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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,)	
)	NO. 48569-2021
Plaintiff-Respondent,)	
)	BOISE COUNTY NO. CR08-19-1091
v.)	
)	
SHAYNA RELANE DAVIS,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Shayna Davis pled guilty to grand theft, the district court sentenced her to fourteen years, with three years fixed. On appeal, Ms. Davis submits the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In March 2019, Ms. Davis’s employer informed police that she admitted to taking money from the company over a period of five years. (Conf. Docs. Vol. 2, pp.1-2, 188-221, 241-72.) A

subsequent investigation found that she had taken a total of \$434,753.72. (Conf. Docs. Vol. 2, pp.1-2, 188-221, 241-72.)

The State filed a complaint against Ms. Davis in September 2019 for six counts of grand theft. (R., pp.8-11.) The State eventually proceeded with an amended complaint alleging the same six offenses, with the only change being the dates that the sixth thefts allegedly occurred. (R., pp.22-25.) After Ms. Davis waived her preliminary hearing, she was bound over to district court on those charges. (R., pp.30-42.)

Pursuant to a plea agreement, in September 2020, Ms. Davis pled guilty to one count of grand theft, and the State dismissed the remaining charges. (Tr., p.16, L.4 – p.19, L.24; R., pp.52-62.)

A sentencing hearing was held in December 2020. (*See* Tr., pp.23-60.) The State gave the recommendation required by the plea agreement: five years, with one year fixed. (Tr., p.11, Ls.11-13, p.37, Ls.4-6.) Defense counsel requested a withheld judgment. (Tr., p.47, Ls.9-15.) Alternatively, defense counsel recommended that the district court sentence Ms. Davis to five years, with two years fixed, but that it suspend the sentence and place her on probation, with one condition being that she serve six months in the Ada County Jail. (Tr., p.46, L.15 - p.47, L.8.) The district court far exceeded both the prosecutors and defense counsel's recommendations, as it imposed and executed a sentence of fourteen years, with three years fixed, for one count of grand theft. (Tr., p.57, Ls.18-24; R., pp.71-75.)

Ms. Davis timely appealed from the judgment of conviction. (R., pp.76-78.)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of fourteen years, with three years fixed, upon Mr. Davis following her conviction for grand theft?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Fourteen Years, With Three Years Fixed, Upon Mr. Davis Following Her Conviction For Grand Theft

Ms. Davis asserts that, given any view of the facts, her sentence of fourteen years, with three 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)). Ms. Davis does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, she must show that in light of the governing criteria, the sentence is 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, Ms. Davis asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, she contends the district court should have withheld judgment, imposed a suspended sentence, or imposed a lesser sentence, in light of the mitigating factors, including her mental health issues, remorse, lack of a criminal record, and family support.

██████████ Ms. Davis has struggled with mental health issues from an early age. (Conf. Docs. Vol.2, p.5; *see* Conf. Docs. Vol.1, p.4.) “[T]he defendant’s mental condition is simply one of the factors that must be considered and weighed by the court at sentencing.” *State v. Delling*, 152 Idaho 122, 132 (2011). Ms. Davis reported a lifetime history of sexual and emotional abuse, and stated that she first started receiving counseling for mental health issues as a child after being molested by her paternal grandfather. (Conf. Docs. Vol.1, p.4; Conf. Docs. Vol.2, pp.6, 19-20, 28-31, 45.) She told her mother about the abuse when she was about ██████████ ██████████ but explained that her dad, paternal grandmother, and other family members did not believe the allegations, so she continued to spend time with her abusive grandfather a few weekends per month. (Conf. Docs. Vol.2 pp.6, 19-20.) Ms. Davis also reported that her boyfriend from 2006-2008 was physically abusive toward her, raped her, and even pointed a gun at her and her daughter on one occasion. (Conf. Docs. Vol.2, pp.7, 28-31; Conf. Docs. Vol.1, p.4.) She further reported that her former husband was very controlling and emotionally abusive, and cheated on her with her best friend. (Conf. Docs. Vol.2, p.7; Conf. Docs. Vol.1, pp.4, 27-29.) Ms. Davis’s mental health records noted that “it is apparent she has had some trauma and will need to address and work on these issues.” (Conf. Docs. Vol.2, p.123.)

