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State v. Jasper Respondent's Brief Dckt. 43145

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43145
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2014-16175
)	
JODY JASPER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Jasper failed to establish that the district court abused its discretion by imposing a unified sentence of 15 years, with three years fixed, upon his guilty plea to trafficking in methamphetamine?

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

Jasper pled guilty to trafficking in methamphetamine and the district court imposed a unified sentence of 15 years, with three years fixed. (R., pp.49-52.) Jasper filed a notice of appeal timely from the judgment of conviction. (R., pp.53-56.)

Jasper asserts the indeterminate portion of his sentence is excessive “in light of the mitigating factors, including his abusive childhood, substance abuse issues, and mental health issues.” (Appellant’s brief, p.4.) 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 trafficking methamphetamine is life in prison. I.C. § 37-2732B(4)(D). The district court imposed a unified sentence of 15 years, with three years fixed, which falls well within the statutory guidelines. (R., pp.49-52.) At sentencing, the state addressed Jasper’s lengthy criminal record which included 11 prior felony convictions, the facts surrounding the charges in this matter, his past failures on both probation and parole, and his failure to be rehabilitated or deterred.

(Tr., p.16, L.19 – p.21, L.16 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and set forth in detail its reasons for imposing Jasper’s sentence. (Tr., p.24, L.6 – p.28, L.10 (Appendix B).) The state submits that Jasper has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Jasper’s conviction and sentence.

DATED this 24th day of November, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of November, 2015, served a true and correct copy of the attached RESPONDENT’S BRIEF by emailing an electronic copy to:

JENNY 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

GAIN I, but with the statutory mandatory minimum, I'm not sure where that information impairs the Court's ability to make the appropriate findings for the need for treatment.

So, Your Honor, this Court is somewhat terribly bound by what it can do based on what the legislature has restricted this Court to do. What we would urge the Court is that to go along with the recommendation for the mandatory minimum of three years, giving him the opportunity to participate in the Therapeutic Community before release.

We would suggest to the Court that instead of the 12 years that the State is recommending for a parole time, that the parole time be something a little bit shorter, like seven years for a unified sentence of ten years.

THE COURT: Thank you.

Ms. Shaul?

MS. NORTH-SHAUL: Thank you, Your Honor.

Pursuant to the plea agreement that was entered into in this case, we are recommending that the Court impose the mandatory three years determinate -- or fixed as required by the plea to a trafficking charge.

I'm also recommending that the Court impose an indeterminate portion of the sentence of 12 years for a

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total unified sentence of 15 years. Again, pursuant to the plea agreement.

This is Mr. Jasper's 11th felony conviction -- actually, his 12th. I think he had 11 prior felony convictions. When I look at his felony convictions, he looks to me to what I -- I, sort of, in my head, call, sort of, of an equal-opportunity offender. He commits crimes across the board. He's not confined to one -- some people just steal cars. Some people just use drugs. He steals cars, he uses drugs, he runs from cops. He does all kinds of things.

The facts surrounding this case, Your Honor, I think are important to put on the record. I'm sure the Court has read the PSI, and I know from experience you are very thorough with that, but I want to point a few things out about how this all came about.

Mr. Jasper was taken into custody, I believe, around November 21st of 2014, and there were a series of phone calls that he made. First, to someone named Tina in Montana -- and this is in the police report that's attached to the PSI -- where he says that he was arrested for having an outfit -- meaning drug paraphernalia -- and for being under the influence of controlled substance. And the woman then says, "Where's the rest," and he says, "I have it." And then he says,

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"I have the toys."

In another phone call, he talks about -- well, he talks about needing to get out of jail, he's desperate to get out of jail. He tells this same woman if she could just bond him out, that they can get out and they can make the money and, "We can make it back."

And then he says he doesn't want to stay in jail for another month because if they happen to run across it, "Well, you know, I'm in big trouble." And it took us about ten days before the people in Mr. Jasper's pod were high, and it was noticed by jail staff that a bunch of people were high in the pod. And a subsequent search of the pod disclosed nearly 2 ounces of methamphetamine that Mr. Jasper had smuggled into the jail with him when he was originally arrested on the paraphernalia and being under the influence of a controlled substance.

He was not cooperative in any way with the investigation. And he also made another phone call on November 21st where he told his mother, "I've got everything on me still." When she asked him if it was in his car or on his person, he said "No" to it being in the car, and "Yes" to it being on his person.

He also to another person said, "I've got to get out of here. It's only a matter of time before somebody tells on me." So for ten days he had methamphetamine,

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and he was sharing it with people in his pod. This, to me, is an example extreme criminal thinking. This is someone who has 11 prior felonies. He knows how bad it's going to be, and yet he still does it. And his plan is "Get me out, and I'll make the money back by selling drugs."

