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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48559-2021
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-46930
v.)	
)	
JAMES DELL NOLEN,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After James Nolen pled guilty to robbery, the district court sentenced him to thirty years, with ten years fixed. Mr. Nolen appeals, and he argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On November 6, 2019, Mr. Nolen entered a bank and passed a note to one of the bank tellers stating “this is a robbery” as well as requesting certain amounts of different monetary

bills. (PSI,¹ pp.147-48.) Mr. Nolen was arrested shortly thereafter a few blocks away from the bank. (PSI, pp.12, 148-49.) Mr. Nolen admitted to the police that he was the person who passed the note and took the money from the bank. (PSI, pp.149-50.) Mr. Nolen explained that he was unarmed and did not threaten anyone at the bank.² (PSI, p.149.) Mr. Nolen had consumed beer and wine immediately before entering the bank. (PSI, pp.12, 26, 45.) Mr. Nolen had not been taking his prescribed psychotropic medication, Invega, for about two months prior to when he entered the bank. (PSI, p.95.)

On November 7, 2019, the State filed a criminal complaint alleging that Mr. Nolen had committed the crime of robbery.³ (R., pp.9-10.) The proceedings in the case were suspended after Mr. Nolen was found not competent to proceed. (R., pp.22-23.) After Mr. Nolen was deemed fit to proceed, the case was eventually bound over to the district court on the charges of robbery and burglary following a preliminary hearing. (R., pp.24-25, 29-33.) Pursuant to a plea agreement, Mr. Nolen pled guilty to robbery and the burglary charge was dismissed.⁴ (Tr. Vol. I,⁵ p.7, Ls.2-11, p.16, L.11—p.17, L.3; R., pp.55-65.) The State also agreed to recommend no

¹ Citations to the “PSI” refer to the 165-page electronic document titled “Appeal Confidential Exhibits 03-01-2021 13.10.6 44871144 0BA0A3D6-5A09-4061-88D3-44D256234D65” included with the confidential sentencing materials.

² The bank teller testified at the preliminary hearing in this case that Mr. Nolen did not say that he was going to hurt the teller at any point during the encounter and that Mr. Nolen never told the teller that he was armed. (Exhibit 1, p.11, L.20—p.12, L.19.) A certified copy of the transcript from the preliminary hearing is contained the electronic document titled “Appeal Exhibits 03-01-2021 13.10.6 44871208 C69BDB96-02A1-4A67-8F17-9AFA0682B154”, and is cited herein as “Exhibit 1”.

³ In particular, the criminal complaint alleged that Mr. Nolen passed a note to an employee at a bank stating that “this is a robbery” and “demanded cash and/or money.” (R., p.9.)

⁴ As part of that plea agreement, the State also agreed not to file a persistent violator enhancement. (Tr. Vol. I, p.7, Ls.2-6.)

⁵ There are two transcripts on appeal, both of which are in the electronic document titled “Appeal Transcripts 03-01-2021 13.10.6 44870764 FFDA12BB-6A3B-4C1F-A736-7653271C49F8”. Since the pagination for the second transcript starts over at page one, the transcripts are cited separately herein. Citations to the first transcript, cited herein as “Tr. Vol. I”, refer to the

more than ten years fixed and twenty years indeterminate at sentencing. (Tr. Vol. I, p.7, Ls.7-11; R., pp.64-65.)