Ms. Davis reported that she was diagnosed with depression, anxiety, and sleep issues in early 2000.¹ (Conf. Docs. Vol.2, pp.4-5, 10-11, 36.) The Global Appraisal of Individual Needs (“GAIN”) assessment diagnosed her with major depressive disorder and generalized anxiety disorder. (Conf. Docs. Vol.2, pp.36, 44; *see also* Conf. Docs. Vol.1, p.8.) Over the last eleven years, she has seen various doctors for anxiety, depression, stress, sleep issues, and panic attacks. (See Conf. Docs. Vol.2, pp.52-55, 67-69, 111-14, 119-24, 128-63, 174; Conf. Docs. Vol.1, p.5.) She is currently taking citalopram, an anti-depressant commonly sold under the brand name Celexa,² quetiapine, an antipsychotic commonly sold under the brand name Seroquel,³ and Lamictal,⁴ a mood stabilizer used to treat extreme mood swings and bipolar disorder. (Conf. Docs. Vol.2, pp.36, 39; *see also* Conf. Docs.Vol.1, p.4.) The PSI and December 2020 mental health evaluation noted that Ms. Davis has been proactive in dealing with her mental health, and she demonstrated an interest in continuing with her mental health treatment. (Conf. Docs. Vol.1, p.6; Conf. Docs. Vol.2, pp.14-15.)

Ms. Davis is extremely remorseful and has taken responsibility for her behavior. (Conf. Docs. Vol.2, pp.16, 34-35; *see also* Tr., p.42, Ls.9-17.) 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.” Ms. Davis understands the seriousness

¹Although Ms. Davis’s medical records show that she had been diagnosed with bipolar disorder, and she is currently taking a mood stabilizer, she reported that a bipolar disorder diagnosis had been ruled out. (See Conf. Docs. Vol.1, p.4; Conf. Docs. Vol.2, pp.119-24, 131-61; *see also* Tr., p.40, Ls.11-22.)

²Citalopram HBR, WebMD, <https://www.webmd.com/drugs/2/drug-4689-8274/quetiapine-oral/quetiapine-oral/details> (last visited June 21, 2021).

³ Quetiapine Oral, WebMD, <https://www.webmd.com/drugs/2/drug-1701/citalopram-oral/details> (last visited June 21, 2021).

⁴Lamictal, RxList, <https://www.rxlist.com/lamictal-drug.htm#description> (last visited June 21, 2021).

of her actions and acknowledged that what “[she] did was not only criminal, but morally wrong, inappropriate, selfish, damaging and foolish.” (Conf. Docs. Vol.2, p.35.) She expressed the gut-wrenching guilt that she constantly feels about committing the crime, and stated that “there is not a day that goes by that I don’t think about what I did and the consequences for myself and the other people in my life.” (Conf. Docs. Vol.2, p.17.) The pre-sentence investigator noted that Ms. Davis was polite and forthcoming throughout the interview, and she expressed her remorse and the impact her theft had on the victims. (Conf. Docs. Vol.2, p.14; *see also* Conf. Docs. Vol.1, p.8.) Furthermore, the investigator noted that she reflected on the reason behind the commission of her crimes and acknowledged that her past rationalizations and justifications were wrong. (Conf. Docs. Vol.2, p.14; *see also* Tr., p.42, L.25 – p.43, L.12.)

The absence of any prior convictions or arrests also supports a lesser sentence for Ms. Davis. “The absence of a criminal record is a mitigating factor that courts consider.” *State v. Miller*, 151 Idaho 828, 836 (2011). “It has long been recognized that “[t]he first offender should be accorded more lenient treatment than the habitual criminal.” *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (alteration in original) (quoting *State v. Nice*, 103 Idaho 89, 91 (1982)). Here, Ms. Davis does not have a criminal record, and the instant offense is her first conviction. (Conf. Docs. Vol.2, p.11.) She reported that her first and only other interaction with law enforcement was at [REDACTED] when she was pulled over for speeding and a seatbelt violation. (Conf. Docs. Vol.2, p.11.) Although the district court acknowledged Ms. Davis’s lack of criminal history, it still imposed a sentence of fourteen years, with three years fixed. (*See* Tr., p.53, Ls.17-20.) Ms. Davis submits that the district court failed to give adequate consideration to the absence of a criminal record and imposed an excessive sentence under the circumstances.

