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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48674-2021
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR28-20-17334
v.)	
)	
AARON WARREN MALM,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Aaron Malm pleaded guilty to felony domestic violence and was sentenced to a unified term of five years, with two and one-half years fixed. He asserts the district court abused its discretion by failing to retain jurisdiction, in light of the mitigating factors that exist in his case.

Statement of the Facts & Course of Proceedings

The State charged Mr. Malm with attempted strangulation, felony domestic battery, malicious injury to property, and false imprisonment. (R., pp.44-46.) Pursuant to an agreement with the State, Mr. Malm pleaded guilty to felony domestic battery, the State agreed to dismiss

the remaining charges, and the parties were free to argue for whatever sentence they believed appropriate. (R., pp.49-51, 55-56; Tr., p.5, L.23 – p.17, L.18.)

The State asked the district court to sentence Mr. Malm to a unified term of ten years, with five years fixed (Tr., p.33, Ls.15-21), while Mr. Malm asked the court to impose a unified term of five years, with two and one-half years fixed, and to either suspend the sentence and place Mr. Malm on probation, or retain jurisdiction (Tr., p.39, Ls.14-22). The district court sentenced Mr. Malm to a unified term of five years, with two and one-half years fixed, but declined to place Mr. Malm on probation or retain jurisdiction. (R., pp.61-63; Tr., p.44, Ls.4-10.) Mr. Malm filed a timely Notice of Appeal. (R., pp.66-69.)

ISSUE

Did the district court abuse its discretion by failing to retain jurisdiction, in light of the mitigating factors present in Mr. Malm's case?

ARGUMENT

The District Court Abused Its Discretion By Failing To Retain Jurisdiction, In Light Of The Mitigating Factors Present In Mr. Malm's Case

Mr. Malm asserts that, given any view of the facts, the district court abused its discretion by failing to retain jurisdiction and allow him to participate in a rider program. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. 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. The decision whether to retain jurisdiction is left to the sound

discretion of the sentencing court, and such decisions are reviewed on appeal under the abuse of discretion standard.

Not long after graduating from high school, Aaron Malm decided he wanted to serve his country, and he joined the U.S. Army. (PSI, pp.22-23.)¹ He served as mechanic, and was honorably discharged as a corporal and team leader in 2015. (PSI, p.22.) Unfortunately, Mr. Malm developed an addiction to alcohol while he was in the Army, and he continued drinking after his term of service ended. (PSI, pp.9, 13.) Mr. Malm attended a 30-day inpatient program through the Veteran's Administration, and was participating in an aftercare program through the Spokane V.A., but stopped attending in February of 2020 due to the COVID-19 pandemic. (PSI, pp.10, 21.) Around the same time, Mr. Malm was laid off from his job, also due to the pandemic. (PSI, p.23.) Out of a job and unable to attend treatment, Mr. Malm's drinking took a hold of his life. (PSI, p.21.)

Mr. Malm's mother, grandmother, and sister, informed the PSI writer that they support Mr. Malm, but recognize that he becomes an angry and sometimes violent person when he is drinking, and he needs to participate in more inpatient treatment for his addiction. (PSI, pp.20-22, 41-42.) Even Mr. Malm's victim, a woman with whom he had been in a dating relationship for three months prior to the incident, acknowledged that Mr. Malm had generally been "patient and kind," but he just "snapped" when he attacked her. (PSI, pp.20-21.) Mr. Malm admitted that he was under the influence of alcohol throughout the day of his offense. (PSI, pp.9, 17-18.)

Fortunately, Mr. Malm recognizes both the harm that he caused, and the reality that he needs treatment for his addiction, and he wants to live an alcohol-free life. (PSI, pp.12-13, 18,

¹ Citations to the Presentence Investigation Report and its attached documents will include the designation "PSI," and the page numbers associated with the 42-page electronic file containing those documents.

21-22.) Mr. Malm informed the PSI writer that it was hard to live with his actions, and that thinking about what he has done makes him ill. (PSI, p.18.) He acknowledged that he was intoxicated when he committed his crime, and that he needs to return to counseling and seek a support group in order to remain sober in the future. (PSI, pp.17, 27.) During his sentencing hearing, Mr. Malm took responsibility for his actions, and expressed remorse and his desire for treatment:

At this point, I don't believe it's any secret to anyone present here today that I have been at war with my addiction to alcohol for several years now. There have been many bumps along that road, but an alarming number of people might label as wake-up calls and to some degree they were.

But this time around is different. This time I hurt someone very close to my heart. Someone that I love and care about more than anything. This time I'm awake. I will not stand here and tell you that this is not my fault. I will not stand here and say that the alcohol made me do it. It was indeed a factor, but I was the one who chose to drink again knowing the risks therein. Reasons I did this, reasons that I relapsed this time are irrelevant, because at the end of the day, no one forced me to do anything.

It is my hope to impress upon the Court today my feelings of responsibility and also of determination. Regardless of the sentence that the Court deems fit to give me today, I want to let it be known that I will be taking full advantage of every resource available to me within these walls and without to ensure that no one or their families will ever have to feel at my hands the way that [the victim] and her family must be feeling now. For my children, for my own family, for everyone around me, and for myself, this is my promise to you.

Your Honor, this – I've been in treatment more than once for alcohol and – inpatient and outpatient. And someone asked me today what would be different this time around. And I always do good. I do really well for about six months, and I get complacent and get comfortable and I start making mistakes.

And I think the difference this time around is the motivation. The motivating factors have changed dramatically. This time I just – I became someone that's not me. That's not who I am. And I started to hurt people that I love, physically. And that's not – that's not the kind of person, the kind of man that I want to be.

(Tr., p.31, L.1 – p.32, L.20.) Mr. Malm ended his allocution by stating the following:

My heart aches for [the victim] and her family. I don't have the words to say what I need to say to her, or the – only that I'm going to do whatever I can to stay moving forward to make sure that I don't ever let that happen again to anyone.

(Tr., p.33, Ls.6-11.)

Idaho Courts recognize that alcohol addiction and the willingness to seek treatment, the support of family and friends, prior military service, and remorse for one's conduct, are all mitigating factors that should counsel a court to impose a less severe sentence. *See State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103 Idaho 593 (1982); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). In light of the mitigating factors that exist in this case, Mr. Malm asserts the district court abused its discretion by failing to retain jurisdiction, and affording Mr. Malm the opportunity to deal with his alcohol problem in a controlled setting, while allowing him the chance to demonstrate pro-social behaviors.

CONCLUSION

Mr. Malm respectfully requests that this Court vacate his sentence and remand his case to the district court with instructions to retain jurisdiction, or to otherwise reduce his sentence as this Court deems appropriate.

DATED this 7th day of September, 2021.

/s/ Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 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

JCP/eas