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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. 48609-2021
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-20-26899
v.)	
)	
STACY JAMES NICKEL,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Stacy Nickel pled guilty to felony unlawful possession of a firearm, the district court placed him on probation, with an underlying sentence of five years, with two years fixed. On appeal, Mr. Nickel argues that the district court abused its discretion by imposing an excessive underlying sentence.

Statement of the Facts & Course of Proceedings

At the time of the instant offense, Mr. Nickel and his ex-wife had just gone through a messy divorce, in which Mr. Nickel was awarded possession of a Ram truck. (PSI, p.38; *see also*

2/1/21 Tr., p.12, L.14 – p.13, L.6.¹) Because the truck was still in his ex-wife’s name, his missed payments on the truck reflected poorly on her credit, so she went to his house to get the truck with the intention of taking it to the bank to get it refinanced. (PSI, p.38.) Immediately after she took the truck, Mr. Nickel contacted her and transferred money into her account for the truck payment, and promised to give her additional cash when she returned the truck. (PSI, p.38.) His ex-wife reported to police that when she returned the truck in the early morning hours the following day, Mr. Nickel yelled at her to get out of the truck and pointed a gun at her head. (PSI, pp.28-30, 38-39.) Due to a previous felony conviction from 2006, Mr. Nickel is not allowed to possess a gun. (PSI, pp.28, 30-31.) When officers arrived at Mr. Nickel’s home and spoke with him, he admitted to having possession of a gun, and gave consent for police officers to retrieve the gun from his bedroom. (PSI, pp.28, 30-32.) As officers went inside his home to get the gun, they saw drug paraphernalia and three small plastic baggies containing methamphetamine in plain view. (PSI, pp.28, 30-32.) Mr. Nickel was subsequently arrested for unlawful possession of a firearm and felony possession of a controlled substance. (PSI, p.32.)

The State filed a complaint against Mr. Nickel in July 2020 for felony unlawful possession of a firearm, felony aggravated assault, felony possession of a controlled substance, and misdemeanor possession of drug paraphernalia. (R., pp.7-8.) The district court issued a no-contact order prohibiting Mr. Nickel from contacting his ex-wife. (*See* R., pp.14-15.) After he waived his preliminary hearing, Mr. Nickel was bound over to district court on those charges. (R., pp.23-27.)

¹ The Reporter’s Transcript consists of two separately-paginated transcripts in one electronic document. Each will be cited with reference to its internal pagination. The first transcript, cited as “11/2/20 Tr.,” contains the entry of plea hearing held on November 2, 2020 (pages four to six of entire document). The second transcript, cited as “2/1/21 Tr.,” contains the sentencing hearing held on February 1, 2021 (pages twelve to fifteen of overall document).

Pursuant to a plea agreement, Mr. Nickel pled guilty to felony unlawful possession of a firearm, and the State dismissed the remaining charges. (11/2/20 Tr., p.5, Ls.1-17, p.12, L.3 – p.14, L.8; R., pp.30-40.) As part of the plea agreement, the State also agreed to recommend that the district court sentence him to five years, with two years fixed, suspend the sentence, and put Mr. Nickel on probation. (11/2/20 Tr., p.5, Ls.1-6; 2/1/21 Tr., p.6, Ls.1-6; R., pp.39-40.)

A sentencing hearing was held in February 2021. (*See generally* 2/1/21 Tr.) At that hearing, the State gave the recommendation required by the plea agreement: five years, with two years fixed, suspended, with a condition of probation being that he serve ninety days in the Ada County Jail, or that he serve time in the Jail until he has completed the Active Behavioral (“ABC”) Health programming. (2/1/21 Tr., p.6, Ls.17-23.) Defense counsel requested a withheld judgment, with some discretionary jail time. (2/1/21 Tr., p.14, L.14 – p.15, L.12.) The district court imposed a sentence of five years, with two years fixed, suspended the sentence, and put Mr. Nickel on probation, with the condition that he serve ninety days in the Ada County Jail, or serve jail time until he completes the ABC program. (2/1/21 Tr., p.17, L.24 – p.18, L.11; R., pp.47-52.)

Mr. Nickel timely appealed from the judgment of conviction. (R., pp.53-55.)

ISSUE

Did the district court abuse its discretion when it imposed an underlying sentence of five years, with two years fixed, upon Mr. Nickel for unlawful possession of a firearm?

ARGUMENT

The District Court Abused Its Discretion When It Imposed An Underlying Sentence Of Five Years, With Two Years Fixed, Upon Mr. Nickel For Unlawful Possession Of A Firearm

Mr. Nickel asserts that, given any view of the facts, his underlying sentence of five years, with two 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. Nickel 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. Nickel 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 ability to be a productive member of society, his ability to correct his behavior, and his employability.

In this case, [REDACTED] Mr. Nickel asserts that his ability to be a productive member of society supports a lesser sentence. Although the instant offense is Mr. Nickel's second felony conviction, he has stayed out of trouble and been a contributing member of society for the last fifteen years. (PSI, pp.4, 9-10, 12.) Since his first felony conviction in Oregon in 2006, Mr. Nickel has not been charged with any misdemeanors or felonies, and he has fully paid the outstanding balance for the 2006 charge. (PSI, pp.4, 8-10, 12.) Further, in the pre-sentence investigation ("PSI") report, Mr. Nickel was deemed to be a low risk to reoffend. (PSI, p.11.)

Mr. Nickel submits that his ability to correct his behavior also weighs in favor of a lesser sentence. In fact, while this case was pending, and after a no-contact order was put in place, in August 2020, Mr. Nickel's ex-wife came over to his house, and entered through the garage door and kitchen door, with the intention of confronting him about payments on the Ram truck. (PSI, pp.61-62.) She ended up taking the truck from Mr. Nickel's home and refinanced it in her name. (PSI, pp.60-61.) Rather than contact his ex-wife or attempt to get the truck back, Mr. Nickel instead hired an attorney and obtained an order that required her to return the truck. (2/1/21 Tr., p.13, Ls.9-16.)

Mr. Nickel contends that his employability supports a lesser sentence as well. *See 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). The pre-sentence investigator noted that Mr. Nickel appears capable of maintaining employment and meeting financial obligations. (PSI, p.8.)

Mr. Nickel reported that he has experience with welding, maintenance, and mechanics. (PSI, p.6.) Prior to his move to Boise in 1995, Mr. Nickel was working for American Airlines as a junior mechanic. (PSI, p.8.) His longest period of employment was from 2013 to 2019 when he worked as a foreman at Vibra Pro. (PSI, p.7.) From 2019 until his arrest in July 2020, Mr. Nickel worked in maintenance at First Rate Property Management. (PSI, p.7.) He reported that he is currently self-employed and working at “He’s the Guy.” (PSI, pp.14, 18.) The pre-sentence investigator noted that his housing accommodations, current employment, and financial stability are protective factors for Mr. Nickel. (PSI, pp.3, 8.)

Although this offense is Mr. Nickel’s second felony conviction, he has not been charged with any other offenses in the past fifteen years. Mr. Nickel demonstrated that he has the ability to correct his behavior and has shown that he can be a productive member of society. Additionally, he is capable of maintaining gainful employment and meeting his financial obligations.

Proper consideration of these mitigating factors supported a more lenient sentence. In light of these facts, Mr. Nickel submits that the district court did not exercise reason, and thus abused its discretion, by imposing an underlying sentence of five years, with two years fixed.

CONCLUSION

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

DATED this 5th day of August, 2021.

/s/ Kiley A. Heffner
KILEY A. HEFFNER
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:

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

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

KAH/eas