI, p.32.) His Global Appraisal of Individual Needs (“GAIN”) evaluator recommended him for a Level I Outpatient Treatment Program, and recommended making necessary adaptations to treatment curriculum to accommodate Mr. Bravo-Vasquez’s problems with reading and writing. (PSI, pp.26, 32.)

During a prior period of retained jurisdiction (a “rider”), Mr. Bravo-Vasquez’s case manager confirmed illiteracy and a language barrier caused an obstruction to his treatment. (PSI, pp.3-4.) Nevertheless, he appeared to be following prison rules and was described as involved in all his classes. (PSI, pp.3-4.) Several positive entries described his behavior and progress as “commendable, appreciable, earnest, and engaged.” (PSI, p.4.) Mr. Bravo-Vasquez was given treatment books during his rider program, and stated that he never understood them - he just copied from them, and did not know what they were about. (10/13/20 Tr., p.20, Ls. 9-14.)

Mr. Bravo-Vasquez had a difficult time navigating and understanding the terms of his probation due to his illiteracy and the fact that he only speaks Spanish. When asked if he was on probation during his GAIN evaluation, he stated he was not sure, as he went to see his probation officer and was told he would be contacted, and stated that no one ever contacted him. (PSI, p.22.) After being released from jail in 2016, Mr. Bravo-Vasquez told his probation officer that he did not know when to report to the probation office. (PSI, p.54.) The officer informed

him that he should have reported within twenty-four hours of his release, and noted that Mr. Bravo-Vasquez did not know much about his case. (PSI, p.54.) When he moved to a new residence while on probation, he told his probation officer that he did not know he was required to obtain approval before moving. (PSI, p.4.) Several times throughout his probation, officers conducting a compliance check on Mr. Bravo-Vasquez noted difficulty in communicating with him due to the fact that he only speaks Spanish, and is illiterate. (PSI, pp.63, 72, 80.) After conducting a compliance check on Mr. Bravo-Vasquez in 2016, one of the officers noted that it was very difficult to communicate with him, and stated that he needs a Spanish speaking officer. (PSI, p.63.) On another occasion, after informing Mr. Bravo-Vasquez that he would need to report to the probation office the next day, one of the officers stated that he was not sure if Mr. Bravo-Vasquez understood him. (PSI, p.72.) In 2017, after another compliance check, the officer made a note about getting Mr. Bravo-Vasquez transferred to a Spanish speaking probation officer. (PSI, p.73.) Additionally, Mr. Bravo-Vasquez reported he tried to attend a treatment program, but was turned away due to his lack of English. (PSI, p.74.) Furthermore, it appears that Mr. Bravo-Vasquez was receiving emails relating to his probation that were written in English, even though he only speaks Spanish and cannot read English or Spanish. (PSI, p.79.) Despite some setbacks while on probation, his probation officer noted that he has done a good job at working and remaining employed. (PSI, p.5.)

The Idaho Supreme Court noted in *State v. Shideler*, 103 Idaho 593, 594 (1982), that family and friend support were factors that should be considered in the court's decision as to what is an appropriate sentence. Mr. Bravo-Vasquez is very close with his family and reported that they are very supportive. (PSI, pp.13, 30, 32.) He stated that he has a good relationship with his mother, who still lives in Mexico. (PSI, pp.5, 6.) He noted that he is also very close to his

brothers, and lived with one of them prior to his arrest. (PSI, p.5.) His brother often drove him to and from work, and would take him to his required classes when he was on probation. (PSI, pp.5, 57, 70.) Letters of support from his nephew, friend from work, and brothers, describe Mr. Bravo-Vasquez as a hard-worker and someone who is always willing to lend a hand. (Exh., pp.1-6.)⁴ His brother noted that he has been a role model to his children and has always inspired them to work hard in order to reach their goals. (Exh., pp.2, 4.)

Notwithstanding Mr. Bravo-Vasquez's serious alcohol addiction, he has shown a willingness to try and overcome his addiction and get treatment. He has acknowledged that drinking has contributed to his history of legal problems and was adamant about maintaining his sobriety. While on a rider and during his period of probation, Mr. Bravo-Vasquez had a difficult time navigating and understanding his treatment and the terms of his probation. Despite the language barrier and his illiteracy, Mr. Bravo-Vasquez successfully completed his rider. He followed all the rules, was involved in all his classes, and had a job in the facility kitchen. (PSI, pp.3-4.) His probation officer noted that he has done a good job at working and remaining employed. (PSI, p.5.) Mr. Bravo-Vasquez indicated that he plans to return to the same job upon his release, and hopes to return to live with his brother. (PSI, pp.5, 6.) Accordingly, Mr. Bravo-Vasquez submits that a rider program, hopefully in Spanish, will adequately protect society while also allowing him to receive necessary substance abuse treatment.

Proper consideration of these mitigating factors supported a more lenient sentence. In light of these facts, Mr. Bravo-Vasquez submits that the district court did not exercise reason, and thus abused its discretion, by declining to retain jurisdiction, and by sentencing him to serve ten years, with four years fixed.

⁴ Citations to "Exh." reference the 8-page electronic document titled "Appeal Exhibits 12-8-2020. . ." which contains letters of support from Mr. Bravo-Vasquez's family and friends.

CONCLUSION

Mr. Bravo-Vasquez respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests this Court vacate his judgment of conviction and remand this case to the district court for an order retaining jurisdiction.

DATED this 11th day of February, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February 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. Fourtner
KYLIE M. FOURTNER
Administrative Assistant

KAH/kmf