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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48673-2021
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-20-31952
v.)	
)	
RICK JOSEPH ANDERSON,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Rick Anderson pled guilty to aggravated assault, the district court sentenced him to serve five years, with two-and-one-half years fixed. Mr. Anderson appeals, and he argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In August 2020, the State filed a criminal complaint alleging that Mr. Anderson committed the crimes of aggravated assault, misdemeanor violation of a no contact order, and misdemeanor malicious injury to property. (R., pp.9-10.) According to the Presentence

Investigation Report (“PSI”),¹ Mr. Anderson showed up at a business where his ex-girlfriend, Luana Yokom, was getting her car fixed. (PSI, p.12.) Mr. Anderson ultimately slammed the driver’s side door of his truck on Ms. Yokom and then drove away. (PSI, p.12.)

Pursuant to a plea agreement, Mr. Anderson pled guilty to aggravated assault and misdemeanor violation of a no contact order.² (Tr., p.15, L.19—p.18, L.9; R., pp.63-74.) At sentencing, the State recommended a sentence of five years, with two-and-one-half years fixed, for the aggravated assault charge and asked that the sentence be executed. (Tr., p.35, Ls.8-10, p.40, Ls.24-25.) Mr. Anderson requested that the district court sentence him to five years, with two-and-one-half years fixed, suspended for probation. (Tr., p.43, Ls.2-9.) The district court sentenced Mr. Anderson to serve a term of five years, with two-and-one-half years fixed, for aggravated assault.³ (Tr., p.56, L.22—p.57, L.2; R., pp.81-84.) Mr. Anderson timely appealed from the judgment of conviction. (R., pp.90-92.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Anderson to serve five years, with two-and-one-half years fixed, for aggravated assault?

¹ Citations to the PSI refer to the 177-page electronic document with the confidential sentencing materials, titled “Appeal Confidential Exhibits 04-12-2021 12.22.54 46033899 BF02E358-ED0B-4B03-BF50-872F2CEBB9DB.”

² While this case was pending, Mr. Anderson was charged in a separate criminal complaint in Boise County, case number CR08-20-1651. (R., pp.29-32). The plea agreement in this case was part of a global resolution that included Mr. Anderson entering a plea to a misdemeanor violation of a no contact order in that Boise County case. (R., p.72; Tr., p.6, L.17—p.7, L.11.) The other charges from the Boise County case, as well as the misdemeanor malicious injury to property charge in this case, were dismissed pursuant to the plea agreement. (R., p.72; Tr., p.6, L.17—p.7, L.11.) The State also agreed as part of the plea agreement that it would not pursue a persistent violator enhancement. (R., p.73.)

³ For the misdemeanor no contact order violation, the district court sentenced Mr. Anderson to one-hundred-and-sixty-eight days, concurrent with the aggravated assault, with one-hundred-and-sixty-eight days credit from time served. (Tr., p.57, Ls.16-20; R., p.82.)

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Anderson To Serve Five Years, With Two-And-One-Half Years Fixed, For Aggravated Assault

“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.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018). In this matter, Mr. Anderson’s sentence does not exceed the statutory maximum. *See* I.C. § 18-906 (five-year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Anderson “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), *abrogated in part by*, *State v. Garcia*, 166 Idaho 661 (2020). “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. Anderson asserts that 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. Anderson contends the district court should have sentenced him to probation in light of the mitigating factors, including his community support, mental condition, substance abuse issues, and expressions of remorse for his actions.

First, the support and good character letters from Mr. Anderson's family and friends stand in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 594–95 (1982) (reducing defendant's sentence upon a finding of family support and good character as mitigation); *see State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (finding that the district court acknowledged family and friend support as mitigating circumstances). Fourteen individuals prepared letters in support of Mr. Anderson. (PSI, pp.57-68, 173-76.) According to the letters, Mr. Anderson is "a good man" that "tries to help people when he can" (PSI, p.57), is a "decent and moral human being" and "honorable family man" (PSI, p.58), has "always been encouraging and supportive" (PSI, p.59), has "always put others first" and is "always there, for problems big and small, expecting nothing in return" (PSI, p.60), has been "a great support" and would give others "the shirt off his back" (PSI, p.61), is "kind, giving, loving, respectful, well-respected in the community, a stranger to no one and friend to many" (PSI, pp.62-63), "would do anything to help out a person in need" (PSI, p.64), was "always kind and professional" (PSI, p.65), has "had compassion for people that are less fortunate" (PSI, p.66), is "a good person that just got on the wrong path" (PSI, p.67), has "great integrity" (PSI, p.68), is an "honest man" (PSI, p.173), and was "always very calm and understanding when it came to teaching others" (PSI, p.176). According to the presentence investigator, Mr. Anderson "[v]oiced prosocial beliefs during

