12-26-2017

State v. Ayala Appellant's Brief Dckt. 45048

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45048**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO. CR01-16-32723**
v.	)	
	)	
JESUS GEORGE AYALA,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE DEBORAH A. BAIL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

This case challenges the constitutional validity of a police officer's warrantless arrest of a parolee, Jesus George Ayala, without probable cause to believe Mr. Ayala had committed any crime, and without a written "agent's warrant" required by Idaho Code § 20-227. The arrest was based solely on the oral request of a parole officer to locate and pick up Mr. Ayala for absconding from parole supervision. The parole officer told police he intended to issue an agent's warrant, but before the agent's warrant was prepared, the police officer arrested Mr. Ayala, searched him, and discovered drugs and paraphernalia in his possession.

Mr. Ayala moved to suppress the evidence, claiming the police violated his state and federal constitutional rights against unreasonable seizures and searches by arresting him without a warrant, without probable cause to believe he was committing a crime, and without other valid arrest authority. The State offered no evidence of any parole term or condition showing that Mr. Ayala had expressly waived his search and seizures rights or had agreed to submit to warrantless arrests or searches. The district court denied Mr. Ayala's motion to suppress, concluding that the parole officer's oral request to arrest Mr. Ayala provided police both probable cause to make the arrest, and the authority to act on behalf of the parole officer, as his agents, to make a warrantless arrest.

On appeal, Mr. Ayala contends that the district court's conclusions are erroneous and that the decision denying his suppression motion should be reversed. Alternatively, he asserts that his sentence of seven years, with one-year fixed, imposed after he conditionally pled guilty to possessing a controlled substance and paraphernalia, is excessive under the circumstances and represents an abuse of the district court's sentencing discretion.

Statement of the Facts and Course of Proceedings

On October 2, 2016, Ada County sheriff's deputy Sergeant Matthew Steele was notified via telephone that Mr. Ayala was wanted by his parole officer in Blaine County for absconding parole, and that the parole officer intended to issue an agent's warrant if Mr. Ayala was located. (Tr., p.10, L.17 – p.11, L.1, p.34, Ls.9-14.) After receiving a tip from a confidential informant, fellow police officers found Mr. Ayala sitting outside of a Target store in Boise and made contact with him. (Tr., p.20, L.22 – p.21, L.4.) Sergeant Steele watched from a distance in his patrol car while speaking on the phone with Mr. Ayala's parole officer, Keven Wayt; Parole Officer Wayt told Sergeant Steele he would[1] issue an "agent's warrant."[2] (Tr., p.20, L.22 – p.21, L.4, p.34, Ls.11-14.)

However, the police did not wait for the agent's warrant to issue. Instead, the police informed Mr. Ayala they were taking him into custody and handcuffed him, then placed him in the back of a patrol car and transported him to the Ada County jail. (Tr., p.17, Ls.1-5, p.20, Ls.13-25, p.34, Ls.15-23.) During a search incident to the arrest,[3] police discovered methamphetamine and paraphernalia in Mr. Ayala's possession. (Tr., p.34, Ls.15-22.) Only after the drugs were discovered did the parole officer prepare a written agent's warrant and email

[1] There is no evidence that police were advised an agent's warrant had already been prepared or issued. (*See* Tr., pp.5-10; R., pp.61-83.)

[2] Idaho Code § 20-227(1) authorizes a parole officer to arrest a parolee without a warrant, or to "deputize any other officer with arrest power to do so, by giving such officer a written statement, referred to as an agent's warrant," that in the judgment of the parole officer, the parolee violated the conditions of parole.

[3] Sergeant Steele testified that he believed the methamphetamine was discovered during the initial search incident to arrest (Tr., p.23, Ls.12-21); the police report indicates the drugs were discovered during a second search conducted after Mr. Ayala arrived at the jail (R., p.73). The district court made no specific finding regarding where Mr. Ayala was when the drugs were discovered, but the court did make a specific finding that the agent's warrant was issued after the arrest, and after the search conducted incident to that arrest when the drugs were discovered. (Tr., p.34, Ls.19-23.)

it to Sergeant Steele. (Tr., p.34, Ls.15-23; Exhibit 1.) The agent's warrant alleged two parole violations: absconding; and a new felony, possession of controlled substances (Tr., p.24, Ls.1-6, p.27, Ls.9-12; Exhibit A), the latter "new felony" being from the evidence found during the search incident to the arrest (Tr., p.24, Ls.22-25). Based on this evidence, the State charged Mr. Ayala with possession of a controlled substance and possession of drug paraphernalia; the State also filed a persistent violator enhancement. (R., pp.7, 39, 78.)

