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State v. Deboer Appellant's Brief Dckt. 47840

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 47840-2020
	)	
v.	)	ADA COUNTY NO. CR01-19-30000
	)	
SETH JORDAN DEBOER,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

Having pled guilty to selling methamphetamine to an undercover officer, the district court sentenced Seth Jordan Deboer to ten years in prison, with three years fixed. On appeal, Mr. Deboer argues the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

According to the Presentence Investigation Report ("PSI"),[1] Mr. Deboer was targeted by an undercover law enforcement operation. (PSI, pp.7, 13, 46-48, 65-66, 70-73, 78-81.) The

[1] Citations to the PSI refer to the 278-page electronic document with the confidential sentencing materials, titled "Conf.Docs.-Deboer."

objective of the operation appears to have been to conduct several controlled, hand-to-hand drug buys. (PSI, pp.7, 13-14, 46-48, 65-66, 70-73, 78-81.) Investigative materials in the PSI indicate that Mr. Deboer was only a "middleman" selling drugs on behalf of other suppliers. (PSI, pp.13, 47, 49, 71, 73.) On February 12, 2019, members of a drug strike force conducted a controlled purchase in which Mr. Deboer is alleged to have sold nearly an ounce of methamphetamine[2] to an undercover officer, in exchange for $650 in cash. (PSI, pp.7, 13-14, 46-48.) He was not arrested or charged at that time. Rather, the State waited more than five months to charge Mr. Deboer with a single count of felony Trafficking in Methamphetamine in violation of I.C. § 37-2732B(a)(4)(A). (R.,[3] pp.7-9.)

Mr. Deboer was appointed a public defender, waived a preliminary hearing and his case was bound over to district court. (R., p.11.) The State later filed an amended Information to reflect the allegation that Mr. Deboer represented that the amount of methamphetamine was a full ounce, regardless of the fact that the actual weight fell far below it. (R., pp.14-15; PSI, pp.1-2; Tr.,[4] p.15, Ls.4-24.) Mr. Deboer pled guilty pursuant to a plea agreement in which the state agreed to dismiss two pending cases and not file charges in a third.[5] (R., pp.22-33.) The plea agreement further provided that the State would recommend a ten (10) year prison sentence, with three (3) years fixed and seven (7) years indeterminate. (R., pp.22-33.) Mr. Deboer's attorney asked the court to

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[2] Although Mr. Deboer allegedly represented it to be an ounce (28.34 grams) of methamphetamine, officers later determined that the actual mass of the substance was 21.75-22.60 grams. (PSI, pp.7, 14, 22; Tr., p.14, Ls.7-24.) Mr. Deboer stipulated in his guilty plea that he represented to the undercover officer that he was delivering a full ounce of methamphetamine. (R., p.14.)

[3] Citations to the Record ("R.") refer to the 50-page electronic document with the court clerk's materials, titled "Clerk-Deboer."

[4] Citations to "Tr." refer to the 27-page transcript (eight -page PDF divided into quadrants) which includes two hearings: entry of plea on 12/2/19 and sentencing on 2/24/20.

[5] The two cases to be dismissed were CR01-19-23897 and 29775. (R., pp.25, 30.) The uncharged case was designated in the plea agreement as "DR# 2019-4009." (R., pp.25, 31.)

sentence him to the three (3) year mandatory fixed term in prison,[6] but to impose no indeterminate sentence. (Tr., p.22, L.24.) The district court adopted the State's recommendation and sentenced Mr. Deboer to ten years in prison, with three years fixed. (Tr., p.25, Ls.11-24.) The district court entered a judgment of conviction and Mr. Deboer timely appealed. (R., pp.37-39, 41-43.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Deboer to ten years, with three years fixed, for trafficking of methamphetamine?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Deboer To Ten Years, With Three Years Fixed, For Trafficking of Methamphetamine

"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. Deboer's sentence does not exceed the statutory maximum. *See* I.C. § 37-2732B(a)(4)(D) (maximum of life in prison). Accordingly, to show that the sentence imposed was unreasonable, Mr. Deboer "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).

The "'[r]easonableness' 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)).

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[6] By statute, Mr. Deboer's guilty plea required him to be sentenced to a "mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000)" I.C. § 37-2732B(a)(4)(A).

> 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).

