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### State v. Alvarez Appellant's Brief Dckt. 48918

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48918-2021
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-20-5746
v.	)	
	)	
MARIO ALBERTO ALVAREZ,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Mario Alberto Alvarez appeals from the district court's Judgment of Conviction and Order of Commitment. Mr. Alvarez was sentenced to a unified sentence of fourteen years, with four years fixed, for grand theft by receiving, possessing, and/or obtaining control over stolen property. He asserts that the district court abused its discretion because in light of the evidence, including the mitigating factors present in his case, the ultimate sentencing conclusion was unreasonable.

## Statement of the Facts & Course of Proceedings

On February 19, 2020 an Information was filed charging Mr. Alvarez with grand theft by receiving, possessing, and/or obtaining control over stolen property. (R., pp.26-27.) The charges were the result of a report to police, by Steven Vicuna, that “Mario Alvarez” had cashed a check for \$1200.00 that had been previously stolen from his vehicle. (PSI, p.1.)<sup>1</sup> The check was deposited in Mr. Alvarez’ Idaho Central Credit Union account. (PSI, p.1.) Mr. Alvarez denied stealing the check, noting that it was given to him by Chancellor Threatt. (PSI, p.1.) Mr. Threatt admitted that he gave the check to Mr. Alvarez. (PSI, p.2.)

Mr. Alvarez entered a not guilty plea the charge. (R., p.30.) After numerous delays due to the pandemic, Mr. Alvarez’s case was identified as a high priority case and, the trial that had been previously scheduled for July, was moved up to April, on relatively short notice. (R., pp.82, 92.) At trial, the State presented three witnesses: Steven Vicuna, the owner of the check (Tr., p.104, L.1 – p.113, L.25); Amy Black, an employee of Idaho Central Credit Union (Tr., p.130, L.5 – p.146, L.4); and Detective Whilden, the officer who investigated the crime and interviewed Mr. Alvarez (Tr., p.147, L.1 – p.162, L.18). The defense did not call any witnesses. (Tr., p.165, Ls.17-23.) The jury found Mr. Alvarez guilty. (R., p.107.)

At sentencing, the State recommended a unified sentence of fourteen years, with four years fixed. (Tr., p.214, Ls.6-7.) Defense counsel requested an underlying sentence of six years, with two years fixed, suspended for probation, including enhanced conditions such as participation in Drug Court, an ankle monitor, and/or participation in the Community Transition Center program. (Tr., p.215, Ls.8-21.) The district court imposed a unified sentence of fourteen

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<sup>1</sup> For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as “PSI” and referenced pages will correspond with the electronic page numbers contained in this file.

years, with four years fixed. (R., pp.134-36.) Mr. Alvarez filed a Notice of Appeal timely from the district court's Judgment of Conviction and Order of Commitment. (R., pp.138-39.)

### ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Alvarez, a unified sentence of fourteen years, with four years fixed, following his conviction for?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed, Upon Mr. Alvarez, A Unified Sentence Of Fourteen Years, With Four Years Fixed, Following His Conviction For Grand Theft By Receiving, Possessing, And/Or Obtaining Control Over Stolen Property

Mr. Alvarez asserts that, given any view of the facts, his unified sentence of fourteen years, with four 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. Alvarez does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Alvarez must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). 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.* (quoting *State v. Wolfe*,

99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

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). Mr. Alvarez asserts in light of the evidence, including the mitigating factors present in his case, the ultimate conclusion was unreasonable and, as a result, the district court did not reach its decision by an exercise of reason.

Several mitigating factors are present in Mr. Alvarez's case. First, Mr. Alvarez has a long history of substance abuse and a desire for treatment. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). Mr. Alvarez began using substances as a very young child, at the [REDACTED] as a teenager he began using crack/cocaine; and at the [REDACTED] he began using amphetamines. (PSI, pp.249, 251.) He has been diagnosed with Stimulant Use Disorder - Amphetamine, Severe and Stimulant Use Disorder - Cocaine, Severe. (PSI, pp.5, 250.) Although he has had prior opportunities to engage in treatment, in 2015, at the Dana Center in Arizona and, in 2014, through IDOC's relapse prevention, he needs further treatment and support to achieve lasting sobriety. (PSI, p.5.) It was recommended that he participate in Level 1 Outpatient Treatment. (PSI, pp.5, 258.) Mr. Alvarez reports that he has now quit using substances and is 100% ready to remain abstinent. (PSI, p.255.) He has expressed a strong desire to participate in Drug Court. (Tr., p.224, Ls.3-9; PSI, p.4.) As an alternative, he would like to participate in the PEER

Wellness Center, a program that would help with re-entry into the community, as well as helping with recovery from both substance abuse and mental illness issues. (Tr., p.221, L.8 – p.222, L.21; PSI, p.435.)

Additionally, Idaho courts have previously recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Alvarez has been previously diagnosed with attention deficit disorder, bipolar disorder, major depression with psychotic features, antisocial personality disorder, and a traumatic brain injury. (PSI, p.249.) He has a history of being physically attacked and emotionally abused, scoring in the "high range of the lifetime General Victimization Scale." (PSI, p.263.) In 2000 or 2001, he was admitted to a mental health hospital in Orofino for three months. (PSI, pp.82, 249.) He has not had any mental health treatment since 2009. (PSI, pp.249-50.) Despite this, he reported feeling significantly disturbed by his mental health with the last year. (PSI, p.261.) As recently as the spring of 2021, he reported symptoms "consistent with a diagnosis of a mood disorder and a possible stress disorder." (PSI, p.261.)

Finally, Mr. Alvarez has shown remorse for his involvement in the instant offense and has several positive character traits. 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." *Id.* 121 Idaho at 209. Mr. Alvarez's attorney noted that Mr. Alvarez wanted to take responsibility and resolve the case, and wanted to plead guilty pursuant to the State's offer, but due to the COVID priority trial list and the State's refusal to hold the offer open, they were unable to get a plea entered prior to the start of trial. (Tr., p.216,

Ls.5-18.) While Mr. Alvarez was not the person that stole items from Mr. Vicuna (PSI, p.2) and received no money from cashing the stolen check (Tr., p.217, Ls.3-7), he openly expressed his remorse for his involvement in the case stating: “I am sorry I have to be here in front of you all . . .” (Tr., p.218, Ls.8-9.) “I’m just sorry. I am sorry, Steven Vicuna.” (Tr., p.225, Ls.8-9.) And, “I so apologize for my behavior for – it’s my fault being ignorant in life.” (Tr., p.225, Ls.20-22.)

Despite his past and current issues, Mr. Alvarez remains upbeat and has a lot of plan for his future success. (PSI, p.440.) He hopes to help homeless women, by providing them with housing and programing, and start three companies: Alvarez Paints (a home painting business), “Pipen Hot Brats” (a hot dog vending business), and “Manitas Place” (a Mexican restaurant). (PSI, p.440.) He desperately desires a chance to be on probation, whether participating in Drug Court or another treatment program. As he noted at sentencing, “You know, it would be an honor to be on probation. It would be an honor to be on probation. I would, in a year's time, in six month[']s time, this man, this gentleman, this gentleman, you all would applaud, you know. I know I got it in me. I know I wouldn't come up with one excuse. I wouldn't gripe. I wouldn't complain. I've been looking for this.” (Tr., p.222, L.19 – p.223, L.1.)

Based upon the above mitigating factors, Mr. Alvarez asserts that the district court abused its discretion by imposing an excessive sentence upon him.

CONCLUSION

Mr. Alvarez 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 28<sup>th</sup> day of September, 2021.

/s/ Elizabeth Ann Allred  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> 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

EAA/eas