Mr. Ayala filed a motion to suppress the evidence. (R., pp.59, 61.) He claimed police violated his right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment of the federal constitution, and by Article I, § 17, of the Idaho Constitution, when the police officers arrested him without a warrant,[4] without probable cause to believe he had committed any criminal offense, and without legal authorization to make a warrantless arrest on behalf of the parole officer granted by Idaho Code § 20-227(1). (R., pp.61-66; Tr., p.28, L.13 – p.29, L.10.) The State objected, arguing that Mr. Ayala did not have a constitutional right or standing to contest the search because he was on parole at the time (R., pp.81-83; Tr., p.31, Ls.7-15); however, the State offered no evidence of the terms and conditions of Mr. Ayala's parole agreement (*see generally* Tr., pp.5-10). The State additionally argued that information the police received from the parole officer – that the parole officer wanted Mr. Ayala for absconding and intended to issue an agent's warrant – provided sufficient information for the police to make the arrest. (Tr., p.31, L.16 – p.32, L.25.) Finally, the State asserted that the police action was justified as a detention because Mr. Ayala was a flight risk, although the State offered no

[4] Sergeant Steele testified that the police had no judicial warrant to arrest of Mr. Ayala. (Tr., p.25, Ls.9-13.) The record contains no evidence of any warrant having been issued by the Commission of Pardons and Parole, pursuant to Idaho Code § 20-228, or the pertinent Rules of the Commission of Pardons and Parole, IDAPA 50.01.01.400.02.

evidence or argument to support the full custodial arrest on that ground. (Tr. p.33, Ls.1-4.)

The district court denied the suppression motion. (Tr., p.37, Ls.9-12.) While the court explicitly found that the parole officer had not prepared or issued the agent's warrant until *after* the police had arrested Mr. Ayala, and *after* the drugs had been found (Tr., p.34, Ls.19-23, p.36, Ls.1-4), the court ruled that the arrest was nevertheless lawful, offering three justifications. First, the district court found that the police had probable cause to make the arrest based on their knowledge that Mr. Ayala was wanted by his parole officer for absconding. (Tr., p.35, Ls.15-22.) Second, citing the Court of Appeals' decision in *State v. Armstrong*[5] as controlling, the district court ruled that the arrest was lawful because the police were acting as agents of the parole officer in carrying out the parole officer's oral request for assistance. (Tr., p.34, L.24 – p.37, L.2.) Third, the district court mentioned that a parolee has less expectation of freedom from law enforcement contact. (Tr., p.36, Ls.6-10.)

Following the denial of his motion to suppress, Mr. Ayala entered a conditional guilty plea to possession of a controlled substance and to possession of drug paraphernalia, reserving his right to appeal the denial of his motion to suppress; the State also dismissed the persistent violator enhancement. (Tr., p.37, L.21 – p.19, L.20, p.46, Ls.1-3.) At sentencing, Mr. Ayala asked the district court to impose a fixed term of six months to a year, and an indeterminate term of not more than two years. (Tr., p.57, Ls.20-24.) The court sentenced him to one year fixed, followed by six years, for a unified sentence of seven years total. (Tr., p.64, Ls.5-7.) Mr. Ayala timely appealed.

[5] 158 Idaho 364 (Ct. App. 2015).

ISSUES

I. Did the district court err when it denied Mr. Ayala's motion to suppress?

II. Did the district court abuse its discretion by imposing an excessive sentence?

ARGUMENT

I.

The District Court Erred When It Denied Mr. Ayala's Motion To Suppress

A. Introduction

The district court erred when it failed to suppress evidence that was discovered as a result of the police's unlawful[6] arrest and subsequent search of Mr. Ayala. Mr. Ayala has established that the police arrested him without a warrant, and the State failed in its burden to demonstrate the arrest was lawful under any recognized exception to the warrant requirement. The police had no probable cause to believe Mr. Ayala had committed any crime, and the parole officer failed to deputize the police, as required by statute, to carryout out a warrantless arrest on his behalf. Although Mr. Ayala was a parolee at the time, the State offered no evidence that he had waived his constitutional rights or agreed to be subjected to warrantless arrests or searches under the terms and conditions of his parole agreement. On this record, the only limitation of constitutional seizure and search rights to which Mr. Ayala was arguably[7] subjected as a parolee is the statutory provision, Idaho Code § 20-227(1) authorizing a parole officer (1) to arrest him without a warrant, or else (2) to deputize any other officer with arrest power to do so "by giving such officer a written statement" known as an "agent's warrant." *See* Idaho Code § 20-227(1). The parole officer did not do either one in this case.

