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State v. Webster Respondent's Brief Dckt. 41695

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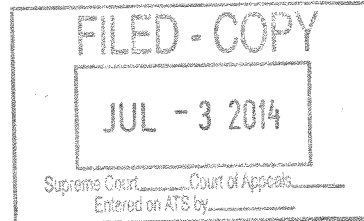
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 41695
Plaintiff-Respondent,)	
)	Jefferson County Case No.
v.)	CR-2013-969
)	
JARED D. WEBSTER,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
)	

Issue

Has Webster failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years with four years fixed upon his guilty plea to felony injury to a child?

Webster Has Failed To Establish That The District Court Abused Its Sentencing Discretion

The mother of 14 year-old S.D. reported to police she had found text messages indicating on S.D.'s phone indicating that her daughter and 28 year-old Webster were

involved in a sexual relationship. (R., pp. 6-8; PSI, pp. 2, 31.¹) S.D. stated in an interview with a police detective and a social worker that she and Webster had sex approximately 30 times between September 2012 and March 2013. (R., p. 6; PSI, pp. 2, 39.) During a later forensic interview, S.D. stated that she and Webster “didn’t really have a relationship, that she is his ‘sex doll.’” (R., p. 7; PSI, p. 39.) S.D. also stated Webster told her not to tell anybody because she was underage and he would get in trouble. (PSI, p. 2.) After checking himself into the Behavioral Health Center the same day the abuse was reported to police, Webster admitted to a staff member that he had had sex with 14 year-old S.D. (R., p. 7; PSI, p. 2.)

The State charged Webster with three counts of lewd conduct with a minor under the age of 16. (R., pp. 42-44.) Pursuant to a plea agreement, the State amended the charge to one count of felony injury to children, and Webster pleaded guilty to the amended charge. (R., pp. 53-54, 56-58, 62-63; Tr., p. 2, L. 19 – p. 3, L. 19.) The district court accepted Webster’s guilty plea and imposed a unified sentence of 10 years with four years fixed. (R., pp. 70-75; Tr., p. 46, Ls. 11-17.) Webster timely appealed and timely filed a Rule 35 motion for sentence reduction, which has not been ruled upon by the district court. (R., pp. 76-80, 83-85.²)

On appeal, Webster asserts the district court imposed an excessive sentence in light of his “lack of criminal history, the behavior of the victim, and the favorable risk

¹ Citations to the Record are to the electronic file “webster, jared clerk’s record.pdf.” Citations to the PSI are to the electronic file “webster, jared PSI CONFIDENTIAL.pdf.”

² The updated register of actions for this case located at <https://www.idcourts.us/repository/caseNumberResults.do> shows no decision by the district court regarding Webster’s Rule 35 motion.

assessment per the psychosexual evaluation.” (Appellant's Brief, p. 4.) The record supports the sentence imposed by the district court.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Oliver, 144 Idaho at 726, 170 P.3d at 391 (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

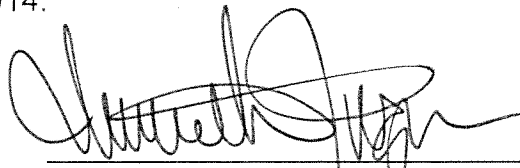
To demonstrate a clear abuse of discretion, the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id. The protection of society is, and must always be, the ultimate goal of any sentence. State v. Moore, 78 Idaho 359, 363, 304 P.2d 1101, 1103 (1956). Accordingly, appellate courts must take into account “the nature of the offense, the character of the offender, and the protection of the public interest.” State v. Hopper, 119 Idaho 606, 608, 809 P.2d 467, 469 (1991); see also I.C. §19-2521.

At sentencing, the district court articulated the correct legal standards applicable to its decision and set forth in detail its reasons for imposing Webster's sentence. (Tr., p. 33, L. 22 – p. 47, L. 24.) The state submits that Webster has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to Webster's conviction and sentence.

DATED this 7th day of July, 2014.

