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### State v. Ferguson Appellant's Brief Dckt. 48964

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48964-2021
Plaintiff-Respondent,	)	
	)	BANNOCK COUNTY NO. CR03-20-10251
v.	)	
	)	
ROY E. FERGUSON, III,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Roy Ferguson pled guilty to felony possession of a controlled substance, the district court sentenced him to five years, with three years fixed, suspended the sentence, and placed Mr. Ferguson on probation for four years. Mindful of the invited error doctrine, on appeal, Mr. Ferguson argues the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In October 2020, police officers were called to Mr. Ferguson's home to investigate a reported altercation between Mr. Ferguson and his girlfriend. (PSI, p.2.) When an officer arrived,

he approached Mr. Ferguson, who was standing by his car in the driveway, and told Mr. Ferguson that he needed to speak with him about the reported disturbance. (PSI, p.2.) Due to Mr. Ferguson's alleged defensive behavior and the fact that he began to reach around in his pockets and waistband, the officer conducted a pat-down search, which revealed a white pill. (PSI, p.2; R., pp.10-16.) Mr. Ferguson told the officer that he had an oxycodone pill in his pocket, and admitted that he did not have a legal prescription for it. (R., p.14; PSI, p.1.)

The State subsequently filed a complaint against Mr. Ferguson for felony possession of a controlled substance. (R., p.8.) After Mr. Ferguson waived his preliminary hearing, he was bound over to district court on that charge. (R., pp.42-45.) The State also filed an Information Part Two, charging a sentence enhancement under Idaho Code § 19-2514, for allegedly being a persistent violator of the law. (R., pp.46-47.)

Pursuant to a plea agreement with the State, Mr. Ferguson pled guilty to felony possession of a controlled substance in April 2021 (Tr., p.13, L.18 – p.14, L.4, p.16, L.19 – p.18, L.5; R., pp.81-90), and the State dismissed the charged sentencing enhancement. (Tr., p.11, Ls.18-23; R., pp.100-01.) Under the terms of the plea agreement, the State and defense counsel agreed to a joint sentencing recommendation of five years of probation, with an underlying sentence of five years, with three years fixed. (R., pp.100-01.)

At the sentencing hearing in June 2021, consistent with the plea agreement, the State and defense counsel requested the district court impose a sentence of five years, with three years fixed, suspend the sentence, and place Mr. Ferguson on probation for five years. (Tr., p.24, Ls.1-4, p.25, Ls.6-9.) The district court sentenced Mr. Ferguson to five years, with three years fixed, suspended the sentence, and placed him on probation for four years. (Tr., p.28, Ls.15-21; R., pp.107-11.) Mr. Ferguson timely appealed. (R., pp.114-16.)

## ISSUE

Did the district court abuse its discretion when it imposed an excessive sentence of five years, with three years fixed, suspended the sentence, and placed Mr. Ferguson on probation for four years?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed An Excessive Sentence Of Five Years, With Three Years Fixed, Suspended The Sentence, And Placed Mr. Ferguson On Probation For Four Years

Mr. Ferguson asserts that, given any view of the facts, his aggregate sentence of four years of probation, with an underlying sentence of five years, with three 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. *State v. Reinke*, 103 Idaho 771, 772 (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. Ferguson 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.” *State v. Bodenbach*, 165 Idaho 577, 591 (2019) (quoting *Lunneborg v. My Fun Life*, 163, Idaho 856, 863 (2018)).

In this case, although mindful of the invited error doctrine, Mr. Ferguson asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Mr. Ferguson and the State both requested that the district court follow the sentence in the plea agreement: five years of probation, with an underlying sentence of five years, with three years fixed. (Tr., p.24, Ls.2-4, p.25, Ls.6-9.) The district court imposed the requested underlying sentence, and placed Mr. Ferguson on probation for four years. (Tr., p.28, Ls.15-21.) It has long been the law in Idaho that one may not successfully complain of errors one has acquiesced in or invited. Errors consented to, acquiesced in, or invited are not reversible.” *State v. Abdullah*, 158 Idaho 286, 420-21 (2015). Although Mr. Ferguson received the underlying prison sentence he requested, he submits the district court should have imposed a more lenient sentence in light of the mitigating factors, including his substance abuse issues and its longstanding impact on his life, his mental health issues, and his remorse and acceptance of responsibility.

[REDACTED] Mr. Ferguson has struggled with substance abuse for the majority of his life, and acknowledges the damaging effect it has had on his life. (*See* PSI, pp.6, 8, 11, 15-16, 22, 29.) *See State v. Osborn*, 102 Idaho 405, 414 n.5 (1981) (recognizing that the impact of substance abuse is a proper consideration in mitigation of punishment). He also suffers from mental health issues, and was diagnosed with attention deficit hyperactivity disorder (“ADHD”), bipolar disorder, depression, post-traumatic stress disorder (“PTSD”), and anxiety. (PSI, pp.5,

15.) *See State v. Dellling*, 152 Idaho 122, 132 (2011) (acknowledging that a defendant’s mental condition is a mitigating factor). In addition, Mr. Ferguson has been diagnosed with bulging disks and nerve damage (PSI, p.5), and explained that he relapsed due to the pain in his back and arm. (PSI, pp.13, 27; *see also* Tr., p.25, L.24 – p.26, L.6.) During the pre-sentence interview and at the sentencing hearing, Mr. Ferguson took full responsibility for his behavior and voiced remorse for his actions. (PSI, p.5; Tr., p.26, L.21 – p.27, L.1.) *See State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing sentence of defendant who, inter alia, “expressed regret for what he had done, especially for the effect it had upon his family and friends, but also indicated that he was confident he could be a productive citizen in the future”). Mr. Ferguson is committed to his sobriety, and he has been proactive in dealing with his substance abuse issues and mental health issues. Since his arrest for the instant offense, Mr. Ferguson got himself approved for disability benefits, and started seeing a doctor for his mental health and for pain management in order to obtain a legal prescription for his pain. (Tr., p.25, L.24 – p.27, L.1; PSI, pp.15-16, 21, 27, 31.) Further, Mr. Ferguson has a stable living environment. (PSI, p.14.) He is a father of three children, and is actively involved in their lives. (Tr., p.24, Ls.13-24, p.25, Ls.17-23.)

In light of these mitigating factors, but mindful of the invited error doctrine, Mr. Ferguson submits the district court did not exercise reason, and thus abused its discretion, by imposing an excessive sentence.

CONCLUSION

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

DATED this 15<sup>th</sup> day of October, 2021.

/s/ Kiley A. Heffner  
KILEY A. HEFFNER  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> 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  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

KAH/eas