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[6] In the district court, Mr. Ayala additionally argued for suppression under the Fourteenth Amendment. (R., p.58.) He does not pursue that argument in this appeal.

[7] Mr. Ayala did not challenge, in the district court, the constitutionality of the warrantless arrest provision contained in Idaho Code § 20-227(1), and he does not raise the constitutionality of that statute on appeal. Rather, his appellate argument is the same he made in the district court: the statute had no operative effect in this case, because the parole officer neither made the warrantless arrest, nor deputized any other officer to do so.

The State has failed to demonstrate that Mr. Ayala's warrantless arrest fell within any recognized exception to the warrant requirement. Mr. Ayala is entitled to suppression of all evidence resulting from the unlawful arrest, including evidence discovered as a result of the subsequent search incident to that arrest. The district court's denial of his motion to suppress should be reversed.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When this Court reviews an order granting or denying a motion to suppress, it accepts the trial court's factual findings unless they are clearly erroneous. However, this Court freely reviews the trial court's application of constitutional principles in light of those facts. *State v. Eversole*, 160 Idaho 239, 242 (2016).

C. The State Failed To Carry Its Burden Of Establishing The Warrantless Arrest Of Mr. Ayala Was Constitutionally Reasonable, And The Evidence Discovered As The Result Of That Seizure Should Have Been Suppressed

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, and effects, against unreasonable searches and seizures." U.S. Const. amend IV. The Idaho Constitution also offers protection against unlawful search and seizure. Idaho Const. art. I, § 17; *State v. Green*, 158 Idaho 884 (2015).

Warrantless searches and seizures are presumptively unreasonable under both the federal and Idaho constitutions unless they come within one of the established exceptions to the warrant requirement. *Green*, at 886-87, (citing *California v. Acevedo*, 500 U.S. 565, 580 (1991) and *State v. Henderson*, 114 Idaho 293, 295, 756 P.2d 1057, 1059 (1988)). Once a defendant has established that a warrantless search occurred, the State bears the burden of establishing that a valid exception applies. *State v. Armstrong*, 158 Idaho 364, 370 (Ct. App. 2015).

Evidence obtained in violation of these constitutionally-guaranteed protections is subject to the exclusionary rule, which requires the suppression of both primary evidence obtained as a direct result of an illegal search or seizure, and evidence later discovered and found to be derivative of an illegality, that is, "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963); *State v. Guzman*, 122 Idaho 981, 988-98 (1992).

Here, the police discovered evidence during a search incident to the warrantless arrest of Mr. Ayala. As demonstrated below, the warrantless arrest was constitutionally unlawful. The police lacked probable cause to arrest because they had no reason to believe Mr. Ayala was committing any crime; and the State has failed to establish that the arrest fell within any other recognized exception to the warrant requirement. The exclusionary rule should be applied in this case to suppress the evidence obtained as the result of that illegal seizure, and the district court's failure to do so was error.

The district court offered three possible justifications for the police's warrantless arrest of Mr. Ayala: (1) that the verbal report of Mr. Ayala as an absconder gave the police probable cause to make the arrest; (2) that the arrest was justified under the Court of Appeals' decision in *State v. Armstrong*[8]; and (3) that a parolee has less expectation of freedom from law enforcement contact. (Tr., p.34, L.24 – p.37, L.2.) As demonstrated below, these rationales to do not apply to justify the arrest as lawful.

1. The District Court Erred When It Concluded The Police Had Probable Cause To Make The Arrest

The district court erred when it concluded that the police had probable cause to arrest Mr. Ayala based on their information regarding his parole status as an "absconder." (*See*,

[8] 158 Idaho at 364, 370 (Ct. App. 2015).

Tr., p.35, Ls.15-18.) Under the long-standing probable cause exception to the warrant requirement, "a warrantless arrest by a law officer is reasonable [and lawful] under the Fourth Amendment where there is probable cause to believe that a *criminal offense* has been or is being committed." *State v. Lee*, 162 Idaho 642, ___, 402 P.3d 1095, 1103 (2017) (quoting *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004)) (brackets original to *Lee* opinion) (emphasis added); *see also Virginia v. Moore*, 553 U.S. 164, 174–78 (2008) (an arrest is "lawful" if "officers have probable cause to believe that a person has committed a crime in their presence").

