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State v. Stearns Respondent's Brief Dckt. 43102

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43102
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2014-8117
)	
MARK ANTHONY STEARNS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Stearns failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with two years fixed, upon his guilty plea to enticement of a child over the internet?

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

Stearns pled guilty to enticement of a child over the internet and the district court imposed a unified sentence of 10 years, with two years fixed. (R., pp.68-72.) Stearns

filed a notice of appeal timely from the judgment of conviction. (R., pp.77-81.¹)

Stearns asserts his sentence is excessive in light of “his acceptance of responsibility and remorse, complete lack of criminal history, positive employment history, supportive family and friends, and good character.” (Appellant’s brief, p.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 enticement of a child over the internet is 15 years. I.C. § 18-1509A(2). The district court imposed a unified sentence of 10 years, with two years fixed, which falls well within the statutory guidelines. (R., pp.68-72.) At sentencing, the district court articulated the correct legal standards applicable to its

¹ Citations to the Record are to the electronic file “Stearns 43102 cr.pdf.”

decision and also set forth in detail its reasons for imposing Stearns's sentence. (Tr., p.38, L.2 – p.48, L.9.) The state submits that Stearns 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 Stearns's conviction and sentence.

DATED this 15th day of September, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of September, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNIFER C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

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1 entire life, you know. How -- it's rare for a
2 person to go 25 years and not have any trouble
3 with the law. I don't have traffic tickets or
4 anything. And I felt like if, you know, I can do
5 that, you know, then I'll never be in trouble.

6 I made a mistake and it's a very
7 serious one. I understand that. But I've got a
8 family who relies on me, friends who rely on me.
9 You know, I have things that I want to do with my
10 life and now it's like -- for the past nine months
11 or ten months, whatever it's been, my life's been
12 turned upside down by it. There's no way that I
13 would ever go back and allow myself to do
14 something so wrong.

15 You know, I've learned from this entire
16 situation. I've restarted multiple times within
17 the last ten months. You know, as soon as I got
18 out of jail, the first thing I did is go to work
19 for my dad and then I started looking for other
20 employment. You know, because of the situation
21 I've lost employment twice because of it.

22 So that's all I want to do. I want to
23 work. I want to be a member of my family. I want
24 to be a good friend. I want to go back to doing
25 all of the things that I was doing before to be a

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1 Mr. Patterson spent quite a bit of time talking
2 about there is no criminal history, gainfully
3 employed. What I find with sex offenders is that
4 generally they have low LSI's because they are
5 gainfully employed. They don't have huge criminal
6 records. Most sex offenders don't have substance
7 abuse problems.

8 He said that your life changed. In the
9 first place I want to say your life changed
10 because of what you did. But more importantly,
11 had there actually been a 14-year-old girl -- and
12 you had no way of knowing that she was not -- the
13 person you were speaking with wasn't 14. You
14 thought they were 14. That wasn't a secret. Had
15 that 14 year old been real, her life would have
16 changed forever. Forever, Mr. Stearns. You
17 thought she was 14.

18 Now, what concerns me -- and I first
19 want to talk about it and I will read to you what
20 you told the presentence investigator. "For
21 nearly a year I had an ad on *Craigslist* seeking a
22 young woman, 18 to 19, for a casual encounter,"
23 which is patently false. "At some point
24 unbeknownst to me during edits and the reposts the
25 18 to 19 was dropped. At this time I was

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1 good member of society.

2 THE COURT: Well, on the plea of guilty, I
3 do find you guilty of this crime. In an exercise
4 of discretion I have applied the Toohill factors.
5 I want to spend some time explaining a couple of
6 things, Mr. Stearns.

7 The -- some of the terminology you used
8 -- I listen always very carefully when somebody is
9 talking just before sentencing. And what I'm
10 hearing and what I'm seeing in this presentence
11 report is a young man who is desperately trying to
12 avoid taking responsibility for the actions that
13 he took. When I say that, I'm not talking about
14 pleading guilty. I'm talking about recognizing
15 that you weren't being baited. You weren't
16 tricked. This isn't a mistake in that -- in the
17 real sense of the word. These were choices you
18 made. And, in fact, they were choices that were
19 made repeatedly.

20 And I'm going to -- I'm going to -- Ms.
21 Slaven doesn't want to read this stuff, but I'm
22 going to read it into the record because I think,
23 Mr. Stearns, you need to hear what you wrote, you
24 wrote.

25 And what's interesting to me -- and

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1 contacted by reply e-mail by a detective posing as
2 a teenage girl. While this was not what I was
3 seeking, the conversation continued and I got
4 attached to the character. She was lonely, had
5 few friends, hinted at sexual experience." It's
6 not true. What that shows me is that you don't
7 want to take accountability for what you did.