Mr. Deboer 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 indeterminate term of imprisonment, in light of several mitigating factors, including: (1) his past dependency on drugs and alcohol, (2) his amenability to treatment, (3) his lack of prior felony convictions, (4) his acceptance of responsibility and remorse, (5) the fact that his crime was encouraged by government agents, (6) the fact that his crime was less egregious than many similarly charged cases, (7) his unstable upbringing, (8) his employability, (9) his willingness to pay restitution, and (10) his good behavior while incarcerated.

When it imposed its sentence, the district court made few specific factual findings to explain its reasoning, leaving the reviewing court to speculate about whether it exercised its discretion reasonably. It briefly noted that Mr. Deboer benefitted from the dismissal of the other cases. (Tr., p.24, Ls.5-10.) Otherwise, however, the court appeared to emphasize the seriousness of drug dealing generally as the primary basis for the ten-year sentence. The court did not cite any distinguishing facts about Mr. Deboer's case but spoke in generalities, telling him, "You were and are a drug dealer. You ruin lives. You ruin communities." (Tr., p.24, Ls.11-12.) Factually, it is notable that law enforcement officers investigating Mr. Deboer apparently did not consider him

an imminent danger to the community nor share the court's assessment because after conducting their controlled drug buys, they left him on the street for more than five (5) months before seeking an arrest warrant to remove him from the community. (R. pp.7-9.) Moreover, dealing drugs is precisely what Mr. Deboer pled guilty to, which is not in itself aggravating but rather a baseline fact shared by every defendant convicted of that offense. The legislature has provided a three-year prison sentence (fixed) as an adequate and legal sentence for a defendant convicted of the crime to which Mr. Deboer pled guilty. Without further factual findings to support its decision to impose the seven-year indeterminate term, it is unclear how the district court concluded that Mr. Deboer—a non-violent, first-time felon—deserved the additional seven years more than the legally required sentence.

In declining to cite any evidence-based facts to support its sentence, the district court also failed to reasonably assess several significant mitigating facts. First, the court did not even mention the information documented in Mr. Deboer's PSI regarding his life-long struggle with substance abuse. Mr. Deboer was [redacted] when he started using intoxicating substances. (PSI, pp.184-85.) He began drinking alcohol to the point of intoxication at [redacted] and was consuming "a fifth of liquor daily" by [redacted] (PSI, pp.58, 184-86, 196.) He experimented with methamphetamine at 16 and, when he was [redacted], Mr. Deboer reports that he smoked marijuana "all day, every day." (PSI, pp.58, 184-86.) He continued to use marijuana until his arrest in this case. (PSI, p.186.) At [redacted], he "ate some Xanax" and "woke up in the mental hospital." (PSI, pp.57, 184.) He was chemically dependent upon heroin at the time of his arrest. (PSI, pp.54-55, 58, 184-86.) His drug

dealing was a function of—and a means to finance—his drug addiction, which involved marijuana and heroin, as well as alcohol.[7] (PSI, pp.58-59, 184-86.)

The presentence investigator noted that Mr. Deboer "admitted he began selling illegal drugs when he was unemployed and had no other means to support his addiction." (PSI, p.60.) State evaluators diagnosed Mr. Deboer with Alcohol Use Disorder, Cannabis Use Disorder, and Opioid Use Disorder—all in the "severe" range. (PSI, p.185.) Yet, the district court failed to adequately acknowledge or even mention these significant facts. A court's failure to consider a defendant's substance dependency can be indicative of an unreasonably excessive sentence. *State v. Nice*, 103 Idaho 89, 91 (1982) (reducing defendant's sentence, in part, because "we feel that the trial court did not give proper consideration of the defendant's alcoholic problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem."); *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981) ("While the ingestion of drugs or alcohol by appellant on the evening of the offense is not sufficient in itself to raise a defense to the crime, it is our conclusion that any arguable impact of such substance abuse is a proper consideration in mitigation of punishment upon sentencing.").