At sentencing, the State recommended a sentence of thirty years, with ten years fixed, and asked that the sentence be executed. (Tr. Vol. II, p.11, L.24—p.12, L.3.) Mr. Nolen requested that the district court sentence him to five fixed years at most, and he also requested that the district court retain jurisdiction. (Tr. Vol. II, p.16, Ls.5-13, p.17, Ls.2-6, p.19, Ls.6-23.) The district court sentenced Mr. Nolen to serve a term of thirty years, with ten years fixed. (Tr. Vol. II, p.22, Ls.9-15; R., pp.68-71.) Mr. Nolen timely appealed from the judgment of conviction. (R., pp.72-74.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Nolen to serve thirty years, with ten years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Nolen To Thirty Years, With Ten Years Fixed

“Where the sentence imposed by a trial court is within statutory limits, ‘the appellant bears the burden of demonstrating that it is a clear abuse of discretion.’” *State v. Windom*, 150 Idaho 873, 875 (2011) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. 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.

transcript for the entry of plea hearing held on October 16, 2020. Citations to the second transcript, cited herein as “Tr. Vol. II”, refer to the transcript for the sentencing hearing held on December 18, 2020.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018). In this matter, Mr. Nolen’s sentence does not exceed the statutory maximum. See I.C. § 18-6503 (“Robbery is punishable by imprisonment in the state prison not less than five (5) years, and the imprisonment may be extended to life”). Accordingly, to show that the sentence imposed was an abuse of discretion, Mr. Nolen “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘[R]easonableness’” implies that a term of confinement should be tailored to the purposes for which the sentence is imposed.” *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

State v. Stevens, 146 Idaho 139, 148 (2008). “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

In this case, Mr. Nolen asserts the district court did not exercise reason and therefore abused its discretion by imposing a sentence that is excessive under any reasonable view of the facts. Specifically, Mr. Nolen contends the district court should have sentenced him to a lesser term of imprisonment or retained jurisdiction in light of the mitigating factors, including his substance abuse issues and mental condition.

First, Mr. Nolen’s substance abuse issues, the impact of his substance abuse on his behavior, and his need for treatment are strong factors in mitigation. A sentencing court should give “proper consideration of the defendant’s alcoholic problem, the part it played in causing

[the] defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho 89, 91 (1982). 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). Prior to sentencing, Mr. Nolen completed a Global Appraisal of Individual Needs (“GAIN”) assessment. (PSI, pp.26-37.) In that assessment, Mr. Nolen self-reported symptoms sufficient to meet the criteria for alcohol use disorder severe, stimulant use disorder severe, and opioid use disorder mild. (PSI, pp.27-29.)

Mr. Nolen reported that he started drinking alcohol at the age of [REDACTED] (PSI, p.28.) Mr. Nolen informed the evaluator that he had “drank alcohol every day during the 90 days prior” to committing the offense in this case. (PSI, p.26.) On the day that he committed the crime charged, Mr. Nolen consumed beer and wine immediately before entering the bank. (PSI, pp.12, 26, 45.)

Mr. Nolen disclosed that he also began using amphetamines and opioids when he was [REDACTED] years old. (PSI, pp.28-29.) Like with alcohol, Mr. Nolen reported that “he used methamphetamine every day during the six months prior to his last use”, which occurred a few days before his conduct in this case. (PSI, p.26.) Mr. Nolen also stated that he injected heroin intravenously “on 45 days during the 90 days prior to his last use.”⁶ (PSI, p.26.) Based on these disclosures, the GAIN assessor found that Mr. Nolen “meets lifetime criteria for substance use disorder severe.” (PSI, p.29.)

At sentencing, Mr. Nolen’s defense counsel explained that Mr. Nolen “experimented and became addicted to alcohol and controlled substances at a very young age and has battled with his addiction for basically his entire adult life.” (Tr. Vol. II, p.18, L.21—p.19, L.5.) Mr. Nolen’s

⁶ It is unclear from the GAIN assessment as to the exact day that Mr. Nolen disclosed last using heroin, but Mr. Nolen “recalled using heroin IV during October 2019.” (PSI, p.26.)

defense counsel recommended a retained jurisdiction or shorter period of fixed time so that Mr. Nolen could address his substance abuse needs through programming and treatment. (Tr. Vol. II, p.19, Ls.6-23.) Mr. Nolen's substance use issues, the impact of his substance abuse on his behavior, and his need for treatment are strong mitigating factors that support leniency in this case.