Absconding from parole supervision is not a crime or public offense in Idaho. *See* I.C. § 18-109 (defining "crime or public offense" as "an act or omission in violation of a law forbidding or commanding it, and to which is annexed, "upon conviction," a punishment of death, imprisonment, fine, removal from office, or disqualification to hold and enjoy any office of honor, trust or profit in this State); *see also* Idaho Code § 19-101 (stating, "[n]o person can be punished for a public offense except upon a legal conviction in a court having jurisdiction thereof"); *see also United States v. Sharp*, 143 Idaho 403, 405 (2008) (interpreting the term "conviction"). Thus, even if the information relayed to the police gave them reason to believe Mr. Ayala was violating the conditions of his parole agreement, such information did not provide police with probable cause to believe Mr. Ayala was committing any *crime*. Thus, the information did not provide police probable cause to make an arrest under the federal constitutional standard for a reasonable arrest. *See Greene*, 158 Idaho at 887 ("the federal standard for a reasonable arrest, articulated by the United States Supreme Court a number of times [is] 'when an officer has probable cause to believe a person committed even a minor crime in his presence, ... [t]he arrest is constitutionally reasonable.'") (quoting *Virginia v. Moore*, 553 U.S. 164, 171 (2008)). Probable cause to believe that Mr. Ayala was absconding supervision

does not provide the police probable cause to arrest him for a crime, and therefore does not fall within the probable cause exception to the warrant requirement of the federal Fourth Amendment standard. The result is the same under the Idaho Constitution. *See State v. Green*, 158 Idaho 884, 888 (2015) (holding that Idaho Constitution's "probable cause to arrest" standard authorizes police to make warrantless arrests for a "felony" or "for a public offense committed or attempted in his presence.")

Because absconding parole supervision is not a crime or public offense in Idaho, the police did not have probable cause under either the state or federal constitutions to make a warrantless arrest based on their belief that Mr. Ayala was violating his parole by absconding. The district court's contrary conclusion is erroneous.

2. The District Court Erred In Concluding That Police Officers Acted As The Lawful Agents Of The Parole Officer When They Arrested Mr. Ayala; The District Court's Reliance On *State v. Armstrong* Is Misplaced

The district court also erred in concluding that the police officer's warrantless arrest of Mr. Ayala was lawful under the Court of Appeals' decision in *State v. Armstrong*, 158 Idaho 364 (Ct. App. 2015). In *Armstrong*, the parole officer had requested a police officer's assistance with a warrantless search of a parolee's vehicle pursuant to the terms of a parole agreement. *Id.* at 370. The parole agreement expressly authorized searches by the parole officer and "any agent of Probation and Parole." *Id*. The parole officer advised the police officer that the parolee had signed a Fourth Amendment waiver allowing the search, and he requested the police officer's assistance with the search "pursuant to that waiver." *Id*. at 370. Under those facts, the Court of Appeals upheld the search as lawful, noting "the parole officer dictated the scope of the search within the parameters of [the parolee's] Fourth Amendment waiver …" and that the police

officer had acted as an "agent" of the parole officer, and as expressly authorized by the waiver. *Id*. at 372.

However, *Armstrong* and the cases it cites deal exclusively with warrantless *searches*, not warrantless arrests.[9] Unlike the situation in *Armstrong*, police officers in Mr. Ayala's case were asked to assist with a warrantless *arrest* pursuant to a *statute*, not a warrantless search pursuant to a waiver provision in a parole agreement. Idaho parole agreements do not typically require waivers of seizure rights, or require parolees to consent to warrantless arrests. *See*, Rules of the Commission of Pardons and Parole, IDAPA 50.01.01.250. Instead, a parole officer's warrantless arrest authority is found in statute; specifically, Idaho Code § 20-227(1) provides,

> Any parole or probation officer may arrest a parolee or probationer … without a warrant, or may deputize any other officer with power of arrest to do so, *by giving such officer a written statement* hereafter referred to as an agent's warrant, setting forth that the parolee or probationer … in the judgment of said parole or probation officer, violated … the conditions of his parole or probation … .

I.C. § 20-227(1).

