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State v. Alvarez Appellant's Brief Dckt. 49001

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 49001-2021
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-19-43743
v.	)	
	)	
MARIO ALBERTO ALVAREZ,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
______________________________	)	

STATEMENT OF THE CASE

Nature of the Case

After Mario Alvarez pled guilty to grand theft and to being a persistent violator, the district court sentenced him to ten years, with two years fixed. Mindful of the invited error doctrine, Mr. Alvarez appeals and argues that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

In October 2019, the State filed a criminal complaint alleging that Mr. Alvarez committed the crimes of: grand theft by wrongfully obtaining checks;[1] resisting and/or obstructing an officer; possession of a conducted energy device; and providing false information to law enforcement. (R., pp.11-13.) After the case was bound over to the district court, the State filed a second part to the Information that alleged that Mr. Alvarez should be considered a persistent violator based on previous felony convictions. (R., pp.40-41.) Pursuant to a plea agreement, Mr. Alvarez pled guilty to grand theft and to being a persistent violator.[2] (R., pp.75-85; Tr., p.14, L.2—p.16, L.25, p.18, L.5—p.19, L.16.) At the entry of plea hearing, Mr. Alvarez also requested that a referral be sent to the Ada County drug court program to determine his eligibility for that program.[3] (R., p.89; Tr., p.19, L.19—p.20, L.3.)

At sentencing, the State recommended that Mr. Alvarez serve fourteen years, with four years fixed. (Tr., p.22, Ls.5-10.) Defense counsel requested that Mr. Alvarez serve ten years, with two years fixed. (Tr., p.24, L.20—p.25, L.19.) The district court sentenced Mr. Alvarez to serve ten years, with two years fixed. (R., pp.94-97; Tr., p.36, L.21—p.37, L.8.) Mr. Alvarez filed a timely notice of appeal from the judgment of conviction. (R., pp.101-04.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Alvarez to ten years, with two years fixed?

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[1] At the entry of plea hearing, Mr. Alvarez explained that he "came into possession" of the checks, that the checks "were in a manilla [*sic*] envelope", and that after he found the checks he "held onto them, deciding what [he] was going to do with them." (Tr., p.16, Ls.1-6.)

[2] Pursuant to the plea agreement, the State agreed to dismiss the other charges in this case and a felony possession of a controlled substance charge in an unrelated case, CR01-20-37688. (R., p.75.)

[3] The drug court program subsequently determined that Mr. Alvarez was not an appropriate candidate for that program prior to sentencing. (R., p.91.)

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Alvarez To Ten Years, With Two Years Fixed

"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. Alvarez's sentence does not exceed the statutory maximum. *See* I.C. §§ 18-2408(2)(a) (one-year minimum and fourteen-year maximum for grand theft) & 19-2514 (five-year minimum and life-maximum for persistent violator). Accordingly, to show that the sentence imposed was unreasonable, Mr. Alvarez "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.

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. Alvarez received the sentence that his trial counsel requested at sentencing. (R., pp.94-97; Tr., p.24, L.20—p.25, L.19, p.36, L.21—p.37, L.8.) "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 386, 420-21 (2015). Mindful that Mr. Alvarez received the sentence requested by defense counsel, he nevertheless maintains that the district court should have imposed a lesser sentence in light of the mitigating factors present in his case.

First, Mr. Alvarez's substance abuse issues, the impact of his substance abuse on his behavior, and his need for 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. Alvarez completed a Global Appraisal of Individual Needs ("GAIN") assessment. (PSI,[4] pp.250-261.) In that assessment, Mr. Alvarez self-reported symptoms sufficient to meet the criteria for amphetamine use disorder severe and stimulants use disorder severe. (PSI, pp.251-53.)

In an attached presentence report prepared in 2001, Mr. Alvarez disclosed that he began drinking beer when he was ██████ (PSI, p.170.) Mr. Alvarez also began smoking marijuana at the██████. (PSI, p.169.) When Mr. Alvarez was ██████ he began drinking "an average of a 12-pack each day, 'but used more weed than alcohol.'" (PSI, p.170.) Mr. Alvarez also began to drink hard liquor at the ██████. (PSI, p.169.) Starting at the ██████ Mr. Alvarez began to consume at least one case of beer a day. (PSI, p.170.) By

[4] Citations to the "PSI" refer to the 435-page electronic document containing the confidential sentencing materials prepared for this case, titled "Appeal Confidential Exhibits 09-14-2021 08.31.29 50526340 902BC09F-F974-4DCC-8181-D0C5251085D9."

the time that Mr. Alvarez was [redacted], he was smoking approximately two-ounces of cocaine daily. (PSI, pp.169-70.)