So I think that this shows that Mr. Jasper has learned nothing from this lengthy and long history where he's been on probation -- felony probation, since as early as 1993, violates his probation, goes to prison.

From that point on, according to the presentence investigator, he goes back and forth between prison, parole, probation. Finally in August of 2014 -- so three months before he gets arrested with -- or before he gets arrested and taken into the Bonneville County jail -- finally in August of 2014, he's released back out into society and within three months, he's got a trafficking amount of methamphetamine, and he takes it into a jail with him. And then he provides it to other people in the jail.

I don't know what you do with a person like this, because it's clear he doesn't know how to live in society, or he's not capable of living in society. And I don't know which one it is. I don't know if it's because he's so institutionalized, but it would seem to

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me with as many stints at probation and parole that he's had, he should have internalized something, and not gone right back to criminal behavior.

And not just a little criminal behavior, but a trafficking level of criminal behavior with a very dangerous drug, and he's willing to share it with other people within the jail which is a huge security risk for the jail. Huge security risk, to have a whole bunch of people high on methamphetamine in a pod together. And I can't even -- I can't even begin to address just how much of a security issue and how dangerous that was, that that was going on in our jail.

So I feel that the State's recommendation based on this history, based on that behavior, based on the very short period of time in which he reviolated on such a grand scale, that our recommendation is more than fair, and that 12-year-indeterminate sentence gives the Court, gives the community, the ability to track Mr. Jasper, because history is the best predictor of the future.

And Mr. Jasper's history predicts, he's going to get back out, and he's going to get right back involved in criminal behavior. We need to know where he is, what he's doing, and having someone monitor him, because he has shown from his background, he's not capable of

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monitoring and controlling himself.

So I would ask the Court to follow our recommendation and to give him the sentence that we have asked, because we do need to be able to track him. He does need, I think, at least one more shot at treatment, and, hence, the recommendation that we're asking the Court to order that he participate in the TC Program prior to his parole date.

I, frankly, don't know if other states have given him the opportunity. I would assume California has, but I don't know that. I don't think that will bar him from doing it in the State of Idaho, so I think it's worth a shot to try one more time to help him. He's 43 years old, and -- and he's coming to you on his 12th felony conviction. I just -- I think his record speaks volumes for what this Court needs to do, so please follow our recommendation.

I do have the motion to dismiss the -- Count II of the Information, Possession of Certain Articles within a Correctional Facility to submit to the Court. And also we have prepared -- as we sort through this issue with motions for restitution, motions for costs -- previously, before we had this new edict issued from the Supreme Court, we had filed a motion for restitution. Normally, I would be submitting an order for

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restitution. I realize there's two different ways this may be handled, but I think what we're doing locally until further notice from Judge Simpson is we are still submitting an order of reimbursement of costs for this Court to sign.

So I would ask the Court to consider our motion for restitution to essentially be a motion for reimbursement of costs of prosecution and investigation. The amount we are requesting is \$277.23. I have received no objection.

THE COURT: Any objection to that amount?

MR. DAVIS: No objection, Your Honor.

MS. NORTH-SHAUL: Thank you, Your Honor. I have nothing further.

THE COURT: Mr. Jasper, do you wish to make any statement on your own behalf or give me any additional information in mitigation before I impose sentence?

THE DEFENDANT: Yes, Your Honor. I'd just like to say, I don't know, I kind of felt a little profiled in the beginning. I know what I did was wrong. I know -- I mean -- and I didn't -- I wasn't trying to -- I don't want to make myself look any worse, but I'm an addict, and I -- that to me is a personal amount based on my usage. But, anyway, it carries a trafficking charge here. That's understandable.

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When I first got arrested, I wasn't allowed to make any phone calls for bail, and the noted recorded phone calls were 11/21, that was three days after I got arrested. I don't know if it's my right to make a phone call to post a bond, but I asked. I was denied. And I didn't even receive a pin number to make my calls for three days, and everything kind of went downhill from there.

And I'm willing to accept the responsibility for my actions. I think the parole time is a little bit extensive. I'm not from here. I don't have any family here. I know that probably doesn't matter too much, but I'd like to transfer back down to California. And every time I've asked for help in California, I was never allowed the help that I asked for because my sentences were always too large.

I mean, I tried to get into the Delaney Street program on a drug charge, and they told me no because I had seven years instead of six years. So I don't know. When I've asked for help, I haven't got it. I don't know if that's really going to -- you know, I need help, and I understand that.

THE COURT: All right. Anything else?

THE DEFENDANT: I'd like to apologize. I mean.

THE COURT: Are you fully satisfied with the

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APPENDIX B

representation Mr. Davis has provided?

THE DEFENDANT: Yes.

THE COURT: Do you know of any legal reason why we shouldn't proceed with sentencing today?

THE DEFENDANT: No.