presentence interview.” (PSI, p.16.) Mr. Anderson’s community support and prosocial beliefs are mitigating factors that support a lesser sentence.

Second, Mr. Anderson’s mental condition is a significant 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. Anderson’s mental health was evaluated as part of his Global Appraisal of Individual Needs (“GAIN”) assessment. (PSI, pp.36-45.) In addition, a Department of Health and Welfare Mental Health Examination Report was prepared for Mr. Anderson pursuant to Idaho Code § 19-2524. (PSI, pp.46-48.) In those assessments, Mr. Anderson was given provisional diagnoses for “Major Depressive Disorder, Single Episode, Mild – Provisional” and “Generalized Anxiety Disorder”. (PSI, pp.37, 46.) According to the mental health report, “Rick Anderson presents with mental health needs as noted above and mental health treatment is recommended to minimize risk of further deterioration of functioning and to monitor for any ongoing risk.” (PSI,

p.48.) The report also stated that “without some form of treatment, it is likely [Mr. Anderson] will continue to struggle with symptoms and problems may increase.” (PSI, p.48.)

During the presentence investigation, Mr. Anderson reported that he suffered significant injuries following a car accident in July 2019. (PSI, pp.15-16.) During that accident, Mr. Anderson suffered a “severe concussion with traumatic brain injury”, a “shattered pelvic bone”, and “neuropathy on his left foot”.⁴ (PSI, p.15.) Since that accident, Mr. Anderson noted that he began to have “anxiety attacks, stress and ‘emotions I don’t understand.’” (PSI, p.15.) In her victim impact statement provided in the presentence investigation report, Ms. Yokom stated that Mr. Anderson “had been good to her up until he was in a car accident” and that “she would like to think the defendant’s actions were due in large part to the car accident and brain damage suffered from that accident.”⁵ (PSI, p.13.)

In a concussion evaluation prepared by Saint Alphonsus Rehabilitation Services shortly after his accident in July 2019, Mr. Anderson was diagnosed with moderately severe post-concussive symptoms. (PSI, p.80.) According to the evaluation, Mr. Anderson “demonstrates functional breakdowns in the areas of short-term memory and verbal expression at the conversational level.” (PSI, p.81.) The evaluator diagnosed Mr. Anderson with a “cognitive communication deficit” following the accident. (PSI, p.79.) After that initial evaluation, Mr. Anderson continued to regularly engage in physical and psychological therapy. (PSI, pp.83-110.)

⁴ In an attached neuropsychological consultation report, Mr. Anderson’s medical records “indicated that the patient had a bad acetabular fracture location with the peroneal nerve palsy from the sciatic nerve. The patient also reportedly had pelvic fractures.” (PSI, p.71.)

⁵ While Mr. Anderson was in custody, Ms. Yokom attempted to contact Mr. Anderson “by phone and messaged more than 30 times, all of which have gone unanswered.” (Tr., p.48, Ls.11-20.)

A few days before committing the offenses at issue in this case, Mr. Anderson proactively attended a neuropsychological consultation to address issues he had been experiencing since the car accident. (PSI, pp.71-74.) At that consultation, Mr. Anderson reported that he had experienced “waves of severe anxiety”, “his frustration tolerance is very short”, his brain was “all over the place”, he “cannot concentrate”, and there are times where he will “draw a blank when trying to retrieve information.” (PSI, p.71.) The psychologist that participated in the consultation noted that Mr. Anderson “is very anxious and restive. He has difficulty regulating his emotions. His frustration tolerance is low. He certainly is sad and blue.” (PSI, p.73.) The psychologist recommended that Mr. Anderson “enter into psychological treatment to address his ongoing depression, anxiety, anger, and poor emotional regulation. Once he stabilizes emotionally, we will likely pursue formal neuropsychological testing.” (PSI, p.74.) Even after Mr. Anderson was charged in this case, he participate in another follow-up neuropsychological consultation. (PSI, p.75.) At that time, Mr. Anderson reported “ongoing difficulties with sustained attention, short-term memory, and neurobehavioral changes.” (PSI, p.75.)