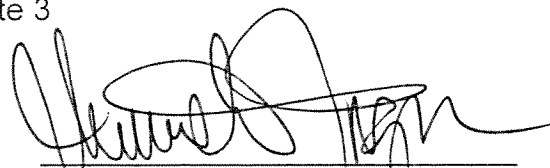

KENNETH K. JORGENSEN
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of July, 2014, served a true and correct copy of the attached RESPONDENT'S BRIEF to be placed in the United States mail, postage prepaid, addressed to:

SEAN P. BARTHOLICK
ATTORNEY AT LAW
147 North 2nd East, Suite 3
Rexburg, ID 83440


KENNETH K. JORGENSEN
Deputy Attorney General

APPENDIX “A”

1 up, but since you brought it up through your attorney,
2 you mentioned being an Eagle Scout. I'm not sure if
3 that's an aggravating factor or a mitigating factor,
4 because as an Eagle Scout I would expect you to know
5 better than this and act better than that.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I don't think this is the Boy
8 Scouts of America's proudest moment right now.

9 THE DEFENDANT: No, I'm not proud of what I've
10 done either.

11 THE COURT: Okay. Is there anything else I
12 need to know?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Are you completely satisfied with
15 the representation you've received from your attorney
16 in this matter?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And, Counsel, is there any reason
19 why I shouldn't pronounce sentence at this time?

20 MR. BROWNING: No, Your Honor.

21 MR. ZOLLINGER: None from the State.

22 THE COURT: Very well. Mr. Webster, based upon
23 your plea of guilty, it is the judgment of the Court
24 that you are guilty of one Count of Injury to a child,
25 a felony. I want you to know that I've very carefully

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1 some indication of your willingness to ignore the law
2 when you think you can get away with it.

3 I've looked at the mental health assessment
4 that was part of the psychosexual. I would note that
5 it shows Axis I diagnoses of paraphilia not otherwise
6 specified, major depressive disorder, a general
7 anxiety disorder, bipolar disorder, ADHD and PTSD.

8 And on the Axis II diagnosis it does show some
9 indication of potential antisocial personality
10 disorder. Those are grave challenges and they don't
11 justify your behavior, they help explain it. They
12 help explain it, but certainly they're not an excuse
13 for what you've done.

14 I note that the psychosexual evaluation has
15 indicated that you are a moderate/low risk. It would
16 appear from everything I've seen that you may be more
17 of an opportunist than a predator. I have some
18 reasons though I'm not sure that's true, but the
19 evidence does tend to point in the direction you're
20 more of an opportunist than a predator.

21 But of concern is what the psychosexual
22 evaluation does show because it does show that despite
23 the fact there's been much made of the victim's sexual
24 history and the victim's alleged promiscuity and the
25 fact that she was out of control and had issues with

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1 reviewed the presentence investigation, the
2 psychosexual evaluation and all the attachments,
3 including the letters from your family.

4 I've listened carefully to the testimony today
5 and I've taken that into consideration as well, with
6 the exception of the comments about you potentially
7 lying on some kind of endorsement to your church
8 leaders for school or for attending of your temple;
9 again, there was no evidence of that and so the
10 Court's going to disregard those questions and the
11 answers that were provided.

12 But other than that, I have reviewed carefully
13 all of the evidence that's been submitted. I would
14 note first of all your presentence investigation does
15 recommend as I read it Incarceration. It mentions
16 your contact with other victims and your deceptive
17 polygraph, and I may have misspoke a few moments ago.
18 Your polygraph did show deceptive as reasons for that
19 recommendation.

20 I do note that I've reviewed your record. It
21 shows three adult misdemeanors, all Fish & Game
22 violations, which I'm certainly not saying aren't
23 serious, but they're the type of offenses that
24 normally wouldn't give me too much concern about the
25 safety of the community, but they do provide me with

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1 boundaries in her life, that you, too, have an
2 extensive sexual history, perhaps more extensive than
3 your family knows, and I'm not going to go into all
4 the details of it. I'm more concerned about what's
5 happened since you've been an adult.

6 And, again, I'm going to be plainspoken about
7 some things and I know there's some young people here
8 in the audience and it's not my intent at all today to
9 do anything that's going to cause embarrassment, but
10 sometimes when you're dealing with a case like this
11 it's important that you look at the evil acts and you
12 call them by their names and that's what I'm going to
13 need to do today to be fair and accurate in my
14 sentencing.

15 I note at age 24 that you reported that you had
16 sex at least three times with a 17-year-old. I note
17 that at age 27 you were in an inappropriate
18 relationship with another 17-year-old that was short
19 of intercourse, but nevertheless was inappropriate.

