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### State v. Betancourt Appellant's Brief Dckt. 48597

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48597-2021
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-20-36188
v.	)	
	)	
CARL ROBERT BETANCOURT,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Carl Betancourt entered an *Alford*<sup>1</sup> plea to felony possession of a controlled substance and driving under the influence, the district court imposed an aggregate sentence of seven years, with one and one-half years fixed. On appeal, he argues the district court abused its discretion by imposing an excessive sentence. He submits the district court should have imposed a lesser indeterminate sentence.

<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

## Statement of the Facts & Course of Proceedings

Late one evening, Mr. Betancourt was pulled over by an Idaho State Police trooper for speeding and driving without headlights. (PSI, p.5.) Because he had bloodshot and glassy eyes, the trooper had Mr. Betancourt perform a series of field sobriety tests, which he failed. (PSI, p.5.) He was then arrested for driving under the influence. (PSI, pp.5, 168-86.) Although a breath test showed he had a blood alcohol content of .000, the trooper obtained a warrant for a blood draw, and a subsequent toxicology report showed that Mr. Betancourt had amphetamine and methamphetamine in his system. (PSI, pp.5, 168-86.) In the meantime, during an inventory search of Mr. Betancourt's car, officers discovered a bag with a crystal powder that appeared to be methamphetamine, a methamphetamine pipe, and syringes. (PSI, p.5.)

The State filed a complaint against Mr. Betancourt alleging felony possession of a controlled substance, possession of drug paraphernalia, and misdemeanor operating a motor vehicle while under the influence of drugs and/or an intoxicating substance. (R., pp.7-8.) After Mr. Betancourt waived his preliminary hearing, he was bound over to district court on those offenses. (R., pp.26-30.)

Pursuant to a plea agreement, Mr. Betancourt entered an *Alford* plea to felony possession of a controlled substance and misdemeanor driving under the influence, and the State dismissed the remaining charge. (Tr., p.10, L.12 – p.12, L.20; R., pp.32-44.)

At the sentencing hearing in January 2020, the State recommended the district court impose a sentence of seven years, with two years fixed for felony possession of a controlled substance. (Tr., p.17, L.24 – p.19, L.11.) As to the DUI charge, the State recommended the district court impose concurrent jail time. (Tr., p.19, Ls.12-15.) Defense counsel recommended a sentence of six years, with two years fixed, for the felony, to run concurrently to

Mr. Betancourt's other holds.<sup>2</sup> (Tr., p.19, L.20 – p.21, L.2.) The district court sentenced him to seven years, with one and one-half years fixed, for felony possession of a controlled substance, and six months in jail for DUI, to run concurrently. (Tr., p.23, L.18 – p.25, L.1; R., pp.51-55.) The district court also made these sentences concurrent with the sentence in Jerome County Case No. CR-2013-1801. (Tr., p.23, L.24 – p.24, L.20.)

Mr. Betancourt filed a Criminal Rule 35 motion in early April 2021. The district court has not yet ruled on this motion. Mr. Betancourt timely appealed from the judgment of conviction. (R., pp.56-58.)

### ISSUE

Did the district court abuse its discretion when it imposed an aggregate sentence of seven years, with one and one-half years fixed, upon Mr. Betancourt?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed An Aggregate Sentence Of Seven Years, With One And One-Half Years Fixed, Upon Mr. Betancourt

Mr. Betancourt asserts that, given any view of the facts, his aggregate sentence of seven years, with one and one-half 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

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<sup>2</sup> At the time of the instant offense, Mr. Betancourt was on parole for his conviction in Jerome County Case No. CR-2013-1801.

the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Betancourt 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. Betancourt 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 indeterminate term of imprisonment in light of the mitigating factors, including his troubled childhood, his substance abuse and its longstanding impact on his life, and the fact that he has gainful employment upon release.

