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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 48872-2021
)	
v.)	ADA COUNTY NO. CR01-18-31471
)	
CHANGKUOTH DOMACH,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After a jury found Changkuoth Domach guilty of unlawful possession of a firearm, and Mr. Domach pled guilty to the persistent violator sentencing enhancement, the district court sentenced him to eight years, with two and one-half years fixed. Mr. Domach appeals. He argues the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State alleged by criminal complaint that Mr. Domach committed the crimes of unlawful possession of a firearm and misdemeanor possession of marijuana. (R., pp.14-15.) After a preliminary hearing, the magistrate judge found probable cause for the offenses and

bound Mr. Domach over to district court. (R., pp.20, 21–22.) The State charged Mr. Domach by information with unlawful possession of a firearm and possession of marijuana. (R., pp.24–25.) Mr. Domach pled not guilty. (R., pp.28–29.) Later, the State filed a part two of the information to charge Mr. Domach with the persistent violator enhancement. (R., pp.38–29.)

Before trial, Mr. Domach pled guilty to possession of marijuana. (R., pp.157–58.) He went to trial on the unlawful possession of a firearm charge. (R., pp.159–67.) The jury found him guilty. (R., p.202.) Mr. Domach then pled guilty to the persistent violator enhancement. (R., p.167.)

At sentencing, the State recommended fifteen years, with five years fixed, for unlawful possession of a firearm with the enhancement. (Tr., p.349, Ls.1–6.) Mr. Domach requested a sentence of five years, with one year fixed. (Tr., p.355, Ls.10–13.) The district court sentenced him to eight years, with two and one-half years fixed, for unlawful possession of a firearm with the enhancement. (Tr., p.366, Ls.7–13.) The district court gave him credit for time served for possession of marijuana. (Tr., p.361, Ls.7–9.)

Mr. Domach timely appealed from the district court’s judgment of conviction. (R., pp.208–11, 215–17.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Domach to eight years, with two and one-half years fixed, for unlawful possession of a firearm with the persistent violator enhancement?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Domach To Eight Years, With Two And One-Half Years Fixed, For Unlawful Possession Of A Firearm With The Persistent Violator Enhancement

“It is well-established 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. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Domach’s sentence does not exceed the statutory maximum. *See* I.C. §§ 18-3316 (five-year maximum for unlawful possession of a firearm), 19-2514 (five-year minimum, life maximum for persistent violator enhancement). Accordingly, to show the sentence imposed was unreasonable, Mr. Domach “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).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

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.

Stevens, 146 Idaho at 148. “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. Domach asserts the district court did not exercise reason and therefore 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 experience as a refugee, low risk to the community, and strong family support system.

First, Mr. Domach's childhood as a refugee from Sudan supported a more lenient sentence. [REDACTED] Mr. Domach moved from Sudan to the United States with his family when he was [REDACTED] (Presentence Investigation Report ("PSI"),¹ p.4.) His family was low-income, and his parents separated when he was [REDACTED]. (PSI, p.4.) Mr. Domach was raised by his mother, who worked hard to support six children. (PSI, p.4.) As the oldest sibling, Mr. Domach had to take on extra responsibilities and act as a father figure for the family. (PSI, p.190.) Mr. Domach's younger sister wrote that Mr. Domach had anger issues as a child from the trauma in Sudan and domestic violence at home. (PSI, pp.190, 195, 197–98.) She also wrote that their father died during the genocide in South Sudan in 2013, and the family "was never the same after that." (PSI, pp.190, 192, 204.) The district court should have given more weight to this mitigating information at sentencing and imposed a lesser sentence.

Further, Mr. Domach's evaluation as a low risk to the community justified a shorter sentence. (PSI, p.210.) Mr. Domach had a somewhat extensive criminal record as a juvenile and young adult, but, in 2013, he turned over a new leaf. (PSI, pp.205, 209–10; Tr., p.356, Ls.11–18.) In 2013, Mr. Domach moved to Salt Lake City to start over. (Tr., p.357, Ls.19–23.) He lived there until the instant offense and has a young son with his ex-girlfriend of six years. (PSI, pp.4, 5, 205.) His son and his family were the most important things in his life. (PSI, p.10.) In light of these positive attributes, and despite his past criminal record, a licensed psychologist opined that

¹ Citations to the PSI refer to the 210-page electronic document with the confidential exhibits.

Mr. Domach was a low risk to the community.² (PSI, p.210.) The psychologist wrote that Mr. Domach admitted that he made mistakes when he was young and had learned from his behavior. (PSI, p.210.) Mr. Domach's status as a low risk reoffender stood in favor of mitigation

Finally, Mr. Domach's good character letters and family support should have been given more weight at sentencing. *State v. Shideler*, 103 Idaho 593, 594–95 (1982) (family support and good character as mitigation); *see State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (district court considered family and friend support as mitigating circumstance). Mr. Domach submitted eight letters in support from family and friends. (PSI, p.189.) First, Mr. Domach's sister described their family's challenges as refugees and explained that Mr. Domach was always there for her and their family. (PSI, p.190.) She wrote that he would pick her up from daycare and make sure they had dinner when their mother worked late. (PSI, p.190.) He recently helped another sibling with mental health issues. (PSI, p.190.) She believed that he felt remorseful. (PSI, p.190.) Second, Mr. Domach's cousin discussed Mr. Domach's generosity and kindness to others. (PSI, p.191.) His cousin stated that Mr. Domach encouraged him to focus on his education. (PSI, pp.191–92.) His cousin believed that Mr. Domach had matured while in custody and hoped that he could be with their family soon. (PSI, p.192.) Third, an acquaintance wrote a letter about their positive interaction with Mr. Domach over the thanksgiving holiday. (PSI, p.193.) Fourth, a long-time family friend described Mr. Domach as a "big brother" in the South Sudanese community. (PSI, p.194.) The friend stated that Mr. Domach had a community that would support him. (PSI, p.194.) Fifth, another South Sudanese friend made similar remarks about Mr. Domach's good character, explaining that Mr. Domach would always be there for the community, such as helping non-English-speaking members during their immigration or doctors'

² The PSI's LSI-R scored him as a moderate risk. (PSI, p.2.)

appointments. (PSI, p.195.) Sixth, a Sudanese community leader, who knew Mr. Domach for over ten years, wrote a letter of support. (PSI, p.196.) Seventh, another long-time family friend discussed, in detail, Mr. Domach's good character and the difficulties they faced as refugees. (PSI, pp.197-01.) His friend asked for leniency so Mr. Domach could be back with his family and friends. (PSI, p.200.) Finally, a family friend, who also saw Mr. Domach as an older brother, wrote that Mr. Domach coached them in basketball, encouraged them to stay in school, and made sure they stayed out of trouble. (PSI, p.202.) In fact, they stated that, due to Mr. Domach's positive influence, they were the first in their family to graduate from high school. (PSI, p.202.) These letters of good character and support warranted a lesser sentence.

In sum, Mr. Domach maintains the district court did not exercise reason and thus abused its discretion by imposing an excessive sentence of eight years, with two and one-half years fixed. He contends proper consideration of the mitigating factors in his case supported a more lenient sentence.

CONCLUSION

Mr. Domach respectfully requests this Court reduce his sentence as it deems appropriate. In the alternative, he respectfully requests this Court vacate his judgment of conviction and remand this case to the district court for a new sentencing hearing.

DATED this 27th day of October, 2021.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October, 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

JCS/eas