8 So let's talk about what actually
9 happened. I also want to say you also told Dr.
10 Johnston that you felt baited by the police
11 because, "This is what policemen do in order to
12 arrest child predators. Let's dangle this and see
13 if we can entice someone." They didn't dangle
14 anything. You're the one that put the ad out.
15 You didn't respond to the police officer's ad.
16 They responded to your ad.

17 And that's now -- they responded, they
18 said, "Hey, saw your ad. I'm probably too young
19 for you, but wanted to give you props and say I
20 like your ad." You replied back a short time
21 later with, "Thank you. I'm definitely
22 interested. How young? You have a pic?" The
23 response, "Hi. I'm" -- blank. "I'm 14. Are you
24 25 for real? I have pics, but I don't send them
25 out until I have -- until I know someone's not a

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1 creeper." So right off the bat you knew that this
 2 person was 14. Then you reply, "Yup, I'm 25 and
 3 14 is cute." Smiley face. "Well, what would you
 4 like to know so you know I'm not a creeper?"
 5 Now, then you provide -- the officer
 6 provides you with the cell number so you guys are
 7 communicating via text.
 8 After -- after -- after receiving the
 9 age-regressed photograph of a female officer, you
 10 reportedly stated, "You're basically exactly the
 11 kind of girl I'm looking for." 14. "So what's
 12 your situation at home? You get out by yourself
 13 at all?" Then you ask, "Are you a good girl with
 14 a naughty side?" Really? Does that sound like
 15 what you told the presentence investigator and
 16 what you're probably telling your family?
 17 Some of the -- and I'll just highlight
 18 some of the conversations. You ask, "Ever had any
 19 experiences or are you totally fresh?" Answer:
 20 "Like what?" You: "With guys or girls, I guess."
 21 Laugh out loud. Response: "Only with guys." You:
 22 "What all have you done? So you like older guys?"
 23 So what times are you able to get out where we
 24 might get together?" This is because you had
 25 grown attached. His response -- the officer's

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1 probably down your legs and then back up to your
 2 tummy slowly sliding down and then down inside
 3 the front of your yoga pants. And while I start
 4 generally rubbing you, I turn your face to me and
 5 deeply kiss you. I'm so hard for you. What are
 6 you doing, sweetie?"
 7 I'm not going to continue reading, but
 8 you had no idea? And this is with someone you
 9 knew -- from the second you were contacted in
 10 reply to your e-mails -- to your *Craigslist* you
 11 knew was 14. That's not a mistake, sir. Those
 12 are repeated choices. You chose to put the ad
 13 out. You chose to respond. You chose to keep
 14 talking to this person. You chose to arrange for
 15 a date. You brought a condom with you.
 16 As the presentence investigator found,
 17 contrary to your assertions, your online
 18 communications for your ads included such things
 19 as big, small, young or old. Age is not an issue.
 20 Don't care about age. Age really isn't an issue.
 21 Mother-daughter combo. Hoping to find someone a
 22 bit younger and cute with an attitude. The
 23 younger the better. Prefers someone my age or
 24 younger. Looking for a younger playmate. Little
 25 sister type except with the naughty side. Looking

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1 response -- excuse me. Then you follow up with,
 2 "Is it okay if I call you princess?" Answer:
 3 "Sure. What do you want me to call you?" You:
 4 "Anything you mind." Answer: "Not sure. I bet
 5 you have an idea." Your response, "Hey, well, I
 6 wouldn't mind Daddy," with a little -- some sort
 7 of a smiley thing with -- I guess it's the one
 8 where you're winking. Response: "Okay, Daddy."
 9 The next day, you: "Nice. I like that
 10 you're fresh. Lots of things are great. We could
 11 experiment." Response: "What's your fav?" You:
 12 "Depends. I like having a girl, her legs all
 13 wrapped around me. Anal is really good for the
 14 girl if you take it slow."
 15 Several days later, you: "You should
 16 come snuggle up and watch bad shows with me. I'd
 17 squeeze you tight, run my hands down you and give
 18 you kisses on the neck." Response: "Oh, yeah?
 19 Sounds yum." You: "You're yum-yums." Response:
 20 "Where you going to run your hands?"
 21 Now, really Mr. Stearns, you were
 22 enticed? You had no idea what you intended to do?
 23 Let me keep reading and I know my clerk is
 24 embarrassed.
 25 You: "Down your chest to your tummy,