Mr. Betancourt had a very tumultuous childhood. A defendant’s “extremely troubled childhood is a factor that bears consideration at sentencing.” *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). Mr. Betancourt was raised in an environment rife with drugs and alcohol, and stated that his mother was always out partying, and was using drugs while she was pregnant with him. (PSI, p.201.) His father was not really a part of his life, and Mr. Betancourt did not have any stable positive role models in his life when he was growing up. (PSI, p.212.) He

reported being abused by both his father and grandfather, and stated that his grandfather made him steal. (PSI, pp.127, 201, 202, 222.) Mr. Betancourt had no structure growing up with his mother, and explained that he was often homeless, and in and out of foster care due to “[his mother’s] drug problem, and abuse to [him].” (PSI, pp.202, 212, 222.) He reported that when he was about [REDACTED] years-old, his mother began yelling at him and held him under the water while taking a bath. (PSI, pp.215, 218, 222, 238.) He stated that he moved around a lot, and has lived in twenty-four different states, as well as in Mexico. (PSI, p.202.) Mr. Betancourt explained that his mother passed away when he was [REDACTED] years-old, due to her “lifestyle, mental health issues, and diabetes.” (PSI, p.202.) He reported that he was involved in special education classes throughout his schooling, and eventually dropped out after completing the tenth grade. (PSI, p.212.) However, Mr. Betancourt was able to obtain his GED while in custody in Arizona. (PSI, p.212.)

After being exposed to drugs and alcohol at such a young age, Mr. Betancourt eventually developed a severe substance abuse problem. 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. Betancourt started using drugs and alcohol at a very young age. (See PSI, pp.120, 122, 125, 202, 207, 212, 223, 231.) He reported that he first used marijuana somewhere between the ages of five and nine, and first used alcohol before age [REDACTED] and stated that he last used both substances in 2013. (See PSI, pp.120, 202, 207, 212, 223.) He explained that he first used methamphetamine for the first time when he was around [REDACTED] years-old, and last used it two days prior to his arrest in September 2020. (See PSI, pp.120, 122, 202, 207, 212, 223, 231.) Mr. Betancourt reported that prior to his arrest, he was smoking methamphetamine about two to three times per week. (PSI, p.120.) He also reported

experimenting with peyote and mushrooms when he was about ten or [REDACTED] years-old. (PSI, p.207.) Mr. Betancourt further reported that he tried to drink himself to death after his mother passed away, and he was hospitalized as a result. (PSI, p.207.) The Global Appraisal of Individual Needs (“GAIN”) evaluator diagnosed him with severe substance use disorder. (PSI, pp.122, 128, 130.) When asked how his substance use has impacted his life, Mr. Betancourt said, “It has been a loss in my life because I always end up in jail or prison.” (PSI, p.218.)

Mr. Betancourt accepted responsibility for his crimes and recognized that he needs counseling and substance abuse treatment. (*See* PSI, pp.113, 218, 226; Tr., p.21, Ls.6-17.) He acknowledged that his substance use underlies his criminal behavior, and stated that his criminal behavior is “all because of meth, how I was brought up in life. Meth is the nightmare in my life.” (PSI, p.208.) Mr. Betancourt admitted that he was under the influence of methamphetamine when he committed the instant offenses, and stated, “I feel horrible for my relapse and crimes!” (PSI, p.114.) He stated that he is 100% ready to remain clean and sober, and is willing to explore how substances affect his personal goals. (PSI, pp.125, 128.)

The fact that Mr. Betancourt will be able to return to his full-time job upon his release also stands in favor of mitigation. *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. Betancourt worked at CS Beef Packers (“CS Beef”) from May 19, 2020 until August 27, 2020, and will be able to return to that job upon his release into the community. (*See* PSI, p.276.) The Human Resources director for CS Beef stated, “Mr. Betancourt was an excellent performer with an outstanding attitude.” (PSI, p.276.) The letter further stated that he was an asset, and the company intended to hire him for a full-time position upon his release. (PSI, pp.117, 276.)

Despite Mr. Betancourt's tumultuous childhood and serious substance abuse, he has shown a willingness to try to overcome his addiction, and has recognized the detrimental effect it has had on his life. He accepted responsibility for his criminal behavior and acknowledged the importance of maintaining his sobriety. Upon his release, Mr. Betancourt plans to return to his job at CS Beef and continue participating in substance abuse treatment.

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

#### CONCLUSION

Mr. Betancourt respectfully requests that this Court reduce the indeterminate portion of his sentence as it deems appropriate.

DATED this 27<sup>th</sup> day of May, 2021.

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



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of May, 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