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Sentencing Discretion: Current Trial and Appellate Court Perspectives in Idaho

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SENTENCING DISCRETION:

Current Trial and Appellate Court Perspectives In Idaho

Hon. Dar Cogswell, District Judge
Hon. Don Burnett, Judge, Court of Appeals

INTRODUCTORY NOTE

This is an outline of current sentencing standards presented to the Idaho Judicial Conference in July, 1984. The contents are descriptive, not evaluative. They set forth the standards found in Idaho today, not necessarily the standards that may, or should, evolve in the future.

Sentencing is a rapidly changing area of the law. The concept of sentencing discretion itself has come under critical scrutiny. Readers of this outline are urged to keep abreast of new court decisions and possible legislative action, prescribing additional standards to guide or to limit sentencing discretion.

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I. DISCRETIONARY SENTENCING ALTERNATIVES

A. **General standard.** The primary responsibility for sentencing rests within the sound discretion of the trial judge. **E.g.,** State v. Osborn, 104 Idaho 809, 663 P.2d 1111 (1983); State v. Reinke, 103 Idaho 771, 653 P.2d 1183 (Ct. App. 1983).

B. **Probation v. confinement.**

1. The choice of probation, among the available sentencing alternatives, is committed to the sound discretion of the trial court. State v. Toohill, 103 Idaho 566, 650 P.2d 707 (Ct. App. 1983).

2. The exercise of discretion is guided by Idaho Code 19-2521, which prescribes criteria for weighing probation against a sentence of confinement.

3. Denial of probation will not be deemed a "clear abuse of discretion" if the decision is consistent with the criteria articulated in I.C. § 19-2521. State v. Toohill, **supra.**

4. Conditions of probation must be reasonably related to the rehabilitative purpose of probation. State v. Vaughn, 105 Idaho 494, 670 P.2d 901 (1983).

C. **Retention of jurisdiction.** Refusal to retain jurisdiction, for further evaluation of a defendant, will not be deemed a "clear abuse of discretion" if the trial court already has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Toohill, **supra.**

D. **Confinement.**

1. Unlike the choice between probation and confinement, the determination of sentence length is not guided by any statutory criteria, except the maximum term.

2. If a sentence is within the statutory maximum it will not be disturbed on appeal unless the appellant affirmatively shows a "clear abuse of discretion." State v. Cotton, 100 Idaho 573, 602 P.2d 71 (1979); State v. Toohill, **supra.**

3. Reasonableness is a fundamental requirement. A sentence may represent a "clear abuse of discretion" if it is shown to be unreasonable upon the facts of the case. State v. Nice, 103 Idaho 89, 645 P.2d 323 (1982); State v. Toohill, **supra.**

4. A term of confinement is reasonable to the extent it appears necessary, at the time of sentencing, to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case. A sentence of confinement longer than necessary for these purposes is unreasonable. State v. Toohill, **supra.**

5. Length of confinement may be indeterminate under I.C. § 19-2513 or fixed under I.C. § 19-2513A.

a) A fixed sentence, unlike an indeterminate sentence, must be served entirely in confinement. State v. Rawson, 100 Idaho 308, 597 P.2d 31 (1979); State v. Miller, 105 Idaho 838, 637 P.2d 438 (Ct. App. 1983).

b) The duration of a fixed life sentence is the full natural life of the inmate. State v. Wilson, 105 Idaho 669, 672 P.2d 237 (Ct. App. 1983) (petition for review granted).

c) A sentence to a fixed term of years less than life may be imposed for first degree murder, as an alternative to fixed or indeterminate life imprisonment. The term of confinement under such a sentence must be no less than that which would be required to be served under an indeterminate life sentence. State v. Wilson, **supra** (2-1 decision on this point).

E. **Reduction of sentence (of confinement).** The decision whether to reduce a sentence rests in the sound discretion of the sentencing court. Such a motion is essentially "a plea of leniency" which may be granted if the sentence originally imposed was, for any reason, unduly severe. State v. Lopez, _____ Idaho _____, 680 P.2d 869 (Ct. App. 1984).

II. EXERCISE OF SENTENCING DISCRETION

A. **Focus on offense and offender.**

1. The trial court must sentence the individual and not the crime category; the process must, therefore, be an individualized consideration of all the facts and circumstances surrounding the offense. Holmes v. State, 104 Idaho 312, 658 P.2d 983 (Ct. App. 1983).

2. The court must examine the record with regard to the nature of the offense, the character of the offender and the protection of the public interest. State v. Schideler, 103 Idaho 593, 651 P.2d 527 (1982).