Ms. Davis's strong support system also weighs in favor of mitigation. (Conf. Docs. Vol.2, pp.14-15, 24-25; Conf. Docs. Vol. 1, pp.6-7; *see also* Tr., p.43, Ls.13-16.) 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. *Id.* Ms. Davis stated that her family is the most important thing in her life, and reported that she has a great relationship with her two daughters, father, mother, and stepfather. (Conf. Docs. Vol. 2, pp.12, 18, 34.) She stated that although her mother and stepfather are disappointed in her, they are still there for her. (Conf. Docs. Vol.2, p.18.) She described her stepfather as an amazing man who "has a heart of gold," and will always look out for her and her children. (Conf. Docs. Vol.2, p.18.) Ms. Davis stated that her mother has helped her the most with her recent struggles and divorce, and that she is her biggest supporter. (Conf. Docs. Vol.2, p.18.) Additionally, Ms. Davis informed the pre-sentence investigator that she has a place to live in the community with her aunt. (Conf. Docs. Vol. 2, p.26; Conf. Docs. Vol.1, p.3.)

Ms. Davis submits that her employability supports a lesser sentence. *See, e.g., State v. Mitchell*, 77 Idaho 115, 118 (1955) (recognizing gainful employment as a mitigating factor); *State v. Shideler*, 103 Idaho 593, 594-95 (1982) (employment and desire to advance within company were mitigating circumstances) Ms. Davis has a diverse employment history and has experience with customer service, administrative work, and business management. (Conf. Docs. Vol. 2, pp.8-9, 33.) She has worked in the service industry for over seventeen years as a bartender and server, owned her own boutique for about twelve years, worked as a dental assistant for nine years, and she has held supervisory and management positions in her previous jobs. (Conf. Docs. Vol. 2, pp.8-9, 33, 49-51.)

Ms. Davis has been a productive, law-abiding member of society for the majority of her life. Although she has struggled with past traumas and mental health issues, Ms. Davis has been proactive in dealing with her mental health. She is extremely remorseful for her behavior and has acknowledged the gravity of her actions. While Ms. Davis understands the difficulty of paying the entire amount of restitution, including interest, she is committed to making every possible effort to compensate her former employer. (*See Tr.*, p.45, Ls.14-25.) In fact, at the sentencing hearing, Ms. Davis paid \$6,000 towards restitution. (*Tr.*, p.30, L.6 – p.31, L.7, p.33, Ls.12-16.) She does not have a criminal record, and the instant offense is her first conviction. Additionally, Ms. Davis has a history of gainful employment, and continues to have support from her family. Prior to her incarceration, Ms. Davis stated that she found a great job, started rebuilding the trust of her children and family, attended church and counseling, and continued with her mental health treatment. (*Conf. Docs. Vol.2*, p.34.) Based on her low risk to reoffend, strong support system, pro-social outlook, good use of time, and her interest in actively participating in mental health treatment and fulfilling her financial obligations, the pre-sentence investigator recommended probation for Ms. Davis. (*Conf. Docs. Vol.2*, pp.12, 14; *see also Conf. Docs. Vol. 1*, p.9.)

Proper consideration of these mitigating factors supported a more lenient sentence. In light of these facts, Ms. Davis submits that the district court did not exercise reason, and thus abused its discretion, by imposing and executing a sentence of fourteen years, with three years fixed.

CONCLUSION

Mr. Davis respectfully requests that her judgment of conviction be vacated and her case be remanded to the district court with an instruction that that judgment be withheld, and that she be placed on probation. Alternatively, Ms. Davis requests her case be remanded to the district court with an order that the imposed sentence be suspended for a period of probation. Alternatively, she requests that this Court reduce her sentence as it deems appropriate.

DATED this 15th day of July, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 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