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1 for a cutie open to all ages. It is not rational
 2 for you to think that you were not looking for
 3 someone young. You were.
 4 Sex offender treatment doesn't work
 5 until you actually admit that what you were doing
 6 -- as to what you actually were doing, not what
 7 you were doing is wrong. That's easy. But to
 8 admit to yourself and also to your family what you
 9 actually were doing. You were not entrapped. You
 10 were not baited. You're the one that placed the
 11 *Craigslist* ad. You're one that advertised for
 12 these things.
 13 And when the presentence -- when the --
 14 when Dr. Johnston, the reason he came to the
 15 conclusions he did is because he actually looked
 16 at what you did. And we do have -- I mean, I
 17 could go on. There's a lot more here about what
 18 you wanted her to do to you. So it isn't because
 19 you filled out some paperwork that you have a
 20 moderate risk, which in sex offender terms it
 21 means that you're just as likely in the next five
 22 to ten years to commit offense as any other sex
 23 offender. You aren't low risk to reoffend.
 24 And like Dr. Johnston likes to point
 25 out, there is no way to accurately predict whether

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1 somebody is going to reoffend or not in the sense
 2 that what you're being compared to is a group of
 3 other sex offenders. And when people have the
 4 responses and the behaviors that were identified
 5 here, on average you will fit -- you will show up
 6 just like a regular sex offender, which means
 7 you're just as likely to reoffend.

8 Part of what Dr. Johnston is looking
 9 at, the -- part of what he's also looking at is
 10 your own history. And what he noted -- and this
 11 is the reason the prosecutor brought it up -- is
 12 that you are somewhat hypersexualized because your
 13 *Craigslist* wasn't just about enticing younger
 14 girls, but you had -- you were all over and that's
 15 one of the things that they look at to determine
 16 risk for reoffense. You were interested in people
 17 cross-dressing. You were interested in
 18 mother-daughter. You were interested in
 19 bestiality. These are things that suggest that
 20 you are at risk. That's what they're looking at.

21 Of concern I'm sure to Dr. Johnston, as
 22 to this Court, is when asked if you believe you
 23 would benefit from sex offender treatment, you
 24 responded I don't believe so, but happily comply
 25 if it is believed so by professionals. So that

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1 presented with very unhealthy personality traits
 2 and that these will affect the ability to control
 3 your behavior.

4 Now, in looking at all of these things,
 5 Dr. Johnston also, as Ms. Slaven pointed out,
 6 believed that you needed to start treatment in a
 7 structured environment and then you could be
 8 transferred into the community. So the question
 9 is what am I going to do.

10 I do not believe probation at this
 11 point is appropriate. I believe that during any
 12 probationary period you would not really
 13 appreciate the seriousness of what you did.
 14 Imprisonment will provide the appropriate
 15 punishment and deterrent to you and hopefully help
 16 you recognize that what you actually did was not
 17 just wrong, but you could have created another
 18 victim. That's why they engage in this kind of
 19 endeavor where the police look at these ads and
 20 see -- and they see a suspicious ad. You did not
 21 have to respond to the officer. You did. Nothing
 22 about what happened was anything other than you,
 23 your actions.

24 So I hereby sentence you to the custody
 25 of the Idaho State Board of Correction under the

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1 suggests that you're not really motivated. You
 2 will just go through the motions to complete it.
 3 And because you are intelligent and overall what
 4 we would call pro-social, then that would suggest
 5 that it would be very superficial because even
 6 today listening to the things that you said to me,
 7 you have yet to admit to what you actually did.
 8 You're sitting in front of someone who's read this
 9 material.

10 And even -- I mean, I understand that
 11 it's okay for you to tell your family, well, you
 12 know, whatever it is you told them. I suspect you
 13 did not show them what you actually said to this
 14 girl, what you thought was a 14 year old.

15 Of concern, and one of the things that
 16 Dr. Johnston is looking at, is whether you have
 17 any personality disorders. And in his opinion,
 18 having gone through the various tests, the
 19 personality issues were antisocial and
 20 narcissistic personality. And the reason that
 21 that's important is that affects the level of
 22 volitional impairment, which is, as Dr. Johnston
 23 points out, understood as an individual's capacity
 24 to control behavior and has a specific relation to
 25 the risk of reoffense. So he found that you

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1 Unified Sentence Law of the State of Idaho for an
 2 aggregate of ten years with two fixed followed by
 3 eight indeterminate and I remand you to the
 4 custody of the sheriff of this county to be
 5 delivered to the proper agents -- agent of the
 6 State Board of Correction in execution of
 7 sentence. Any bail is exonerated and credit will
 8 be given for the days that were served prior to
 9 entry of this judgment.

10 It is further ordered that you shall
 11 provide a DNA sample, a HIV blood test and right
 12 thumbprint to the Department of Correction. You
 13 shall comply with the sex offender registration
 14 requirements pursuant to Chapters 83 and 84 of the
 15 Idaho Code.

16 I am imposing court costs in this case.
 17 I'm imposing a fine of \$2,500. And there is no
 18 restitution.

19 Now, I am further recommending that you
 20 not be released until you successfully complete
 21 sex offender treatment within the prison setting
 22 to give you the incentive to go and participate
 23 because you need to.

24 You have the right to appeal and if you
 25 cannot afford an attorney, you can request to have