At sentencing, defense counsel explained that Mr. Anderson had been actively meeting with a social worker on a weekly basis for the previous six months while incarcerated. (Tr., p.43, L.23—p.44, L.14.) Defense counsel stated that Mr. Anderson would continue to work with the social worker if he was released onto probation and that the social worker had helped set up an assessment with Human Supports of Idaho for Mr. Anderson so that he could continue to work on his behavioral health therapy plan. (Tr., p.44, Ls.9-14; *see also* PSI, pp.172, 174-75, 177.) In a report prepared on Mr. Anderson’s behalf, the social worker explained that “[t]hroughout the course of sixteen therapy visits, Rick has expressed increasing insight and

judgment.” (PSI, p.174.) Furthermore, the social worker found that Mr. Anderson “expressed evolving beliefs in the importance of mental health and engaging in counseling/psychotherapy that will encourage his ongoing participation in treatment.” (PSI, p.174.) The social worker observed that Mr. Anderson “has worked to further develop his emotional vocabulary, understand locus of control, accept responsibility, express empathy, and increase insight of how his beliefs and self-understanding have impacted his past actions and willingness to participate in treatment.” (PSI, p.174.) While in custody in this case, Mr. Anderson also completed courses on “anger management, cognitive awareness, contentious relationships, healthy relationships, substance abuse, thinking skills, and so on.” (Tr., p.49, Ls.11-17; *see also* PSI, pp.69-70.)

Defense counsel asserted at sentencing that while Mr. Anderson had prior convictions, Mr. Anderson did not have a “violent past” and his criminal convictions were “over or about 20 years ago.”⁶ (Tr., p.45, L.22—p.46, L.16.) Defense counsel further explained that Mr. Anderson’s family, including his wife of thirty years and his sister, had not observed “this sort of violent behavior from Rick before” and that the car accident may have triggered something in Mr. Anderson’s brain that made him feel and react differently. (Tr., p.46, Ls.3-16.) Defense counsel stated that Mr. Anderson is amenable to treatment and to changing his behavior if given the opportunity to do so. (Tr., p.46, Ls.3-16.)

⁶ There was an over fifteen year gap in time between Mr. Anderson’s conviction for felony escape in 2004 and his conviction for misdemeanor battery in 2020. (PSI, p.20-22.) At sentencing, district court emphasized that Mr. Anderson “had a disturbing the peace that was reduced from a battery for which you were convicted that arose before the accident occurred. That’s violent behavior that had nothing to do with the accident, and it’s more evidence of criminal thinking.” (Tr., p.55, Ls.19-24.) However, defense counsel explained that the disturbing the peace charge referenced by the district court was actually dismissed after Mr. Anderson appealed the conviction, and the district court acknowledged that that case was dismissed. (Tr., p.32, Ls.11-20; *see also* PSI, p.21 (listing the disposition of the disturbing the peace case as “Amended Disposition 04/29/19 – Dismissed.”).)

At sentencing, Mr. Anderson explained that “[p]rior to that accident, I didn’t really feel like I had all the emotions and feelings and that sort of thing that I do after the accident. I never experienced that kind of stuff before.” (Tr., p.51, Ls.8-11.) Mr. Anderson stated that he realized that he was having issues prior to the charges arising in this case, and that he told his wife that he “needed to talk with somebody, I needed to get some help.” (Tr., p.51, Ls.16-19.) Mr. Anderson asserted that he “got ahold of a Dr. Calhoun and started and went in for testing -- several tests, or whatever -- prior to coming to jail.” (Tr., p.51, Ls.19-22; *see* PSI, pp.71-75.)

