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State v. Boyd Respondent's Brief Dckt. 42957

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42957
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2014-4046
)	
GWYNN ELLEN BOYD aka MULLER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Boyd failed to establish that the district court abused its discretion by imposing a unified sentence of five years, with one and one-half years fixed, upon the jury's verdict finding her guilty of battery on a police officer?

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

A jury found Boyd guilty of battery on a police officer and the district court imposed a unified sentence of five years, with one and one-half years fixed. (R., pp.133-36.) Boyd filed a notice of appeal timely from the judgment of conviction. (R., pp.138-41.)

Boyd asserts her sentence is excessive in light of her mental health issues and purported remorse. (Appellant's brief, pp.3-5.) 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.

The maximum prison sentence for battery on a police officer is five years. I.C. § 18-915(3). The district court imposed a unified sentence of five years, with one and one-half years fixed, which falls well within the statutory guidelines. (R., pp.133-36.) At sentencing, the state addressed the harm done to the victim, Boyd's failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions, her abysmal conduct in the jail while the instant offense was pending, and her high risk to reoffend. (5/22/15 Tr., p.11, L.17 – p.13, L.19.) The state submits that Boyd has failed

to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

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

DATED this 4th day of February, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of February, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 interested. But I believe the prosecutor,
 2 Mr. Judd here, will make a qualified and a right
 3 decision in the situation on my behalf.
 4 THE COURT: All right. I appreciate that.
 5 And I know I have a lot of confidence
 6 in all of the attorneys that appear in front of me
 7 on a regular basis. And this is certainly no
 8 comment on Mr. Judd at all. But I do want you to
 9 have the chance to read that. It's your right,
 10 under Idaho's Constitution, to read that before
 11 sentencing.
 12 So I'm going to have Mr. Judd give you
 13 his copies, and you can sit there. And then I'll
 14 recall the case when you give me the sign.
 15 OFFICER CRIST: All right. Thank you.
 16 THE COURT: Thank you.
 17 (Recess.)
 18 THE COURT: State of Idaho vs. Gwynn Boyd,
 19 CRFE-14-0004046.
 20 MR. JUDD: Brett Judd for the State.
 21 MS. OWENS: Nicole Owens on behalf of
 22 Ms. Boyd, Your Honor.
 23 THE COURT: And for the folks that are here
 24 for the 10 o'clock calendar, we're going to take a
 25 recess before I call any of the 10 o'clock cases,

1 just to let you know.
 2 We were in the middle of the sentencing
 3 hearing. And I wanted to give Officer Crist an
 4 opportunity to read the PSI materials, if he
 5 wanted to, and then, of course, to make any
 6 additional statement in light of his review of
 7 those materials.
 8 I just want to confirm with you,
 9 Officer, have you had a chance to read through all
 10 of that?
 11 OFFICER CRIST: Yes, ma'am.
 12 THE COURT: You don't have to say anything
 13 else, but you certainly can if you want.
 14 OFFICER CRIST: I'll say one more thing.
 15 It comes as no surprise, based upon
 16 what I have read, based upon Ms. Boyd's action
 17 that day, that what the doctors and other
 18 incidents that have occurred since she has been in
 19 jail have shown that -- the propensity for her to
 20 -- when she gets out, doing the same thing again.
 21 To protect the citizens, again, I would
 22 ask for a full conviction.
 23 THE COURT: Thank you. I appreciate that.
 24 OFFICER CRIST: Thank you.
 25 THE COURT: Mr. Judd?

1 MR. JUDD: Thank you, Your Honor.
 2 I did have one correction, actually,
 3 that I forgot to mention. On page No. 6 of
 4 Dr. Arnold's report, "The danger of re-offending,"
 5 at the bottom of the first paragraph --
 6 THE COURT: The louder you mention this
 7 correction, the better chance I have of hearing
 8 it.
 9 MR. JUDD: Thank you.
 10 Page No. 6 of Dr. Arnold's report, "The
 11 danger of re-offending," at the bottom, last
 12 sentence in that paragraph, first paragraph, it
 13 says, "Ms. Bell's," which I believe should be
 14 "Ms. Boyd's risk of future violence."
 15 THE COURT: Thank you.
 16 Go right ahead.
 17 MR. JUDD: Thank you, Your Honor.
 18 In this case, I'm going to ask the
 19 Court to impose a judgment of conviction on a
 20 five-year sentence, the first two years fixed, the
 21 next three years indeterminate, and impose that
 22 sentence.
 23 I'm not asking for a fine.
 24 I would like restitution to be open for
 25 90 days. I just gave Ms. Owens some restitution

1 documents today, so I doubt she has had a chance
 2 to review those with her client.
 3 And as Officer Crist said, he had been
 4 going through treatment recently. And I would
 5 like to be able to get -- make sure that treatment
 6 is complete, there's no more follow-up on physical
 7 therapy when I submit the restitution -- a final
 8 restitution judgment to the Court.
 9 I'm not asking for any public defender
 10 reimbursement.
 11 I think that, as the Court has heard
 12 from Officer Crist about how this has impacted him
 13 and his knee and his previous actions with his
 14 family, I also think that this defendant has had
 15 chances at rehabilitation. She's a 2007 Drug
 16 Court graduate. So if she has gone through that
 17 program in the community and then re-offended, I'm
 18 not sure that community treatment is ever going to
 19 be effective with this defendant.
 20 Her LSI score is high, according to the
 21 PSI. She has continued to have issues, after her
 22 arrest in this case, in the jail. I believe she
 23 has had ten separate disciplinary actions at the
 24 time of the writing of the PSI while she was in
 25 custody.

13

14

1 She claims that she has not used
 2 substances since 2012, even though she has a
 3 paraphernalia conviction from 2013. She was also
 4 -- I believe one of the write-ups in the jail was
 5 trying to make alcohol in the jail. So a lack of
 6 substance abuse issues appears to be hollow.

7 She has all of the tools that she needs
 8 and knows where to get the resources. She talks
 9 about that in page No. 1 of the GAIN about
 10 Easter Seals. She chooses not to use those.

11 I'm especially concerned about
 12 Dr. Arnold's evaluation in his diagnostic
 13 impressions. The most concerning one is the
 14 borderline personality disorder with antisocial
 15 and passive-aggressive features. I'm concerned
 16 that the antisocial features of her personality
 17 are going to make her a continued risk to the
 18 community and to re-offend. That's why I believe
 19 imposition is an appropriate sentence.

20 Thank you.

21 THE COURT: Ms. Owens?

22 MS. OWENS: Thank you, Your Honor.

23 Your Honor, Gwynn is 35 years old. And
 24 she comes before the Court today. She exercised
 25 her constitutional right to a trial. She -- even

1 though she went to trial, we have talked about
 2 that. And there's two sides to that coin, I
 3 think.

4 On the one hand, she felt like she
 5 hadn't intentionally harmed the officer.
 6 Obviously, the jury disagreed. On the other hand,
 7 as I believe is reflected in the PSI, she
 8 understands now what she did that contributed to
 9 the incident.

10 She understands that she interjected
 11 herself in a situation where she wasn't necessary.
 12 She understands that when the officer told her to
 13 get away, that she disobeyed that command.

14 And so while she doesn't feel like her
 15 actions were intentional in terms of the injury,
 16 that that was her reflex, she recognizes that she
 17 certainly harmed him. She disputes that that was
 18 intentional. Certainly, the jury disagreed with
 19 her.

20 But she does, as she has thought about
 21 it, recognize she basically started this ball in
 22 motion, and that it was her actions in disobeying
 23 the officer and interjecting herself into the
 24 situation that even caused this to begin in the
 25 first place.

15

16

1 She recognizes that. She is remorseful
 2 for that. And she understands she needs to
 3 address her thinking and the errors that caused
 4 her to be here.

5 She certainly has a lengthy misdemeanor
 6 criminal history, but she does not have a lengthy
 7 felony history. As the State recognized, she's a
 8 Drug Court graduate. And so she finds herself
 9 back here now on this felony, with no other felony
 10 history.

11 Her father is present in the courtroom
 12 today, Your Honor. And her father continues to be
 13 supportive of her. He has been in contact with
 14 me. He has been at the hearings. So she
 15 certainly has some element of support outside in
 16 the community, which is important because I think
 17 she struggles with issues from her childhood.

18 As you review the PSI, her mother
 19 passed away when she was quite young. She had
 20 some trauma with her house burning down when she
 21 was young. And I think she just still struggles
 22 with those issues, with the PTSD from that, with
 23 the grief and the loss from those situations.

24 She also has a tendency. She has found
 25 herself to be the victim in several domestic

1 relationships where she was abused quite severely.
 2 And those relationships resulted in convictions,
 3 for those partners, for domestic violence. So
 4 it's well documented that she has found herself to
 5 be a victim several times.

6 Gwynn is smart. She is articulate.
 7 She is a high school graduate, and she even has
 8 some college. But she also has some mental health
 9 issues that I think Dr. Arnold detailed in his
 10 report. She self-reports as having PTSD.
 11 Dr. Arnold found that she has major depressive
 12 disorder and borderline antisocial and
 13 passive-aggressive features.

14 And so I think that that's clear from
 15 what we see from her in her behavior, not only in
 16 this incident, but also in incidents that have
 17 been documented in the jail.

18 We talked about that the Court may have
 19 some concern about those incidents. And so the
 20 first thing I would note is that they have
 21 decreased over time. She hasn't had an incident
 22 in the jail for some time now, for a couple of
 23 months.

24 Secondly, I think when she was first
 25 placed into custody, she struggled with not

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_____)	

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es):

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Dated and certified this 4th day of February, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
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