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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48500-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-20-30067
v.)	
)	
ANTONIO LLANES AVILA,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Antonio Avila pled guilty to domestic battery following a fight with his wife, and was sentenced to a unified term of eight years, with one and one-half years fixed. The district court did not retain jurisdiction, despite the prosecutor’s bargained-for recommendation. Mr. Avila appeals from his judgment of conviction, arguing the district court abused its discretion when it did not retain jurisdiction, considering the prosecutor’s recommendation and the substantial mitigating factors that exist in this case.

Statement of Facts and Course of Proceedings

Mr. Avila was charged by Information with one count of felony domestic battery. (R., pp.31-32.) He entered into an agreement with the State pursuant to which he agreed to plead guilty to the charged offense, and the State agreed to recommend a unified sentence of ten years, with five years fixed, with the district court retaining jurisdiction. (R., pp.34-42; Tr., p.5, L.12 – p.6, L.9.) At the change of plea hearing, Mr. Avila told the district court he “got into a big argument [with his wife] and . . . broke her hand.” (Tr., p.11, Ls.10-13.) He said, “[S]he swung at me and I swung back and I hit her hand and broke her hand.” (Tr., p.11, Ls.19-23.) The district court found a factual basis for Mr. Avila’s guilty plea and accepted the plea. (Tr., p.13, Ls.11-16.)

At sentencing, the district court began by reviewing the fact that the State was required “to recommend that the court retain jurisdiction and the defendant serve a rider.” (Tr., p.15, Ls.9-14.) The prosecutor said:

I do believe that this conduct would warrant a prison sentence, but as you have seen and know, I offered to recommend a rider. Based on the aforementioned, I am guessing that the court’s scratching its head as to why I would recommend a rider or the sentence that I’ve negotiated here

(Tr., p.19, L.21 – p.20, L.1.) The prosecutor told the district court that Mr. and Mrs. Avila were in the process of adopting their grandson when the fight occurred, and “she didn’t want to jeopardize that by reporting the conduct to the police.” (Tr., p.20, Ls.1-6.) The prosecutor said Mrs. Avila “didn’t want to see [her husband] in prison for a lengthy period of time . . . and so with a compromise of conscience, I made an offer of a rider . . . with a stiffer underlying sentence” (Tr., p.21, Ls.15-23.) The prosecutor thus recommended a rider. (Tr., p.22, L.15 – p.23, L.7.)

Counsel for Mr. Avila recommended that the district court place Mr. Avila on probation, with an underlying unified sentence of ten years, with three years fixed. (Tr., p.23, Ls.12-17.) Counsel told the district court that Mr. Avila had been successful on probation in the past, and had the support of his family and friends, and a possible job waiting. (Tr., p.23, L.19 – p.24, L.8, p.26, Ls.9-18.) Counsel explained that Mr. Avila had relapsed on drugs following the death of his son, and recognized he needed counseling to deal with the trauma, along with domestic violence treatment. (Tr., p.24, Ls.17-24.)

The district court sentenced Mr. Avila to a unified term of eight years, with one and one-half years fixed. (Tr., p.32, L.23 – p.33, L.4.) The district court did not retain jurisdiction, despite the prosecutor’s recommendation. The district court judge said, “I just don’t see him as somebody that ought to be put on a probation track that really sending someone on a rider is.” (Tr., p.32, Ls.18-20.) The district court entered a restitution order and a no contact order without objection. (*See R.*, pp.55-59.) The judgment of conviction was entered on December 4, 2020, and Mr. Avila filed a timely notice of appeal on December 14, 2020. (*R.*, pp.49-52, 60-62.)

ISSUE

Did the district court abuse its discretion at sentencing?

ARGUMENT

The District Court Abused Its Discretion At Sentencing When It Did Not Retain Jurisdiction

The Idaho Supreme Court has held that where, as here, a district court imposes a sentence within statutory limits, the 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) (quotation marks and citation omitted). In order to succeed on appeal under this standard, an

appellant “must establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment,” which are deterrence, the possibility of rehabilitation, punishment or retribution for wrongdoing, and the protection of society. *State v. Varie*, 135 Idaho 848, 856 (2001) (citation omitted). Mr. Avila can make the necessary showing, as the district court should have retained jurisdiction considering the four objectives of criminal punishment.

The first objective of criminal punishment is deterrence of the individual and the public generally. *See Varie*, 135 Idaho at 856. The sentence imposed by the district court would serve no less of a deterrent effect if the district court had retained jurisdiction. Allowing Mr. Avila the opportunity to earn a chance at probation would not reduce his underlying sentence, and the deterrent effect of that sentence.

The second objective of criminal punishment is the possibility of rehabilitation. *See Varie*, 135 Idaho at 856. Mr. Avila recognizes he needs substance abuse treatment, domestic violence treatment, and help coping with the loss of his son, but contends he could obtain the treatment he needs on a rider program or in the community. Indeed, the domestic violence evaluator recommended Mr. Avila complete a 52-week domestic violence treatment program, which is a community-based program. (*See Conf. Exs.*, p.235.) Mr. Avila has been accepted into Rising Sun Sober Living and intends to live there if released on probation. (Tr., p.25, Ls.15-17; *see Conf. Exs.*, p.269.) Sending Mr. Avila straight to prison has the effect of hindering, rather than aiding in, his rehabilitation.

The third objective of criminal punishment is punishment. *See Varie*, 135 Idaho at 856. This objective is important here, as the crime of conviction stems from an act of violence. But this objective was realized by the fact Mr. Avila was incarcerated immediately following his

arrest. (*See* Conf. Exs., p.212.) And he would be incarcerated even while participating in a rider program, and possibly after completing the program, depending on his performance.

The fourth objective of criminal punishment is the protection of society. *See Varie*, 135 Idaho at 856. This objective was adequately served in this case by the no-contact order entered by the district court, which permits Mr. Avila to contact his wife only for the purpose of speaking to their minor child (their adopted grandson). (Tr., p.25, Ls.13-16; R., pp.55-56.) In addition, the district court would not have been obligated to place Mr. Avila on probation following the completion of the period of retained jurisdiction. Had the district court had any doubt about the risk posed by Mr. Avila, it could have relinquished jurisdiction over him. But to deny Mr. Avila the chance at probation on the record presented was an abuse of discretion.

Mr. Avila apologized to his wife at sentencing. (Tr., p.27, Ls.19-20.) He explained that he took the death of his son hard and he “went down the wrong track” and “should have asked for help.” (Tr., p.27, Ls.20-25.) He said:

[I]t’s something that I don’t wish upon anybody, you know, because it’s very hard when . . . one of your kids dies. They’re supposed to bury you. You’re not supposed to bury them. And, you know, I should have talked to my wife, and I love my wife very much, but I don’t know. I just went off the deep end.

(Tr., p.28, Ls.1-8.) He said he could find the tools to help him outside of prison. (Tr., p.29, Ls.1-3.) Mr. Avila had the support of family and friends, and job possibilities lined up. (Tr., p.26, Ls.9-18; *see* Conf. Exs., pp.264-67.) He would like to spend time with his children and grandchildren and obtain his associate’s degree. (Tr., p.26, Ls.22-25.) The district court should have been given Mr. Avila the opportunity to complete a rider program.

CONCLUSION

Mr. Avila respectfully requests that this Court vacate his sentence and remand this case to the district court for a new sentencing hearing.

DATED this 5th day of August, 2021.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas