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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48528-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-20-32991
v.)	
)	
MICHAEL RAY DOBSON,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Michael Dobson pled guilty to felony driving under the influence, the district court sentenced him to ten years, with four years fixed. On appeal, Mr. Dobson argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In August 2020, Mr. Dobson was driving his car when he sideswiped a delivery van that was parked on the side of the street, and continued driving. (PSI, p.83.) The driver of the delivery van began to follow him, and called dispatch to report the incident. (PSI, p.90.) Mr. Dobson

eventually pulled over after he noticed the van was following him, and allegedly admitted to the delivery van driver that he was drunk. (PSI, p.90.) When police officers arrived and spoke with Mr. Dobson, he admitted to drinking a few beers earlier that day. (PSI, p.90.) The officers noticed that he had glassy, bloodshot eyes, and they could smell alcohol coming from his breath, and arrested Mr. Dobson for felony driving under the influence (“DUI”). (PSI, pp.90-91.) He was charged with a felony due to the fact that he was on probation for a 2014 felony DUI conviction when he committed the instant offense. (R., p.10; PSI, pp.7-8.) Police officers later obtained a blood sample from Mr. Dobson, which showed a blood alcohol content of .202. (PSI, pp.91-94.)

The State filed a complaint against Mr. Dobson in August 2020 for felony DUI, driving without privileges, and failing to provide information at the scene of an accident involving damage. (R., pp.6-8.) After he waived his preliminary hearing, he was bound over to district court on those charges. (R., pp.21-26.) Pursuant to a plea agreement, Mr. Dobson pled guilty to felony DUI, and the state dismissed the remaining charges. (R., pp.30-41; Aug. Tr., p.12, L.5 – p.13, L.11.)

In December 2020, a joint sentencing and disposition hearing was held for the 2014 probation violation case and the 2020 DUI. (*See generally* Tr; R., p.42.) At that hearing, the State recommended the district court revoke Mr. Dobson’s probation in the 2014 case and execute his underlying sentence of ten years, with two years fixed. (Tr., p.9, Ls.12-18.) In the new DUI case, the State recommended the district court sentence him to ten years, with four years fixed, to run concurrently with the sentence in the 2014 case. (Tr., p.9, Ls.12-18.) Defense counsel recommended that the district court retain jurisdiction, or alternatively allow Mr. Dobson an opportunity to participate in a drug court program. (Tr., p.10, L.2 – p.11, L.11.) The district court

sentenced him to ten years, with four years fixed, to run concurrently with the sentence in the 2014 probation violation case, without retaining jurisdiction. (R., pp.45-48; Tr., p.15, L.13 – p.16, L.16.)

After sentencing, Mr. Dobson filed a Criminal Rule 35 motion with no new information. (R., pp.50.) The district court denied that motion in January 2021. (R., pp.55-57.)

Mr. Dobson timely appealed from the judgment of conviction in the new case. (R., pp.51-53.) He did not appeal from the revocation order in his 2014 case.

ISSUE

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

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Sentence Of Ten Years, With Two Years Fixed, Upon Mr. Dobson

Mr. Dobson asserts that, given any view of the facts, his sentence of ten years, with four 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. Dobson 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. Dobson 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 substance abuse and its longstanding impact on his life, remorse, amenability to treatment, a history of stable employment, and family support.

Mr. Dobson reported that he first used drugs or alcohol between the ages of seventeen and nineteen, and acknowledged that his substance of choice is alcohol. (PSI, pp.11, 12, 103.) The Global Appraisal of Individual Needs (“GAIN”) assessment diagnosed him with severe alcohol use disorder. (PSI, pp.12, 21, 105.) 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). Mr. Dobson admitted that his addiction to alcohol is his “main problem.” (PSI, p.8.) He acknowledged that the full scope of his criminal history has centered around driving under the influence of alcohol, and stated “I need to remember I’m an alcoholic every minute of every day.” (PSI, pp.8-9.) The pre-sentence

investigation (“PSI”) report and the GAIN assessment recommended Level 2.1 intensive outpatient treatment for Mr. Dobson, such as a drug court program. (PSI, p.20.)

Mr. Dobson has expressed remorse for his actions and has recognized the severity of his choices. (PSI, p.4.) In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, “In light of Alberts’ expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Id.* 121 Idaho at 209. During the PSI interview, Mr. Dobson expressed his gratitude for the help he received to help get him on his feet over the past six years, writing he was “ashamed for starting to drink again after five years of sobriety.” (PSI, p.2.) Mr. Dobson recognizes that he has a severe alcohol addiction, and understands the importance of staying in treatment, and asking for help when he needs it. (*See* PSI, p.2.) At the sentencing hearing, he reiterated that he is ashamed of his behavior, and apologized to all the people he let down. (PSI, p.9; Tr., p.11, Ls.19-25.)

Although Mr. Dobson relapsed, that is part of the recovery process. He has demonstrated his ability to maintain his sobriety and be a productive member of the community when he is engaged in treatment and under proper supervision. During a prior period of probation, Mr. Dobson was sober for about three years before he relapsed. (PSI, p.106.) A 2014 PSI report states that Mr. Dobson did well on misdemeanor probation – he never received a positive¹ urine analysis, he was accountable, respectful, and cooperative, and he paid his financial obligations on time (PSI, p.99.) When discussing his recent relapse, Mr. Dobson explained that after his hours were cut at work due to COVID-19, he feared he would lose his job, and started drinking again. (PSI, pp.2, 5, 11.) He reported that he relapsed around March or April 2020 after five

¹ Page 99 of the PSI states that Mr. Dobson received no negative drug tests, however, it is clear from the context that the investigator meant positive drug tests.

years of sobriety, and stated that he was drinking approximately three to four beers every day to every other day. (PSI, pp.5, 9, 46-66.)

Mr. Dobson submits that his positive employment history also supports a lesser sentence. *See State v. Mitchell*, 77 Idaho 115, 118 (1955) (recognizing gainful employment as a mitigating factor); *see also State v. Shideler*, 103 Idaho 593, 594–95 (1982) (employment and desire to advance within company were mitigating circumstances). Mr. Dobson has been steadily employed since at least 1990, and reported that he has never been fired. (*See* PSI, pp.5-6, 28, 101-02, 106.) Prior to his arrest, he was working at Maravia Corporation as a lead painter from February 2017 to August 2020, and he is currently serving as the head baker while incarcerated. (PSI, pp.5-6.)

In addition to a history of stable employment, Mr. Dobson also has a strong support system. (PSI, p.106.) He has a great relationship with his family, particularly with his niece and nephew. (PSI, pp.4, 9, 99.) The Idaho Supreme Court noted in *State v. Shideler*, 103 Idaho 593, 594 (1982), that family and friend support are factors that should be considered in the court's decision as to what is an appropriate sentence. *Id.* Mr. Dobson's niece and nephew provided letters of support to the district court describing him as having a big heart and being selfless by nature. (PSI, pp.4, 25-27.) They expressed their belief that he feels deep remorse about his actions, and stated that they remain supportive of their uncle and want to help him stay sober. (PSI, pp.25-27.)

Despite his serious alcohol addiction, Mr. Dobson has demonstrated his ability to stay sober and be a productive member of society. He did very well during a prior period of probation, and he was sober for a period of five years before his recent relapse. Mr. Dobson is remorseful and ashamed of his behavior, and understands the importance of seeking help when

he is struggling with his sobriety. Additionally, Mr. Dobson has a history of gainful employment, and continues to have support from his family.

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

CONCLUSION

Mr. Dobson respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 10th day of June, 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 June, 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

KAH/eas