Despite the concerns raised throughout the presentence investigation report and by Mr. Anderson and his counsel at sentencing regarding the car accident, the district court stated that “while I appreciate that you want to assign a lot of the reasons for that to your accident, I am not convinced that it plays as great a role as you would like me to believe.” (Tr., p.55, Ls.15-18.) The district further determined that “the level of criminal thinking that existed prior to the accident and that which exists subsequent to the accident doesn’t seem to have changed much.” (Tr., p.56, Ls.13-16.)

Mr. Anderson 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. Anderson’s mental health was a significant factor, and substantial concerns were raised if Mr. Anderson 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, Mr. Anderson contends that the district court did not give adequate consideration to the factors listed under Idaho Code § 19-2523, and the lengthy prison sentence imposed suggests it did not. Mr. Anderson’s mental condition stands in favor of mitigation and leniency in this case.

Third, Mr. Anderson's substance abuse issues, the impact of his substance abuse on his behavior, his need for treatment, and his willingness to participate in treatment are strong factors in mitigation. 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. Anderson completed a GAIN assessment. (PSI, pp.36-45.) In that assessment, Mr. Anderson self-reported symptoms sufficient to meet the criteria for amphetamine use disorder severe and cannabis use disorder moderate. (PSI, pp.27-29.)

Mr. Anderson reported that he began using cannabis at the age of [REDACTED] (PSI, p.38.) Mr. Anderson informed the evaluator that he had "consumed cannabis edibles daily for several months before this incarceration", and that his use of cannabis was "to deal with the permanent nerve pain" in his "legs and feet." (PSI, p.36.) Mr. Anderson also disclosed that he relapsed on methamphetamine in February 2020. (PSI, p.36.) In the GAIN assessment, Mr. Anderson "reported that he has quit using substances and is about 100% ready to remain abstinent." (PSI, p.41.) Furthermore, Mr. Anderson completed a substance abuse course while in custody for this case. (Tr., p.49, Ls.11-17; PSI, pp.69-70.) Prior to sentencing, Mr. Anderson worked with a social worker to schedule an assessment through Human Supports of Idaho, and that program included substance abuse sessions and substance use groups that would help Mr. Anderson if he was released into the community. (Tr., p.44, Ls.9-14; PSI, p.172.)

At sentencing, defense counsel indicated that Mr. Anderson would comply with any court ordered drug and alcohol testing and participate in level one outpatient substance abuse treatment as was recommended in the GAIN assessment. (Tr., p.43, Ls.10-12, p.45, Ls.1-6; PSI, pp.44-45.) Defense counsel further stated that there were potentially factors other than Mr. Anderson's car accident that contributed to his conduct in this case, including his relapse on

methamphetamine. (Tr., p.46, Ls.17-23.) When discussing the viability of releasing Mr. Anderson into the community, the presentence investigator noted that Mr. Anderson “does appear motivated to participate in those treatment opportunities.” (PSI, p.24.) Mr. Anderson’s substance use issues, the impact of his substance abuse on his behavior, his need for treatment, and his willingness to participate in treatment are strong mitigating factors that support leniency in this case.

Fourth, Mr. Anderson has expressed great remorse for his actions and accepted responsibility for the crime. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). In the presentence investigation report, Mr. Anderson told the investigator that he was “embarrassed” and felt “extremely bad” for his conduct in this case. (PSI, p.13.) The presentence investigator noted that Mr. Anderson “[e]xpressed remorse for actions” and that Mr. Anderson was “[w]illing to accept consequences for actions and wishes to participate in further assessment and treatment.” (PSI, p.16.)

At sentencing, Mr. Anderson informed the district court that he was “embarrassed and ashamed” of his actions. (Tr., p.50, Ls.21-24.) Mr. Anderson also apologized to Ms. Yokom for the harm that he caused her and stated that he was “extremely sorry for the loss of her mother and the pain and suffering [he] caused her.” (Tr., p.53, Ls.14-19.) These statements of acceptance, remorse, and regret stand in favor of mitigation.

In sum, Mr. Anderson maintains that 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 supported his request for probation. Mr. Anderson submits that the district court abused its discretion by not giving him an opportunity for probation.

CONCLUSION

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

DATED this 17th day of June, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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

JLW/eas