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State v. Helton Respondent's Brief Dckt. 43390

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43390
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-1189
)	
KENNETH MICHAEL HELTON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Helton failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with one and one-half years fixed, upon his guilty plea to failure to register as a sex offender?

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

Helton pled guilty to failure to register as a sex offender and the district court imposed a unified sentence of 10 years, with one and one-half years fixed. (R., pp.39-

42.) Helton filed a notice of appeal timely from the judgment of conviction. (R., pp.44-46.)

Helton asserts his sentence is excessive in light of his education, “physical and mental impairments,” and his claims that he “did not fully understand the nature of his requirement to register as a sex offender,” that he lacked community support, and that his failure to register as a sex offender did not pose “any threat to the public.” (Appellant’s brief, pp.3-6.) 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 failure to register as a sex offender is 10 years. I.C. § 18-8311. The district court imposed a unified sentence of 10 years, with one and one-half years fixed, which falls well within the statutory guidelines. (R., pp.39-

42.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Helton's sentence. (Tr., p.31, L.22 – p.34, L.9.) The state submits that Helton 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 Helton's conviction and sentence.

DATED this 10th day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 state that it seemed to me that if he came back there
2 and agreed to do their program, and when they say "their
3 program," I understand what they call New Life or New
4 Directions program, they would consider taking him back
5 in.

6 He clearly got a mental health history,
7 he's been taking medication for quite a while. He
8 doesn't really have a clear mental health evaluation
9 anywhere in there. He's got the psychosexual
10 evaluations and he's got the GAIN, which you know
11 basically says he's got mental health issues he told us
12 all about but we're not going to go further and do a
13 psychological evaluation. Apparently voc rehab did one
14 and said they set him up with services but he didn't
15 follow through. Those services presumably are still
16 available to him.

17 The underlying offense was a little odd in
18 terms in of possession of the child pornography. I
19 didn't see anything in his psychosexual evaluations.
20 His 2007 one that he did on a Rider came back and said
21 he was as moderate to low risk. There's nothing else in
22 his criminal history that would suggest to me he's
23 really a threat to society; he has a '93 grand theft and
24 a whole bunch of license misdemeanors and he came back
25 in and got this underlying charge.

1 I think that possibly he could be
2 successful on probation with that sort of supervision.
3 I know the court is going to look back and say he got on
4 parole a couple times, he violated and he went back in.
5 I guess the end part of the calculation to me too is do
6 I see him really at this point as a genuine threat to
7 society, and I don't. Do I see him as a threat to
8 abscond and I don't know. I don't think he goes
9 anywhere, he's going to stay here. So if he doesn't
10 follow through, he's going to get caught, brought in
11 pretty quickly.

12 I'm going to ask the court to consider
13 putting him on probation but bringing him back in a
14 couple of weeks to see where he's at and what he's done
15 and if he's gotten signed up. Maybe if we can get him
16 off to a sort of a structured start, he can be
17 successful. He doesn't have anybody in the world to
18 rely on, to depend on, to call to get rides from. He's
19 truly a homeless person. And he wrestles with other
20 disability, mental health disabilities, learning
21 disabilities.

22 I would like to think that with this
23 message kind of straight between the eye that you have
24 to register, this is something you have to do or else
25 you're going back to prison, which is where he doesn't

1 want to go, and by bringing him here initially every
2 couple weeks for the beginning period of time to see he
3 is registered and he gets a little more stable, he can
4 be successful. I would ask the court to consider that.
5 I show he's been in custody since March 12th.

6 THE COURT: Mr. Helton, do you wish to make a
7 statement to the court prior to sentencing?

8 THE DEFENDANT: Well, what they were saying,
9 discussed between my lawyer and I on the PSI and with my
10 current life the way it has been, it is has been tough
11 for me because I have not had the support I needed. And
12 if I'm allowed to, I'm asking you to give me a chance. I
13 know I can do it. I thought about it all month, since
14 the last time we talked, and I was hoping to talk with
15 the gentleman at the Rescue Mission to see about getting
16 into the New Life program for a substantial amount of
17 time, you know, for their -- for what they plan so that I
18 might have or may have or gain the skills I need to help
19 me to succeed instead of keep going back and forth in and
20 out of prison for the rest of my life.

21 THE COURT: Thank you.

22 Mr. Helton, on your plea of guilty I find
23 you guilty. In an exercise of my discretion in
24 sentencing, I have considered the Toohill factors,
25 including the nature of offense and the character of the

1 offender, and the mitigating and aggravating factors as
2 well. In fashioning a sentence, I do so mindful of the
3 objectives, first and foremost, of protecting society,
4 also achieving deterrence, the need for rehabilitation
5 as well as the need for retribution or punishment. I've
6 considered the PSI materials, the arguments of counsel
7 and the statement of defendant today.

8 I think that a lot of what both sides have
9 said, the state and defense here today, is true. I
10 think the record is clear that Mr. Helton has made very
11 little, if any, effort to do what it is that is either
12 required of him or even what has been offered to him to
13 help him fashion some semblance of a successful reentry
14 into the community.

15 I think also what the defense has said,
16 which is true, which is if he doesn't figure out how to
17 do this, how to meet the registration requirements that
18 will be with him the rest of his life, he is simply
19 going to go back into prison and out of prison and into
20 prison and out of prison for the remainder of his life.

21 And so at some point you're going to have
22 to figure this out. I believe that -- I don't
23 necessarily accept the premise that the defendant does
24 not present a risk to the community. I believe that the
25 conviction -- the crime for which he was convicted

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1 demonstrates that he poses a risk to the community.
2 The legislature has determined that to
3 minimize that risk to the community, registration for
4 the balance of his life is necessary. And so it is not
5 simply an option to remain homeless and be living on the
6 fringe of the system without meeting any requirements
7 that are set upon you, because it's important that those
8 responsible for protecting the community understand
9 where you are and that that information be available to
10 them and to the public.
11 I'm concerned simply putting the defendant
12 back out on probation, given his past inability or
13 unwillingness to do frankly anything to help himself and
14 to do any of the requirements set upon him. Every
15 opportunity he was given for parole, he failed. Every
16 opportunity he's been given since he's been released
17 this time to help himself, he's not taken. I hear
18 excuses like "it's too far." It's not too far. It can
19 be walked easily, it certainly can be ridden and there
20 are ways to arrange things, but you have to want to
21 comply or at least recognize that you have to comply.
22 I think, frankly, what I can do to best
23 protect society, as well as to achieve deterrence, in
24 particular, specific deterrence to this defendant to
25 ensure that the next time he's in the community that he

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1 meets his obligations, is to impose a prison sentence
2 with a relatively short fixed term, thereby placing
3 him -- putting parole back into his ability to affect
4 based upon his conduct. And then once he gains parole,
5 him understanding that failure to follow the rules will
6 result in revocation of the parole and placement back
7 into the system. At some point you will figure it out
8 or at some point you will simply be incarcerated for the
9 balance of your life.
10 It's therefore my sentence that you be
11 sentenced to the custody of the Idaho State Board of
12 Corrections under the Unified Sentencing Laws of the
13 State of Idaho for an aggregate term of ten years. The
14 Court specifies a minimum period of confinement of
15 one-and-a-half years fixed, followed by eight-and-a-half
16 years indeterminate.
17 I remand you to the custody of the sheriff
18 of the county to be delivered to the proper agent of the
19 State Board of Corrections in execution of this
20 sentence. Credit will be given for the time served
21 since March 12th, 95 days. I understand he has topped
22 out on his prior sentence. No need to worry about
23 whether it's concurrent or consecutive. The Court will
24 order you pay court costs, and because you're going to
25 be incarcerated, I'm not going to order a fine at this

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1 time.
2 You do have the right to appeal, Mr.
3 Helton, and if you cannot afford an attorney, you can
4 request to have one appointed at public expense. Any
5 appeal must be filed within 42 days of the date of this
6 order or the entry of the written order of judgment of
7 conviction and commitment. Good luck, sir.
8 (Proceedings concluded.)
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1 REPORTER'S CERTIFICATE
2 STATE OF IDAHO)
3 COUNTY OF ADA)
4
5 I, CHRISTIE VALCICH, Certified Court
6 Reporter of the County of Ada, State of Idaho, hereby
7 certify:
8 That I am the reporter who transcribed the
9 proceedings had in the above-entitled action in machine
10 shorthand and thereafter the same was reduced into
11 typewriting under my direct supervision; and that the
12 foregoing transcript contains a full, true, and accurate
13 record of the proceedings had in the above and foregoing
14 cause, which was heard at Boise, Idaho.
15 IN WITNESS WHEREOF, I have hereunto set my
16 hand this 28th day of August, 2015.
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CHRISTIE VALCICH, CSR-RPR
Ada County Courthouse
200 West Front Street
Boise, Idaho