Second, the PSI also indicated that Mr. Deboer is highly motivated for treatment. (PSI, pp.189, 196.) Mr. Deboer has acknowledged a need for treatment and sobriety, and he told the court that he was committed to improving himself and leaving his criminal mentality in the past. (Tr., p.23, Ls.9-11; PSI, pp.58-60.) He stated that "the most important things in his life include 'taking care of myself and staying drug free.'" (PSI, p.59.) Ironically, this is not the first time that incarceration has thwarted Mr. Deboer's attempts to obtain substance abuse treatment; he had

[7] The PSI appears to contain a typo with respect to Mr. Deboer's first use of heroin, stating that he started using heroin "last year when he was [redacted] (PSI, p.58.) Mr. Deboer was 28 at the time of the pre-sentence investigation (PSI, pp.44, 186.)

previously checked himself into a treatment center voluntarily to help overcome his heroin addiction, but that treatment was terminated prematurely when he was taken to jail for an outstanding misdemeanor warrant. (PSI, pp.58, 187.)

Then and now, Mr. Deboer received incarceration instead of any opportunity to engage in meaningful treatment. Instead of presuming that a lengthy prison sentence was the only means to rehabilitate him, the court should have taken into consideration Mr. Deboer's amenability to treatment. *State v. Shideler*, 103 Idaho 593, 595 (1982) (reducing sentence of defendant who, *inter alia*, "stated he had successfully recovered from his dependency on and abuse of prescription medications."); *see State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008) (finding the sentence was not excessive, but recognizing mitigating circumstances including defendant's "expression of remorse for his conduct, the family support that he still retains, the part that his being under the influence of alcohol played in the incident, and his willingness to seek treatment for an alcohol problem.").

Third, Mr. Deboer has no prior felony convictions.[8] (PSI, p.60.) The district court did not mention this significant fact or appear to consider it in imposing its ten-year sentence, despite the fact that Idaho caselaw clearly establishes that a lack of prior felony convictions is a factor in favor of leniency. *State v. Owen*, 73 Idaho 394, 402 (1953) ("The courts have long recognized that the first offender should be accorded more lenient treatment than the habitual criminal. In addition to considerations of humanity, justice and mercy, the object is to encourage and foster the rehabilitation of one who has for the first time fallen into error, and whose character for crime has not become fixed."), *overruled on other grounds by State v. Miller*, 151 Idaho 828 (2011); *Nice*,

[8] Mr. Deboer has eleven misdemeanor convictions and zero prior felony convictions. He has never been on supervised probation. (PSI, pp.54, 60.)

103 Idaho at 91; *Shideler*, 103 Idaho at 595;*State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998); *see also State v. Caudill*, 109 Idaho 222, 224 (1985); *State v. Bickhart*, 164 Idaho 204, 206 (Ct. App. 2018); *Cook v. State*, 145 Idaho 482, 489 (Ct. App. 2008). Such consideration is especially true when an individual's first felony conviction requires a sentence of incarceration with no opportunity for some other form of supervision.

Fourth, Mr. Deboer also accepted unconditional accountability and expressed remorse for his offense, repeatedly. He told the presentence investigator: "I'm really sorry for what I did.... I would give up anything to take back what I did." (PSI, p.49.) Mr. Deboer "accepted culpability for the instant offense" and wrote, "I feel horrible about what I did I just hope I can get a chance to right my wrongs." (PSI, pp.49, 59, 60.) Moments before receiving his ten-year prison sentence, Mr. Deboer shared with the district court that he was "ashamed" of his actions, was "very sorry," and had learned from his mistakes. (Tr., p.23, Ls.4-5, 13-14.) Far from minimizing his conduct, Mr. Deboer told the court there was "no excuse" for his crime and that he accepted "full accountability." (Tr., p.23, Ls.6-7.) He told the court that he was looking forward to a better future, clearly inferring that he was committed to sobriety and lawful behavior. (Tr., p.23, Ls.14-15.)

Mr. Deboer's remorse and unequivocal acceptance of responsibility for his conduct was mitigation that should have been considered by the district court. *State v. Jackson*, 130 Idaho 293, 295-96 (1997); *see also State v. Carrasco*, 114 Idaho 348, 354-55 (Ct. App. 1988) (apparently treating as mitigation the fact that the defendant "acknowledged the wrongfulness of the transaction [drug sale] and he openly expressed contrition for his acts."), *reversed on other grounds*, 117 Idaho 295 (1990); *Caudill*, 109 Idaho at 224; *Shideler*, 103 Idaho at 594-95 (reducing defendant's sentence in part because "the defendant has accepted responsibility for his acts," "expressed regret for what he had done" and "indicated that he was confident he could be a

productive citizen in the future."); *Coffin*, 146 Idaho at 171; *Cook*, 145 Idaho at 489; *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991) (holding that leniency was required in part because the defendant expressed "remorse for his conduct."); *State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991).