20 Some time after you turned 27, it was either
21 right before or during your contact with this victim,
22 you were involved with two 19-year-olds at the same
23 time in a threesome. And then, of course, you were
24 involved with this victim, 14 years old.

25 Now, again, as I mentioned, if this had

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1 happened one time, that wouldn't legally excuse it,
2 but I think there would be a lot of mitigation that
3 could explain the behavior, but that's not what
4 happened here. We talked about two periods of abuse,
5 one occurring between September and November of 2012
6 and the other between February and March of 2013.

7 During those periods, based upon your own
8 statements, which are somewhat less than the victim's,
9 but we'll just take yours at face value, you engaged
10 in vaginal intercourse with this young woman 12 to 15
11 times. You engaged in oral intercourse with this
12 woman 15 times. You engaged in anal intercourse with
13 this young woman two times.

14 I have a hard time imagining that she made you
15 do that. And then there was sexual touching going on
16 on probably more instances than can be counted at this
17 point.

18 And then after this incident came -- after
19 these incidents came to light, after you turned 28 --
20 and, again, these incidents aren't against the law,
21 but they certainly show your personality as being
22 willing to engage in risky and inappropriate behavior.

23 When you were 28 you've been involved in a
24 sexual relationship with your boss. You've been
25 involved in Internet sex with a 21-year-old via Skype,

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1 in which you usually masturbated while you've been
2 conversing with this person.

3 This is all after this crime came to light, so
4 this suggests to me that the victim isn't the only
5 person in this case that has boundary problems.

6 The psychosexual evaluation notes on Page 29
7 that your explanations for what happened are, quote,
8 "irrational explanations that prevent you from being
9 fully accountable." The evaluator says that you're
10 emotionally immature, that you turn to younger
11 vulnerable girls because of feelings of inadequacy
12 when you're around adult women and almost everything
13 about your sexual history tends to support those
14 conclusions.

15 So that's requiring this Court to take a very
16 hard look at this matter. This is a very grievous
17 crime. I've looked at the Idaho Supreme Court's
18 decision -- excuse me, Idaho Court of Appeals Decision
19 in State versus Toohill. It lists the four objectives
20 of criminal sentencing and usually protection of
21 society is always the prime one, and certainly in this
22 case the Court has to be concerned with that.

23 Now, you were assessed as a low to moderate
24 risk, which suggests that you may not be a predator,
25 although you've had quite a few instances that

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1 suggests you were seeking out younger women. So
2 protection of society is always a factor I have to be
3 concerned about.

4 In this case, though, because of the egregious
5 nature of your conduct, the fourth element, which is
6 punishment or retribution for wrongdoing I think is
7 also, and this case equally as important as protection
8 of society.

9 You've done something very seriously wrong here
10 to a very young woman and despite her problems and
11 challenges, you took advantage of her problems and
12 challenges, frankly, for your own pleasure. And I
13 know there are probably parts about it that you didn't
14 like, but you sure didn't try very hard to get away
15 from it. I think a reasonable adult in the situation
16 you were in would have left after this happened the
17 first time and told your parents I'm not coming home
18 until she's out of the house.

19 I don't know how much your parents knew about
20 this. They claim they didn't know anything about it,
21 and I hope that's true, but you knew everything about
22 it, so therefore the accountability lies with you.

23 I'm also concerned obviously about the
24 possibility of rehabilitation. I think you have some
25 problems sexually and I think you need treatment, I

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1 think you need help and I'm going to make sure you get
2 that.

3 Also, we need to deter you from making sure
4 that nothing like this happens again and maybe 60 days
5 or 50 days in jail was enough to convince you of that,
6 maybe not.

7 I also have a responsibility not only to deter
8 you, but to deter the public as a whole, which means
9 if I give too light of a sentence on this case that's
10 going to suggest to other men in this community that
11 they can engage in the same kind of behavior as you
12 and expect nothing more than a slap on the wrist. And
13 that's the last thing I want to do and I guarantee you
14 I'm not going to do that. My sentence, intentionally
15 or otherwise, has to send a message.

16 Now, I've looked at Idaho Code 19-2521, that's
17 the section of the Code that outlines the factors that
18 I need to weigh in determining whether to place you on
19 probation as your attorney is recommending, or place
20 you in prison as the PSI is recommending.