3. The sentencing process must allow flexibility, in order that it be humane and sensitive to the individual defendant. State v. Creech, 105 Idaho 362, 670 P.2d 463 (1983) (capital punishment case).

4. Revocation of probation.

a) Where probation is revoked, the relevant sentencing facts include those which have come to light between pronouncement of the original sentence and the execution of a sentence upon revocation of probation. State v. Dryden, 105 Idaho 848, 673 P.2d 809 (Ct. App. 1983).

b) Where original sentence was lawful, it may not be increased upon revoking probation. State v. Pedraza, 101 Idaho 440, 614 P.2d 980 (1980); State v. Mendenhall, _____ Idaho _____, 679 P.2d 665 (Ct. App. 1984).

B. **Presentence information.**

1. The court is free to consider the results of the prehearing investigation if the reliability of the information contained in the report is insured by certain protections: (1) that the defendant be afforded a full opportunity to present favorable evidence; (2) that the defendant be afforded a reasonable opportunity to examine all the materials contained in the presentence report; and (3) that the defendant be afforded a full opportunity to explain and rebut adverse evidence. State v. Creech, **supra.**

2. Where no objection has been made to a presentence report at a sentencing hearing, and the report substantially addresses the points required by court rule, a challenge to the report will not be reviewed on appeal. State v. Toohill, **supra.**

3. Sentencing court also may consider other information presented to him in his official capacity, with notice to the parties. State v. Gibson, _____ Idaho _____, _____ P.2d _____ (Ct. App. No. 13830, slip op. Feb. 29, 1984).

4. The trial court is not bound by recommendations of the state, even though offered in conjunction with a plea negotiation. The state's recommendation to the trial court is purely advisory. State

v. Rossi, 105 Idaho 681, 672 P.2d 249 (Ct. App. 1983).

C. **Consecutive and enhanced sentences.**

1. The imposition of a consecutive sentence is authorized and made discretionary by I.C. § 18-308. The exercise of that discretion will not be disturbed on appeal unless it is abused. State v. Lloyd, 104 Idaho 397, 659 P.2d 151 (Ct. App. 1983).

2. If a person escapes from custody while charged with or convicted of a felony, I.C. § 18-2505 requires that any sentence of confinement for the escape be consecutive to confinement imposed for the underlying felony. State v. Thomas 98 Idaho 623, 570 P.2d 860 (1977); State v. Mendenhall, **supra.**

3. An indeterminate life sentence cannot be "enhanced" by additional punishment for use of a firearm; but consecutive sentences for different crimes are permissible. State v. Kaiser, _____ Idaho _____, _____ P.2d _____ (Ct. App. No. 13711, slip op. April 24, 1984). (2-1 decision; petition for review granted.)

D. **Reasons for sentencing decisions.**

1. While setting forth reasons for imposition of a particular sentence would be helpful, and is encouraged, it is not mandatory. State v. Nield, _____ Idaho _____, _____ P.2d _____ (S. Ct. No. 15218 slip op. June 6, 1984) (3-2 decision). **See also** State v. Brewster, _____ Idaho _____, _____ P.2d _____ (S. Ct. No. 15042, slip op. February 15, 1984); State v. Osborn, 104 Idaho 809, 663 P.2d 1111 (1983).

2. Supreme Court's majority decision in **Nield** overrules prior holdings by Court of Appeals requiring judges in felony cases to state of record the reasons for their sentencing decisions. **See** State v. Nield, 105 Idaho 153, 666 P.2d 1164 (Ct. App. 1983); State v. Tisdale, 103 Idaho 836, 654 P.2d 1389 (Ct. App. 1982).

III. REVIEW OF SENTENCING DISCRETION

A. **General standard.** Sentencing determinations cannot be made with precision. In deference to the discretionary authority vested in Idaho's trial courts, an appellate court will not substitute its view for that of a sentencing judge where reasonable minds might differ. An appellant must show that, under any reasonable view of the facts, his sentence was excessive in light of the criteria of protection of society, retribution, deterrence and rehabilitation. State v. Toohill, **supra.**

B. **Specific criteria.**

1. Protection of society is the paramount sentencing consideration. State v. Wolfe, 99 Idaho 382, 582 P.2d 728 (1978); State v. Moore, 78 Idaho 359, 304 P.2d 1101 (1956).

a) "Protection of society" has not been specifically defined by appellate opinion. It might refer to general protection against crime or to specific protection against the particular defendant.

b) The Court of Appeals has used the phrase in a specific sense, relating to protection from the conduct of a particular defendant. **See, e.g.,** State v. Jenkins, 105 Idaho 166, 667 P.2d 269 (Ct. App. 1983); State v. Wilde, 104 Idaho 461, 660 P.2d 73 (Ct. App. 1983).