Fifth, there is also no indication in the record that the district court appropriately weighed the fact that Mr. Deboer's criminal conduct was encouraged by government agents. Mr. Deboer does not allege that the police encouraged him to become a drug addict or to associate with drug dealers in the first place, but it is clear from the information contained in the PSI that the drug distribution alleged in this case was part of an ongoing narcotics operation in which undercover officers regularly contacted Mr. Deboer encouraging him to sell drugs to them in exchange for cash.[9] (PSI, pp.7, 13, 46-48, 65-66, 70-73, 78-81.) Not only did the undercover officers solicit drugs from Mr. Deboer, they continued to solicit from him repeatedly, stockpiling felony charges against him instead of promptly arresting him after the first incident. (PSI, pp.7, 13, 46-48, 65-66, 70-73, 78-81.) Although police inducement does not excuse criminal activity, it "does represent a factor in mitigation" of a defendant's sentence. *State v. Carrasco*, 114 Idaho 348, 354-355 (Ct. App. 1988), *reversed on other grounds*, 117 Idaho 295, 787 P.2d 281 (1990) (considering in mitigation that the defendant's criminal conduct was "encouraged by offers of large sums of money from government agents"). Without controlling the discretion of the court, Idaho law also recognizes it to be mitigating if a "defendant acted under a strong provocation." I.C. § 19-2521(2)(c).

[9] Mr. Deboer is mindful that after the sales began with undercover officers, there were instances in which he offered to sell to them. (PSI, p.47.)

Sixth, it is further significant that the police investigation identified Mr. Deboer as merely a middleman, as contrasted with the higher-level drug distributors for whom he was selling. (PSI, pp.7, 13, 46-49, 71, 73, 78.) In the world of drug trafficking, Mr. Deboer's participation was far less egregious than the actions of those who manufacture and distribute bulk amounts of drugs to be sold by low-level pawns like Mr. Deboer. The record reflects that Mr. Deboer participated as such a pawn for a short period of time, "to support his addiction" while in the clutches of heroin dependency, as opposed to the sustained actions of career drug traffickers who profit from widespread drug trade. (PSI, pp.7, 13, 46-49, 58-59, 184-186.) In addition, nothing in the record suggests that Mr. Deboer possessed weapons or behaved in a violent or threatening manner during his involvement in drug sales. Where it is evident that an offender's crime is not as egregious as it could have been, the Idaho Supreme Court has recognized the mitigating nature of that fact. *See State v. Jackson*, 130 Idaho 293, 295 (1997). Here, the fact that Mr. Deboer was merely a middleman begs the question why the district court thought it reasonable to impose a sentence seven (7) years longer than was legally required. Yet, the district court provided no insight into its reasoning.

There are several other mitigating facts that the district court apparently did not take into account. A seventh mitigating factor would have been Mr. Deboer's unstable childhood, during which he constantly moved from place to place with drug-addicted parents—an upbringing that likely had a negative impact on his development, contributing to his involvement with drugs, as well as his educational and employment deficiencies.[10] (PSI, pp.54-56, 191.) A high school dropout, he was under-educated, under-skilled and indigent at the time of his arrest. (PSI, pp.49,

[10] Mr. Deboer dropped out of school after ninth grade, in order to get a job to help pay bills, following his mother's incarceration. (PSI, pp.54-56.) His mother, in turn, continues to be the only person he considers a source of social support. (PSI, p.191.)

54, 191, 193.) As described above, Mr. Deboer's use of drugs and alcohol at an extremely young age is also indicative of his neglected childhood. (PSI, pp.58, 184-86, 196.) A defendant's difficult childhood can significantly impact development and is unquestionably mitigating. *See State v. Gonzales*, 123 Idaho 92, 93 (Ct. App. 1993) (mitigation included that defendant "was eighteen at the time of the offense and had dropped out of school during high school… was subjected to an abusive childhood, living in numerous broken homes… was introduced to drugs and alcohol at a very young age and admits to being chemically dependent"); *see also State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001) ("While Williams' extremely troubled childhood is a factor that bears consideration at sentencing, against it must be weighed the heinous nature of his offense and the danger that Williams presents to society"); *State v. Smith*, 144 Idaho 687, 690-91 (Ct. App. 2007); *State v. Walker*, 129 Idaho 409, 410 (Ct. App. 1996). In this case, however, there is little indication the district court reasonably considered Mr. Deboer's difficult upbringing.