THE COURT: All right. Well, Mr. Jasper, you're kind of between a rock and a hard spot in terms of the judgment here because even though you claim that 40-some grams of methamphetamine that you had in your possession was a use amount for you, it's under the Idaho statute as a trafficking amount. Almost 2-ounces.

And, no question, this is a conservative state. They don't give much latitude for that, but that's the way it is, and we've got to go from there.

Now, you'll find that we have a much more robust structure in this state than they do in California in terms of probation and treatment. We try to provide treatment for everyone who needs it. We put a lot of effort into building that system, and part of that is what's been recommended here. But I expect that at your age, you're a little -- you're getting kind of old for this lifestyle.

THE DEFENDANT: I understand.

THE COURT: You've been in and out of prison for 20 years -- mostly in -- and just recently out of

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prison, and back into the same behavior.

You have a very interesting, nontraditional, entrepreneurial view of life. You steal cars and sell drugs and hawk stuff on eBay for a living, and most of time that gets you back into trouble.

THE DEFENDANT: I understand.

THE COURT: So you've got to make some changes, and figure out how to live in society without doing those things, or you're going to just continue to nickel and dime yourself into a life sentence.

THE DEFENDANT: I understand that too.

THE COURT: So we'll deal with things as we have to here. I have responsibilities that I have to take care of, and you have some needs that I need to take care of.

Based upon your plea of guilty, it is the judgment of the Court that you are guilty of the crime of trafficking in the methamphetamine in the amount of 28 grams or more, but less than 200 grams.

In addition to the Presentence Investigation Report, I have reviewed the objectives of criminal punishment adopted by Idaho Supreme Court. My primary duty in all cases is to protect society from criminal behavior, and we consider that this kind of a crime is one that has a ripple effect. It impacts the community

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in a great deal. I must deter you if I can from committing this type of crime. I must see to your rehabilitation if I can, and there is a mandatory requirement for punishment.

I have also reviewed and considered the criteria set forth in Idaho Code section 19-2521 relevant to whether I put you on probation or send you to the prison.

Based upon all of the circumstances of the case, it is the judgment of the Court that you be sentenced to the custody of the Idaho Board of Corrections for a minimum period of three, as required by law, and a maximum period of 15 years.

I will fine you \$10,000 which is the mandatory minimum fine. I shall require that you pay \$277.33 as reimbursement for -- in costs for costs of investigation and prosecution. You'll reimburse the county \$500 for the services of the public defender.

Court costs will be \$205.50, and \$75 to the Victims Relief Fund. You'll provide a DNA sample and thumbprint exemplar and pay the statutory fee for that, and if required by the Department of Corrections you shall contribute up to \$100 for the preparation of the presentence report.

Now, do you have any question about that

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sentence?

THE DEFENDANT: Yes. Honestly, I don't know if -- that's an awful lot of money.

THE COURT: Well, I can't do anything about the money, other than the little stuff, but the \$10,000 fine is required -- that's part of the mandatory minimum. You have to do three years and pay \$10,000. The legislature's required that. I don't have any way to back off of that.

THE DEFENDANT: Yeah.

THE COURT: So I know it's a lot of money, but that's the way it is.

THE DEFENDANT: The thing that I don't understand is I'm not, like -- I'm not familiar with the laws out here.

THE COURT: Un-huh.

THE DEFENDANT: And when I caught this case in the county jail, they put me in the hole in max in a cell --

THE COURT: Right.

THE DEFENDANT: So I couldn't have any communication with anybody local to find out if I am getting the best deal or not. So I honestly --

THE COURT: Well, I don't know how to -- I can't advise you as to whether you got the best deal or not.

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I can tell you that with the amount of drug that was found --

THE DEFENDANT: I understand.

THE COURT: -- both the charge and the penalty are appropriate.

THE DEFENDANT: Okay.

THE COURT: Now, that's just the -- you know, other states may not do it that way, but that's the way Idaho does it, and that's what you expose yourself to when you drive through Idaho.

All right. You are advised that you have the right to appeal to the Idaho Supreme Court from this judgment. You have the right to be represented by an attorney on that appeal. If you cannot afford an attorney, one will be appointed to assist you at public expense, but you only have 42 days from today's date to file any Notice of Appeal. You may have up to 120 days under Rule 35 to ask for relief if you wish, and you may have up to a year under the Uniform Post-Conviction Relief Act if you qualify.

You are hereby remanded to the custody of the Sheriff of Bonneville County for delivery to the proper agent of the Idaho Department of Corrections and execution of sentence.

Is there anything else, Mr. Davis?

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MR. DAVIS: Nothing further for this Court this case this morning, Your Honor.

THE COURT: Ms. Shaul?

MS. NORTH-SHAUL: Nothing further, Your Honor.

THE COURT: You may be excused.

(Proceedings concluded.)

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