Despite his lifelong issues with controlled substance abuse, Mr. Alvarez reported in the GAIN assessment that he "has quit using substances and is about 100% ready to remain abstinent." (PSI, p.256.) The GAIN assessor noted that Mr. Alvarez "has agreed to participate in any recommended treatments[.]" (PSI, p.260.) At the entry of plea hearing, defense counsel requested a drug court referral on Mr. Alvarez's behalf. (Tr., p.19, L.19—p.20, L.3.) Although Mr. Alvarez was determined to not be an appropriate candidate for the drug court program, he informed the district court that he was "not giving up on" himself and that he would make sure that his conduct did not occur again in the future. (Tr., p.32, L.23—p.34, L.8.) Defense counsel also stated at sentencing that Mr. Alvarez plans on engaging in treatment with Peer Wellness whenever he is released into the community. (Tr., p.25, Ls.20-24.) Mr. Alvarez's substance abuse issues, the impact of his substance abuse on his behavior, and his need for treatment are strong mitigating factors that support leniency in this case.

Second, Mr. Alvarez's mental condition is a 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.

Prior to sentencing, a mental health examination report was prepared by Department of Health and Welfare pursuant to Idaho Code § 19-2524. (PSI, pp.262-64.) In addition to the stimulant use disorders described above, Mr. Alvarez was also given provisional diagnoses for: (1) major depressive disorder, single episode, with psychotic features and (2) posttraumatic stress disorder or acute stress disorder or other disorder of extreme stress. (PSI, p.262.) The examiner that prepared the report noted that "Mario Alvarez does present with a serious mental illness (SMI) and/or other mental health needs. Mental health treatment is recommended to minimize the risk of further deterioration of functioning and to monitor for any ongoing risk." (PSI, p.264.) Furthermore, the examiner wrote that "[w]ithout some form of treatment, it is likely this Individual will continue to struggle with symptoms and problems may increase." (PSI, p.264.)

In the GAIN assessment, the assessor noted that Mr. Alvarez "has been diagnosed with attention deficit disorder, bipolar, major depression with psychotic features, antisocial personality disorder, and a traumatic brain injury (TBI)." (PSI, pp.250, 255.) Mr. Alvarez disclosed in the GAIN assessment that he was "tortured at [redacted]" and that he "has not been treated for his mental health since 2009." (PSI, pp.250-51.) Mr. Alvarez was admitted to a mental health hospital in Orofino, Idaho for three months in 2000 and a different hospital when he was younger. (PSI, pp.250, 255.) In the GAIN assessment, Mr. Alvarez "scored in the high range of the Internal Mental Distress Scale" and "reported thinking about committing suicide during the past 12 months." (PSI, p.254.) Additionally, Mr. Alvarez "reported a lifetime history

of being attacked with a weapon, being beaten, emotional abuse; and scored in the high range of the lifetime General Victimization Scale." (PSI, p.259.)

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

Third, Mr. Alvarez has shown regret for his actions in this case 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. At sentencing, Mr. Alvarez acknowledged that it "was stupid of" him to have taken the check at issue in this case. (Tr., p.32, Ls.20-21.) Mr. Alvarez stated that his "mind was not in the right place" at the time that he committed the crime in this case and that he apologized for his conduct. (Tr., p.32, Ls.21-22.) Defense counsel explained at sentencing that Mr. Alvarez "has a lot of goals for the future", including helping his family and community. (Tr., p.26, Ls.4-7.) Defense counsel stated that Mr. Alvarez has been planning on starting a hot dog business with his brother and wants to either work with or help open shelters for homeless people. (Tr., p.26, Ls.9-22.)

Mindful that he received the sentence that defense counsel requested at sentencing, Mr. Alvarez maintains that the district court abused its discretion by imposing an excessive sentence in this case.

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 16th day of November, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 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

JLW/eas