Eighth, given his scarce education and crippling substance dependency, his relative employment successes in the past were worthy of consideration by the sentencing court. Except during his period of heroin dependency, it appears that Mr. Deboer was regularly employed and expressed a desire to be gainfully employed in the future. (Tr., p.23, Ls.12-13; PSI, pp.49, 54-55, 57, 59.) He has expressed a forward-looking desire to attend trade school to improve his employment opportunities and to "stay employed" after his release. (PSI, pp.56, 59.) *See Shideler*, 103 Idaho at 595; *Nice*, 103 Idaho at 90-91; *State v. Mitchell*, 77 Idaho 115, 119 (1955); *State v. Hagedorn*, 129 Idaho 155, 161 (Ct. App. 1996); *Baiz*, 120 Idaho at 293. Ninth, Mr. Deboer agreed to pay restitution and did not contest the amount sought by the State, which is also a significant fact in mitigation. *State v. Hall*, 114 Idaho 887, 889 (Ct. App. 1988); I.C. § 19-2521(2)(f).

And finally, it appears that Mr. Deboer's conduct in the county jail for 216 days was productive and without incident, reflecting not only his good behavior but also his sincerity in assuring the court that he was committed to a future free of criminal conduct. (Tr., p.23, Ls.7-15.) As corroboration of his sincerity in striving to rise above his involvement in drugs, Mr. Deboer used the time he spent in the county jail studying to obtain his GED. (Tr., p.23, Ls.7-8; PSI, p.56.) Idaho courts have often recognized that good conduct during incarceration mitigates a potential sentence. *See State v. Barreto*, 122 Idaho 453, 455 (Ct. App. 1992); *State v. Gonzales*, 122 Idaho 17, 20 (Ct. App. 1992); *State v. Jardin*, 121 Idaho 1030, 1031 (Ct. App. 1992); *State v. Sanchez*, 117 Idaho 51, 52 (Ct. App. 1990); *State v. Snapp*, 113 Idaho 350, 351 (Ct. App. 1987); *State v. Torres*, 107 Idaho 895, 898 (Ct. App. 1984).

Instead of prison, the PSI indicated that outpatient treatment would be appropriate for Mr. Deboer, with a sentence crafted to help him resolve his severe substance abuse issues, as well as his financial, education, employment and housing challenges. (PSI, pp.59, 187, 192-93.) Noting that a prison sentence was statutorily mandated in this case, the PSI advised that Mr. Deboer "clearly is in need of structure, treatment, and supervision moving forward." (PSI, p.61.) Three years in prison will provide Mr. Deboer no shortage of structure. However, the district court's decision to add an additional seven years onto the minimum sentence appears arbitrary, unnecessary, and unreasonable in light of Mr. Deboer's circumstances. Mr. Deboer argues that the district court unreasonably sentenced him to confinement for a period substantially longer than necessary to achieve retribution and the other legitimate sentencing goals.

The great bulk of facts in the record suggests that Mr. Deboer is a man of good character, highly motivated to succeed in treatment, and whose involvement in drug dealing was a direct manifestation of his severe chemical dependency. His lack of prior felonies, his detrimental

upbringing, indigency, and lack of education all mitigated his opportunistic criminal offense, as did the fact that his conduct was encouraged and drawn out by undercover agents. Rhetorically, if anyone convicted of this offense deserved the minimum sentence, the record is lacking indications of why Mr. Deboer should not be that person. In Mr. Deboer, the district court had a compliant, cooperative, remorseful young man in a low-level position of the drug world conducting middleman drug sales at the behest of undercover agents over a discrete period of weeks in early 2019, without weapons or violence—a first-time felon having already served seven months in jail waiting for his case to resolve, and required by statute to sit in prison for nearly two and a half more years. Under these facts, no reasonable review of the record justifies the decision to give him up to seven additional years in prison, where he will not receive the case planning called for in the PSI.

CONCLUSION

Mr. Deboer 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 8th day of July, 2020.

/s/ Garth S. McCarty
GARTH S. McCARTY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

GSM/eas