2. The public has a legitimate interest in **retribution** for a crime of violence. State v. Pettit, 104 Idaho 601, 661 P.2d 767 (Ct. App. 1983).

a) "[T]he public interest demands that our criminal justice system convey a clear message, through the sentencing process, that the use of deadly force . . . is condemned by society and will be firmly punished.' **Pettit,** 104 Idaho at 603, 661 P.2d at 769.

b) "An unintentional killing takes from the victim what an offender never can restore — the fragile gift of life. It is the final betrayal of another human being and the ultimate affront to civility. Our courts have no deeper obligation than to express society's condemnation of this act." State v. Miller, 105 Idaho 838, 841, 673 P.2d 438, 441 (Ct. App. 1983).

3. General **deterrence,** by itself, is a sufficient reason for imposing a prison sentence. State v. Adams, 99 Idaho 75, 577 P.2d

1123 (1978); State v. Urquhart, 105 Idaho 92, 665 P.2d 1102 (Ct. App. 1983); State v. Pettit, **supra.**

4. "[I]n some cases, where genuine **rehabilitation** opportunities exist, lengthy confinement without any remedial programs can be counterproductive. It may actually diminish a prisoner's ability or motivation to conform his conduct to the law when he is eventually released." **Pettit,** 104 Idaho at 603, 661 P.2d at 769. (Emphasis added.)

a) Selection of an indeterminate, rather than fixed, sentence is an indicator that the sentencing judge has considered rehabilitation and parole potential in reaching his decision. **See** State v. Adams, _____ Idaho _____, _____ P.2d _____ (Ct. App. No. 14874, slip op. March 13, 1984).

b) A substantial term of imprisonment will not be overturned solely because of the youthful age of the offender. State v. Brooks, 103 Idaho 892, 655 P.2d 99 (Ct. App. 1982).

C. **Measuring the length of sentences imposed.**

1. For the purpose of sentence review, the duration of confinement imposed by a **fixed sentence** is the term of the sentence less the formula reduction available as a matter of right for good conduct under I.C. § 20-101A. State v. Miller, **supra.**

2. For the purpose of appellate review of an **indeterminate sentence,** one-third of the sentence will be deemed an appropriate measure of the term of confinement, absent a contrary statute or indication in the record. State v. Toohill, **supra; accord** State v. Nield (Ct. App.), **supra, overruled on other grounds,** State v. Nield (S. Ct.), **supra**

a) This measure of confinement is not a prediction of whether, or when, parole actually might occur. Rather, it is a general approximation of confinement intended solely to facilitate the necessarily imprecise task of reviewing an indeterminate sentence on appeal. Under Idaho law parole is merely a possibility, not an expectancy. Parole may be granted earlier, later, or not at all. State v. Nield (Ct. App.), **supra.**

b) I.C. § 20-223 is not a "contrary" statute under the **Toohill** "one-third rule." The one-third measure will be applied even if a prisoner might be eligible for parole consideration earlier under the statute. State v. Jenkins, **supra** (modifying State v. Pettit, **supra).**

D. **Sentencing disparity.**

1. Sentences cannot be deemed disparate upon simplistic comparison of results. Different sentences, which are properly attuned to the individual circumstances presented in each case, do not reflect disparate treatment of the defendants. The constitutional right to equal protection does not mandate uniform sentencing. State v. Seifart, 100 Idaho 321, 597 P.2d 44 (1979); State v. Lopez, _____ Idaho _____, 680 P.2d 869 (Ct. App. 1984). **See also** State v. Martinez, 105 Idaho 841, 673 P.2d 441 (Ct. App. 1983).

2. Appellate decisions affirming particular sentences "[do] not necessarily signify that we considered those sentences adequate in the cases where they were imposed. We were not asked to review those sentences for adequancy; we were asked to review them for excessiveness. We held that they were not excessive." **Miller,** 105 Idaho at 841, 673 P.2d at 441.

E. **Vindictive sentence.** A judge's mention of the defendant's election to go to trial, rather than to plead guilty, does not establish **per se** that the sentence imposed was vindictive. Vindictiveness will be evaluated on appeal in light of the totality of the circumstances, considering the sentencing judge's words and actions as a whole. State v. Regester, _____ Idaho _____, _____ P.2d _____ (Ct. App. No. 14246 slip op. February 28, 1984).

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