Second, Mr. Nolen's mental condition is a mitigating factor that supports leniency in sentencing. The Idaho Supreme Court has recognized that Idaho Code § 19-2523 not only suggests, but requires, the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). If a defendant's mental condition is a significant factor, then Idaho Code § 19-2523 requires the court to consider factors such as: (a) the extent to which the defendant is mentally ill; (b) the degree of illness or defect and level of functional impairment; (c) the prognosis for improvement or rehabilitation; (d) the availability of treatment and level of care required; (e) any risk of danger which the defendant may create for the public if not incarcerated, or the lack of such risk; and (f) the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law at the time of the offense charged. "The factors listed in Idaho Code § 19-2523 provide a manner in which to evaluate the mental health information presented to the sentencing court." *Strand*, 137 Idaho at 461.

Mr. Nolen's mental health was evaluated in a mental health examination report prior to sentencing. (PSI, pp.38-48.) In addition to the stimulant use disorders described above, Mr. Nolen was also given provisional diagnoses for: (1) major depressive disorder, recurrent, with psychotic feature; (2) unspecified anxiety disorder; and (3) attention-deficit/hyperactivity disorder – combined presentation. (PSI, p.38.) In the Idaho Standard Mental Health Assessment

prepared prior to sentencing, the assessor noted that Mr. Nolen “demonstrates a history of major depressive disorder, bipolar disorder, and schizoaffective disorder. James has a significant history of mental health related hospitalizations and treatment episodes.” (PSI, p.46.) Even though he was receiving treatment at the Ada County jail prior to sentencing, Mr. Nolen reported that he “is continuing to experience depressive and suicidal symptoms as well as daily auditory hallucinations, delusions, and paranoia.” (PSI, p.47.) The assessor found that Mr. Nolen “experiences severe and persistent symptoms related to his diagnoses with and without a medication/treatment regimen although his symptoms appears to be somewhat manageable when receiving appropriate treatment.” (PSI, p.47.) The assessor determined that Mr. Nolen “has a history of psychiatric hospitalizations and is currently incarcerated on a charged related to both substance use and mental health symptomatology. He has experienced a number of negative impacts stemming from difficulties with severe and persistent mental health issues and ongoing substance use.” (PSI, p.48.)

At sentencing, Mr. Nolen’s defense counsel explained that Mr. Nolen had been dealing with severe mental health issues throughout his life. (Tr. Vol. II, p.18, L.21—p.19, L.5.) Mr. Nolen’s defense counsel also indicated that Mr. Nolen would need to obtain treatment for both his mental health and substance abuse issues since future substance abuse could exacerbate Mr. Nolen’s mental health issues. (Tr. Vol. II, p.20, Ls.7-21.) Defense counsel further stressed the importance for a treatment focused sentence for Mr. Nolen because Mr. Nolen was still demonstrating symptoms related to his mental health issues even though Mr. Nolen had been sober and in custody for over a year since his arrest in November of 2019. (Tr. Vol. II, p.20, Ls.7-21.)

Mr. Nolen asserts that the district court did not adequately consider his mental health as a factor at sentencing as required under Idaho Code § 19-2523. Mr. Nolen mental health was a significant factor, and there were substantial concerns if Mr. Nolen does not receive adequate treatment for his mental health needs. “The sentencing court is not required to recite each of the factors listed.” *Strand*, 137 Idaho at 461. However, the prison sentence imposed suggests that the district court did not give adequate consideration to the factors listed under Idaho Code § 19-2523. Mr. Nolen’s mental condition stands in favor of mitigation and leniency in this case.

In sum, Mr. Nolen maintains the district court did not exercise reason at sentencing because it failed to give adequate weight to the mitigating factors in his case. Proper consideration of these factors supports a lesser prison sentence or a retained jurisdiction. Mr. Nolen submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

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

DATED this 5th day of May, 2021.

/s/ Jacob L. Westerfield
JACOB L. WESTERFIELD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

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

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DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

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

JLW/eas