This statute grants a parole officer the authority to (1) make a warrantless arrest of a parolee, or (2) "deputize" any other "officer with arrest power" to do so "by giving such officer a written statement" known as an agent's warrant. *Id*. The statute prescribes *who* the parole officer

[9] *State v. Armstrong*, 158 Idaho 364 (Ct. App. 2015) (holding that police search at request of parole officer was lawful, where police "acted under the direction of the parole officer for the specific, limited purpose of assisting with execution of a search authorized by the terms of [the defendant's] parole); *State v. Cruz*, 144 Idaho 906, 911 (Ct. App. 2007) (parole conditions that subjected parolee to warrantless, suspicionless searches diminished his privacy expectations); *State v. Peters*, 130 Idaho 960, 963 (Ct. App. 1997) (holding that a parole officer may make a warrantless search, and may enlist the aid of police when conducting that search), *State v. Vega*, 110 Idaho 685, 687 (Ct. App. 1986) (holding police assistance with parole officer's warrantless search was lawful), *State v. Pison*, 104 Idaho 227, 234 (Ct. App. 1983) (holding that where

can deputize (i.e., any other officer with arrest power), and *how* the parole officer must deputize such officer (i.e., by giving such officer a written statement). *Id.* Here, the parole officer failed to invoke his arrest authority under the statute: he did not make the arrest, and he did not deputize any other officer to do so until after police had taken Mr. Ayala into custody and searched him. Thus, while Mr. Ayala was arguably subjected to the parole officer's arrest authority provided by the statute, that authority was not invoked, since the probation officer neither made the arrest nor deputized any other officer to do so. The district court's conclusion that the parole officer could nevertheless authorize police officers to make a warrantless arrest on his behalf, without complying with the statute's requirement of a written warrant, was error.

3. The State Failed To Show That The Warrantless Arrest By Police Officers Was Justified By Mr. Ayala's Diminished Expectations Of Privacy

The district court also erred to the extent it found the warrantless arrest was justified because Mr. Ayala had diminished expectations of privacy as a parolee.[10] (Tr., p.36, Ls.5-8.) Courts have recognized that parolees and probationers are subjected to terms and conditions of parole that can diminish their reasonable expectations of privacy. *See, e.g., State v. Cruz*, 144 Idaho 906, 911 (Ct. App. 2007) ("Cruz' parole condition significantly diminished his reasonable expectation of privacy *because* it subjected him to searches of person or property, including residence and vehicle, *at any time and place* and did not expressly require reasonable suspicion or reasonable grounds"); *United States v. Knights*, 534 U.S. 112, 119 (2001) (probationer's consent to suspicionless searches by probation officers and law enforcement officers, found in

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warrantless search by probation officer is justified, probation officer may enlist the help of police in performing his duty.)

[10] The district court stated, "The defendant is a parolee who has less expectation of freedom from law enforcement contact." (Tr., p.36, Ls.6-8.) The State had argued that Mr. Ayala was on parole "so he doesn't have the fourth amendment rights afforded to every citizen usually." (Tr., p.31, Ls.12-15.)

probation agreement, significantly diminished probationer's reasonable expectation of privacy); *Samson v. California*, 547 U.S. 843, 852 (2006) (California parolee's privacy expectations significantly diminished by state-imposed circumstances "including the plain terms of the parole search condition" subjecting parolees to warrantless arrests and suspicionless searches by both law enforcement and probation officers). Thus, parolees and probationers' privacy interests are diminished *because of* the terms and conditions of their parole or probation.

As noted previously, the State did not introduce the terms or conditions of Mr. Ayala's parole supervision agreement; for that reason, the extent to which Mr. Ayala's privacy expectations may have been diminished by such terms or conditions cannot be evaluated. Although Mr. Ayala's privacy rights may have been limited in accordance with the warrantless arrest authority granted to his parole officer under Idaho Code § 20-227, the police officer's intrusion into his privacy did not conform to that statute.

Thus, the State has failed to carry its burden of showing that the warrantless arrest of Mr. Ayala was lawful. Contrary to the conclusions of the district court, the police lacked probable cause to arrest because they had no reason to believe Mr. Ayala was committing any crime; and the State has failed to establish that the arrest fell within any other recognized exception to the warrant requirement. The exclusionary rule should be applied in this case to suppress the evidence obtained as the result of that illegal seizure, and the district court's denial of the suppression motion should be reversed.

II.

