

3-25-2016

State v. Olsen Respondent's Brief Dckt. 42818

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Olsen Respondent's Brief Dckt. 42818" (2016). *Not Reported*. 2136.
https://digitalcommons.law.uidaho.edu/not_reported/2136

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

JESSICA M. LORELLO
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 42818
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2013-3486
)	
KRISTOPHER WAYNE OLSEN,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

Issue

Has Olsen failed to establish that the district court abused its discretion by imposing a unified 10-year sentence with three years fixed upon the jury verdict finding Olsen guilty of burglary, which sentence was later reduced to 10 years with one and one-half years fixed?

Olsen Has Failed To Establish The District Court Abused Its Sentencing Discretion

The state charged Olsen with three counts of burglary and one count of petit theft for stealing some items from someone's car and then taking those items to two separate pawn shops to sell. (R., pp.41-43, 48-49, 65-66; PSI, p.3.) A jury acquitted Olsen of the petit theft charge and two of the burglary counts, but convicted him of the burglary count

alleging he entered Vista Pawn with the intent to sell a stolen camera and lens. (R., pp.66, 78-81, 110.) The district court imposed a unified 10-year sentence, with three years fixed, and retained jurisdiction “for evaluative purposes only.” (R., pp.116-118.) The court subsequently relinquished jurisdiction at which time it reduced Olsen’s sentence to 10 years, with one and one-half years fixed. (R., pp.131-133.) Olsen timely appealed after his appeal rights were reinstated as the result of post-conviction proceedings. (R., pp.134-137, 142-146, 149-150.)

Olsen asserts his sentence is excessive in light of his acceptance of responsibility, his recognition of his need for “treatment or counseling to understand why he makes decisions,” and his family support. (Appellant’s Brief, pp.4-5.) The record supports the sentence imposed.

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. Id. (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 carry this burden 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.

At sentencing, the court noted Olsen was on probation for grand theft when he committed the burglary for which he was convicted in this case. (Tr.¹, p.359, Ls.3-6.) The court also noted Olsen had the benefit of two prior “riders” (Tr., p.359, Ls.11-13), and explained it considered the following factors in determining its sentence: (1) Olsen has a “very significant theft related history”; (2) “he has a major poly-substance abuse problem, long-standing in time”; (3) Olsen has “below average” “rehabilitation potential”; and (4) he has a “poor work history” (Tr., p.360, Ls.3-11). As for Olsen’s claim that his sentence is excessive because he “accepted responsibility” (Appellant’s Brief, p.4), he only did so after a jury found him guilty and the court was preparing to sentence him. The mitigating value of this is minimal and does not demonstrate the district court abused its discretion.

Further, the district court exercised leniency by reducing the fixed portion of Olsen’s sentence from three years to one and one-half years in reward for Olsen’s performance during the retained jurisdiction program. (10/20/2014 Tr., p.383, L.19 – p.384, L.7.) Given the sentencing considerations identified by the district court and its *sua sponte* reduction of Olsen’s sentence, Olsen has failed to show the district court abused its discretion.

¹ There are two transcripts in the record on appeal in this case. “Tr.” refers to the transcript that includes the trial and sentencing.

Conclusion

The state respectfully requests this Court affirm Olsen's conviction and sentence.

DATED this 25th day of March, 2016.

/s/ Jessica M. Lorello

JESSICA M. LORELLO

Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of March, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Jessica M. Lorello

JESSICA M. LORELLO

Deputy Attorney General