21 I would note that the Prosecutor's
22 recommendation is somewhere in between, retained
23 jurisdiction. The recommendation of the psychosexual
24 evaluation says that you could be treated in the
25 community, but it doesn't make a recommendation

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1 specifically about what I should do and that's
2 appropriate, because the psychosexual is just advising
3 the Court about your mental health and your sexual
4 history and risks and it's really not concerned with
5 punishment, as this Court is concerned with.

6 So in mitigation, let's list the mitigating
7 factors, because there are some in this case that are
8 important. First of all, the Court notes that you,
9 yourself, have been a victim of sexual abuse. I'm
10 aware from what you've disclosed that at an early age
11 that you were a victim.

12 Additionally, you claim that the victim's
13 mother in this case may have abused you when you were
14 17, although you never reported that to the
15 authorities. The Court is very aware that you have
16 supportive family and friends. I've read their
17 letters. One thing that's clear in this case is your
18 family loves you and they want the best for you and
19 having that kind of supportive family foundation is
20 very important.

21 I note that from the record it appears you're a
22 hard worker. You've had difficulty in holding certain
23 jobs, maybe because of some personality issues that
24 you're dealing with, but no one doubts your work ethic
25 around the home and around the farm and you've played

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1 an important role in your family and have been a great
2 service to your mom and dad based on the testimony
3 I've heard today, no question about that.

4 The Court notes -- and, again, this is a
5 two-edged sword, it cuts both ways, that you have
6 shown an ability to commit yourself to things and
7 accomplish things. Despite some of the difficulties
8 you had in high school, you were able to get your
9 Eagle Scout award, which tells me a lot about you, but
10 it's also disappointing as well, that someone that had
11 done that kind of accomplishment could make such a
12 mistake.

13 The Court's aware that you have no substance
14 abuse issues, which is good. The Court is aware that
15 you've got considerable skills in rodeo and dealing
16 with livestock. I am also aware that you're a father
17 to a two-month-old daughter who, because of some
18 decisions that were made earlier, and I'm sure some of
19 them may have to do with this case, you haven't had
20 any contact with yet. I'm not sure if I hadn't put
21 you in jail if you would have had contact with her
22 anyway, but certainly the Court is aware of that.

23 I'm aware that you have some mental health
24 issues that weren't really discussed by your attorney,
25 but I've seen the diagnosis, which I mentioned earlier

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1 and I understand that you even attempted suicide at
2 one time recently. The Court's very concerned about
3 that.

4 And then I don't want to put too much weight on
5 this, but it is a factor, that although I don't blame
6 the victim for what happened, I think there is pretty
7 clear evidence the victim may have facilitated these
8 crimes, but she was only 14 years old. By law she
9 can't consent, but there's no question she may have
10 helped facilitate to a certain degree. I've looked at
11 those factors.

12 I also have to look at the aggravating factors
13 present here, and first and foremost is the disparity
14 in age. You were a 27-year-old dealing with a
15 14-year-old. The law has higher requirements for the
16 judgment of a 27-year-old than it does for a
17 14-year-old.

18 I had a case earlier this morning where I was
19 dealing with a 21-year-old. In my eyes there's a
20 difference between a 27-year-old and a 21-year-old.

21 The next factor in aggravation is the number of
22 incidents. This didn't happen once or twice, this
23 happened multiple times.

24 The third aggravating factor is the type of
25 incidents. This isn't the type of case where there

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1 was some fondling going on and then you drew the line
2 there. Again, I had a case this morning in which we
3 were dealing with a situation that was mainly dealing
4 with fondling. This is different. You basically
5 sexually abused this girl in almost every way
6 possible, vaginally, anally, orally. She's 14 years
7 old.

8 Now, I don't care if she has had sex with other
9 people before and if some of those people were adult
10 men. Just because others abused this child and took
11 advantage of her poor judgment doesn't justify you in
12 doing the same thing.

13 The Court notes that the polygraph shows that
14 you had a deceptive polygraph. That you were asked
15 some questions over again and you were not able to
16 pass them, which means we may not have gotten to the
17 bottom of this. And although a risk assessment was
18 made of low/moderate, it's difficult for this Court to
19 have much confidence in that assessment when you
20 haven't been able to pass the polygraph. I don't know
21 what is out there that we don't know about, only you
22 know that.

23 And then finally, the Court notes that this is
24 not an isolated incident with this victim. You have
25 had a history of inappropriate relationships with

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1 minors or with very young women and of risky-type
2 behavior, even recently when these charges came to
3 light.

4 Now, the Court feels nothing but sorrow for
5 your family. Again, your mom and dad -- can you
6 imagine anything more difficult than having to testify
7 at your son's sex offense sentencing? That was a hard
8 thing for them. It took a lot of courage for them to
9 come here and do this.

10 Your father is a Veteran who helped protect our
11 nation and now he needs some help with the farm and
12 the son that he was counting on is in jeopardy of not
13 being able to help him out, so I feel nothing but
14 sorrow for your parents.

15 Now, I have read the letters that your family
16 wrote, and I must just comment that I strongly suspect
17 that they don't know everything that was going on.
18 They may know less than the Court does, based upon my
19 reading of your psychosexual evaluation. If they do,
20 then they're in denial about how serious this was. I
21 don't think they were in denial, I just don't think
22 they were fully advised of everything that happened
23 here and that they don't know you as well as they
24 think they do. And although they've seen a lot of
25 your good traits, I think they don't realize that

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1 In justification of that sentence, I note under
2 Idaho Code 19-2521, Section 1, that all but one of the
3 factors are present there and all the Court needs to
4 find is one factor present to justify a prison
5 sentence. Here, we've got five of the six. I find
6 that you would be an undue risk, notwithstanding the
7 low to moderate risk, and that's because of your
8 polygraph results and the other victims you've abused.

9 I note that you need correctional treatment
10 that can be best provided through the Department of
11 Corrections while in custody, so a lesser sentence in
12 prison would depreciate the seriousness of this action,
13 that a prison sentence is an appropriate deterrent to
14 you and to others.

15 The only factor not present under 19-2521 -- or
16 the only factor that I think is an exception in your
17 favor is F, which is that you don't have a long legal
18 history. Under 19-2521(2) I do find two mitigating
19 factors present. The first is that the victim to a
20 certain degree may have facilitated this crime and
21 that you don't have a prior record that's severe.
22 But, again, those factors don't control the Court's
23 analysis, but they are factors I took into
24 consideration.

25 I'm going to recommend that the time you serve

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1 you've been living a double life in a lot of respects,
2 especially in your sexual behavior.

3 The bottom line is this, Mr. Webster: In our
4 society when we're dealing with young children who may
5 be promiscuous, who may be over sexualized, our
6 society doesn't expect older men to take advantage of
7 them or exploit them. We're supposed to protect them
8 from themselves and you were in a position to protect
9 this girl, but instead you chose to exploit her over
10 and over and over again.

11 And so for those reasons my sentence is going
12 to be as follows: It's the judgment of this Court
13 that you be sentenced to the custody of the Idaho
14 Department of Corrections for a total unified sentence
15 of ten years, consisting of a fixed minimum term of
16 four years, followed by an indeterminate term of six
17 years.

18 Let me make this clear, under the statute that
19 you were charged with in this case, injury to a child,
20 ten years is the maximum sentence. I would let you
21 know that if you had been charged with lewd conduct
22 and I was sentencing you on lewd conduct, that this
23 would be a longer than ten year probation because I would
24 want a longer term so that you could be on parole and
25 watched and supervised, but the case is what it is.

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1 in prison, that you be given access to the therapeutic
2 community for your mental health issues and that you
3 be given access to sex offender treatment.

4 I'm going to impose a fine in this case.
5 Again, the fine is going to be a small reflection of
6 how serious this is. It could be higher, but I'm
7 going to impose a \$5,000 fine, court costs in the
8 amount of \$150.50, the victim's relief fund payment is
9 normally \$75, but since this is a sex offense there
10 will be an additional \$300, for a total of \$375.

11 By law, I could impose a civil penalty in this
12 case. Given the level of facilitation, I think that
13 would be inappropriate. I'm not going to do that, but
14 I am going to order restitution to be paid and the
15 State will have 30 days to submit any restitution
16 they're seeking. The Court will allow the Defense 30
17 days thereafter if they wish to object.

18 I am going to order that the restitution
19 include the cost of the psychosexual evaluation, if
20 that was done at County expense.

21 MR. BROWNING: I don't believe it was.

22 THE DEFENDANT: I paid that.

23 THE COURT: Okay. Very well. Then that will
24 not be included then.

25 Now, given your record, given the seriousness

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