The District Court Abused Its Discretion By Imposing An Excessive Sentence

A. Introduction

The district court abused its discretion by imposing an excessive sentence. Mr. Ayala asked the court to impose a fixed term of not more than one year, and he does not challenge that portion of his sentence on appeal. He contends that the indeterminate term of six years is unreasonably harsh given the mitigating circumstances of his case.

B. Standard Of Review

Where a defendant challenges his sentence as excessively harsh, 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. *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court's sentencing decisions for an abuse of discretion, which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, "under any reasonable view of the facts." *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). "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." *Miller*, 151 Idaho at 834. When reviewing the length of a sentence, the Court considers the entire sentence. *State v. Oliver*, 144 Idaho 722 (2007).

C. The District Court's Imposition Of A Seven-Year Sentence Is Excessive In Light Of The Mitigating Circumstances Presented By This Case

Mr. Ayala's drug addiction and his strong potential for overcoming that addiction given his youth, along with his strong family support, are mitigating factors that should be taken into account. *See State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008); *State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991).

Mr. Ayala was twenty-nine years old at the time of sentencing. (PSI, p.2.) He has struggled with drugs since his teens and he became addicted to methamphetamine. (PSI, p.20.) He had been sober for eighteen months prior to his release; he then completed his aftercare program, was in private counseling and working two jobs, when bad news plus a car accident triggered his most recent relapse. (PSI, pp.4, 11, 36; Tr., p.59, Ls.24-25.) He turned himself in to his parole officer and asked to be jailed so that he could sober up, but his request was denied. (PSI, p.4.) He was given the option of a halfway house and chose to go to a motel instead, to avoid being targeted for sexual assault by offenders who knew of his vulnerability and past victimization at the prison. (PSI, pp.4-5.) Nonetheless, recently-released inmates located Mr. Ayala and abducted him, and they transported him to Boise where they "sold" him repeatedly and stole the only money he had.[11] (PSI, p.5.) During this period, he was using meth, intravenously, three to four times a day. (PSI, p.11.) Mr. Ayala managed to escape and was waiting for a ride back to Twin Falls, sitting outside the Target store in Boise, when the police arrested him. (PSI, p.5; Tr., p.16, Ls.6-14.)

Mr. Ayala knows he has a terrible drug problem and he laments that recovery has been elusive for him. (PSI, pp.5, 16.) But he has made strides; he has learned to ask for help when

relapse threatens his sobriety. (Tr., p.16, L.9 – p.17, L.12.) Importantly, Mr. Ayala believes in himself. As he told the court at sentencing:

> I have been through a lot of things. I am someone – I can adapt and move on … I can do this better than anybody else. I am someone who should be [a] priority. I am salvageable. I can fix this. … I have a really great family, and I really can't lose.

(Tr., p.60, Ls.1-15.)

Mr. Ayala has exceptional family support. His parents are still married, and he considers his mom his greatest asset. (PSI, p.9.) In her letter to the court, Ms. Ayala expresses unconditional love and support for Mr. Ayala and shows she has a good understanding of his addiction problem. She is willing and able to help him obtain treatment and she has great hope for him as well. (PSI, p.38.) Mr. Ayala's relationship with his father, although tested over the years, is strengthening. (PSI, pp.9, 39.) Mr. Ayala's sister, his only sibling, provided a letter to the court describing her brother's struggles growing up, and she confirmed her commitment to helping him recover from his addiction, including a willingness to have him live with her. (PSI, p.39.) Mr. Ayala's recovery will also be supported by his fiancé, who is drug free and has no criminal history, and who wrote to the court indicating his deep commitment to Mr. Ayala's recovery and his intention to accompany him throughout his drug programming. (PSI, p.37.)

Given these mitigating circumstances, Mr. Ayala's seven-year sentence, with one year fixed, is unreasonably harsh and represents an abuse of the district court's sentencing discretion. The sentence should be reduced, or else vacated and the case remanded for resentencing.

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[11] According to trial counsel, Mr. Ayala had testified at his parole violation hearing regarding his abduction and abuse, and the hearing officer declined to find that the allegation of absconding was sustained. (Tr., p.56, Ls.5-15.)

CONCLUSION

For the reasons stated above, Mr. Ayala respectfully requests that this Court vacate the district court's order of judgment and commitment, reverse the order denying his motion to suppress, and remand this case to the district court for further proceedings. Alternatively, he asks that this Court reduce his sentence, or else vacate his sentence and remand the case to the district court for resentencing.

DATED this 26th day of December, 2017.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JESUS GEORGE AYALA
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DEBORAH A BAIL
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas