

4-13-2016

State v. Lasater Respondent's Brief Dckt. 43413

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

Recommended Citation

"State v. Lasater Respondent's Brief Dckt. 43413" (2016). *Not Reported*. 2645.
https://digitalcommons.law.uidaho.edu/not_reported/2645

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

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 43413 & 43414
Plaintiff-Respondent,)	
)	Ada County Case Nos.
v.)	CR-2014-15472 & 2013-15134
)	
SHANE ROBERT LASATER,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

Issue

Has Lasater failed to establish that the district court abused its discretion by imposing concurrent unified sentences of 10 years, with two and one-half years fixed (later reduced to eight years with two years fixed), upon his guilty plea to forgery, and five years, with two years fixed, upon his guilty plea to possession of a controlled substance?

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

In case number 43413, Lasater pled guilty to forgery and the district court imposed a unified sentence of 10 years, with two and one-half years fixed, and retained

jurisdiction. (43413 R., pp.62-66.) At a rider review hearing in June 2015 the court relinquished jurisdiction and *sua sponte* reduced Lasater's sentence to just eight years, with two years fixed. (43413 R., pp.71-73.) Lasater filed a notice of appeal timely from the order relinquishing jurisdiction and reducing sentence. (43413 R., pp.76-78.)

In case number 43414, Lasater pled guilty to possession of a controlled substance and the district court imposed a unified sentence of five years, with two years fixed and retained jurisdiction. (43414 R., pp.111-15.) At a rider review hearing in June 2015 the court relinquished jurisdiction. (43414 R., pp.123-25.) Lasater filed a notice of appeal timely from the order relinquishing jurisdiction. (43414 R., pp.127-29.)

Lasater asserts his sentence for forgery in case number 43413 is excessive, in light of his upbringing, age, mental health problems, and drug addiction. (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.

The maximum prison sentence for forgery is 14 years. I.C. § 18-3604. The district court originally imposed a unified sentence of 10 years, with two and one-half years fixed, but later reduced the sentence to only eight years, with two years fixed, which falls well within the statutory guidelines. (43413 R., pp.62-66, 71-73.) At sentencing, the state addressed Lasater's young age, his extensive criminal history, and his prior failure on probation. (43413 1/20/15 Tr., p.28, L.18 – p.30, L.6.) The state submits that Lasater 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.)

Lasater next asserts that his sentence for possession of a controlled substance in case number 43414 is excessive, in light of the mitigating factors above. (Appellant's brief, pp.4-5.) Lasater's argument is barred by the doctrine of invited error.

A party is estopped, under the doctrine of invited error, from complaining that a ruling or action of the trial court that the party invited, consented to or acquiesced in was error. State v. Carlson, 134 Idaho 389, 402, 3 P.3d 67, 80 (Ct. App. 2000). The purpose of the invited error doctrine is to prevent a party who "caused or played an important role in prompting a trial court" to take a particular action from "later challenging that decision on appeal." State v. Blake, 133 Idaho 237, 240, 985 P.2d 117, 120 (1999). This doctrine applies to sentencing decisions as well as to rulings during trial. State v. Leyva, 117 Idaho 462, 465, 788 P.2d 864, 867 (Ct. App. 1990).

Lasater is “[m]indful that he got the sentence he requested” (Appellant’s brief, p.1.) Nevertheless, he argues the district court “abused its discretion by not imposing a lesser sentence.” (Appellant’s brief, p.5.) Lasater’s argument fails. At the sentencing hearing, Lasater specifically asked the district court to impose a sentence of five years, with two years fixed, and the district court followed his recommendation. (43414 1/20/15 Tr., p.25, Ls.6-8; p.27, L.22 – p.28, L.14.) Because Lasater received the sentence he requested, he cannot claim on appeal that his sentence is excessive. Therefore, Lasater’s claim of an abuse of sentencing discretion in case number 43414 is barred by the doctrine of invited error, and his sentence should be affirmed.

Conclusion

The state respectfully requests this Court to affirm Lasater’s convictions and sentences.

DATED this 13th day of April, 2016.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of April, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

MAYA P. WALDRON
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

25

1 otherwise not included in the PSI. I'll set it for
2 sentencing on January 20th, 11:00 a.m.
3 MS. JONES: Thank you, your Honor.
4 MR. HAWS: Judge, I'm doing make a note we should
5 send our PSI documents directly to the court. Thank you.
6 (Proceedings concluded.)
7 * * *

26

1 TUESDAY, JANUARY 20, 2015
2 * * *
3
4 THE COURT: State of Idaho vs. Shane Lasater,
5 CR-FE-14-15472. The defendant is present in custody with
6 counsel, Ms. Jones, the State is represented by
7 Mr. Medema. This is the time set for sentencing.
8 The defendant previously entered a guilty
9 plea on December 23rd, 2014, to Count I, forgery.
10 Pursuant to the the plea agreement, the other counts
11 were to be dismissed. The State agreed to limit its
12 recommendation to a sentence of seven years consisting
13 of two-years fixed, five-years indeterminate; the
14 defendant to go on a Rider concurrent with a case before
15 Judge Greenwood, CR-FE-13-15134; the defendant agreed to
16 restitution on all counts, included dismissed counts.
17 Have I stated the terms of the agreement
18 correctly?
19 MR. MEDEMA: Yes, your Honor.
20 MS. JONES: Yes, your Honor.
21 THE COURT: Does either party know of any legal
22 cause why judgment of conviction and sentence should not
23 be pronounced against the defendant at this time?
24 MS. JONES: No, your Honor.
25 MR. MEDEMA: No, sir.

27

1 THE COURT: I did order a PSI to be prepared, I
2 received that and I have reviewed that. Have both
3 parties had full opportunity and sufficient time to
4 review the PSI materials?
5 MS. JONES: Yes, your Honor.
6 MR. MEDEMA: The State has, Judge.
7 THE COURT: Mr. Lasater, have you reviewed the
8 PSI materials?
9 THE DEFENDANT: Yes, your Honor.
10 THE COURT: Does either party contend there are
11 any deficiencies in the PSI materials?
12 MR. MEDEMA: No, your Honor.
13 MS. JONES: No, your Honor.
14 THE COURT: Does either party object to anything
15 that is included in the PSI or contend there should be
16 additional investigation or evaluation of the defendant
17 prior to sentencing?
18 MS. JONES: No, your Honor.
19 MR. MEDEMA: No, sir.
20 THE COURT: Is there a restitution claim?
21 MR. MEDEMA: Yes, your Honor. I have a proposed
22 order for the court and counsel. The losses are from the
23 checking accounts of the victims.
24 THE COURT: Proposed restitution is \$21,557.21.
25 Has defense had an opportunity to look this over and does

28

1 it have an objection?
2 MS. JONES: Your Honor, I would like to reserve
3 this issue in anticipation of a further Rider Review. I
4 can let the court know he was just sentenced this morning
5 to a Rider and I do need additional time to review this
6 number.
7 THE COURT: I'll keep it open for 45 days or
8 until the Rider Review, if there is a Rider Review in
9 this case.
10 MS. JONES: Thank you.
11 THE COURT: Is there a victim that wishes to make
12 a statement?
13 MR. MEDEMA: I don't believe anyone from either
14 business is here today. I spoke with them last week.
15 THE COURT: Then if neither side has evidence,
16 the State may argue.
17 MR. MEDEMA: Thank you.
18 Judge, Mr. Lasater is 21 years of age. He
19 comes before the court having passed a forged series of
20 checks from businesses here in town. Speaking with the
21 businesses and reviewing the police report, a best guess
22 on how somebody got a hold of these checks that led to
23 Mr. Lasater's possession is through mail theft, that's
24 the most likely thing that they can figure. But it's
25 clear that Mr. Lasater is tied up with people who are

29

1 using drugs and doing these kinds of thing to support
2 their drug habits. His statement that he got them from
3 three guys running a scam here in Boise may be
4 plausible.

5 Mr. Lasater is someone who has an
6 extensive history of criminal behavior starting at a
7 young age, and he has a previous felony for which he was
8 being supervised in drug court as an adult when he chose
9 to abscond supervision and commit these offenses. I
10 think it's clear that substance abuse is a significant
11 component.

12 In the State's view, Mr. Lasater is at a
13 crossroads. It seems like every male adult in his
14 family has felony convictions. I hope he chooses to
15 respond to this one like his stepfather apparently did.
16 He worked his way off his probation back in 2001 and as
17 far as I can tell is a productive member of society now.
18 I hope Mr. Lasater chooses to go that route. He
19 certainly can see in his family what happens if you make
20 the other choice; he's got a brother who is serving time
21 in prison right now.

22 Our recommendation is that you impose the
23 seven year sentence. This is a crime for which the
24 legislature authorizes a 14-year prison term. We're
25 asking for half of that largely because this is a

31

1 THE COURT: Mr. Lasater, do you wish to make a
2 statement to the court?

3 THE DEFENDANT: No. Thank you, your Honor.

4 THE COURT: On your plea of guilty, I find you
5 guilty. In an exercise of my discretion in sentencing,
6 I've considered the Toohill factors, including nature of
7 the offense and character of the offender, as well as the
8 information and evidence in mitigation and in
9 aggravation.

10 In fashioning a sentence, I do so with the
11 objective of protecting society, achieving deterrence,
12 the need for rehabilitation -- the prospects for
13 rehabilitation as well as need for punishment or
14 retribution. I have reviewed the PSI materials and
15 considered them as well as arguments of counsel.

16 I think Mr. Medema puts it correctly when
17 he says that you are at a crossroads. At your young age
18 of 21, you are in a position where you are going to make
19 decisions about how your life is going to turn out from
20 this point. You're either going to continue down the
21 road that you've been on, using and stealing to use,
22 it's just going to result in what I would call a serial
23 life sentence where you're in for a few years, out, back
24 in for a few years, out, back in for few years, until
25 finally a judge in my position just gets -- and the

30

1 significant amount of money. And I think that two fixed
2 is an appropriate fixed term. I'd ask that you retain
3 jurisdiction and give Mr. Lasater a chance to show this
4 court how in four months or six months or nine months
5 from now he's a better candidate for probation than he
6 was when he chose to abscond from drug court.

7 Thank you.

8 THE COURT: Thank you. Ms. Jones.

9 MS. JONES: Thank you, your Honor.

10 I don't have a whole lot to add. I agree
11 with the recommendation in this case. Certainly if we
12 do agree on a number for restitution and Mr. Lasater is
13 able to pay that off early, he can come before this
14 court and request the probation period be converted to
15 unsupervised or commuted all together, but I do think in
16 this instance for this individual a Rider is an
17 appropriate sentence.

18 He is of a demographic that drug court is
19 just very difficult for gentlemen of his age to be
20 successful in, so it's not a large surprise that he did
21 perform poorly in there. Perhaps with a stronger
22 foundation which he can get on the Rider program, he
23 will be able to successfully complete probation. I ask
24 that this run concurrent with his current sentence as
25 well. Thank you.

32

1 prosecutor gets tired of it and remands you on a
2 persistent violator and puts you away for a long, long
3 time. That's the life you're looking at if you continue
4 down the road that you've been on.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Or you can choose other road and you
7 can choose to stop using, to use the tools that have been
8 given to you and those that you will acquire, to turn a
9 leaf, to do something new, to do something different, to
10 get a job, to be employed, to be productive; but that's
11 going to be entirely up to you and what you decide to do.

12 I am going to sentence you to the custody
13 of the Idaho State Board of Corrections under the
14 Unified Sentencing Laws of the State of Idaho for an
15 aggregate term of ten years. The court specifies a
16 minimum period of confinement of two-and-a-half years
17 fixed and a subsequent indeterminate period of custody
18 of seven-and-a-half years. I chose that sentence
19 because I think you're going to need significant time to
20 pay off what is likely to be a significant restitution,
21 based at least on the preliminary numbers I've seen, and
22 frankly I want to encourage you to succeed on the Rider
23 by giving you plenty of incentive to do so.

24 If you do well, you can always come back
25 and petition the court for early release from probation,