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State v. Sheltra Respondent's Brief Dckt. 43562

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43562
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2014-17363
)	
SHAWN VICTOR SHELTRA, JR.,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Sheltra failed to establish that the district court abused its discretion, either by imposing a unified sentence of 15 years, with two years fixed, upon his guilty plea to sexual abuse of a child under the age of 16, or by relinquishing jurisdiction?

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

Sheltra pled guilty to sexual abuse of a child under the age of 16 and the district court imposed a unified sentence of 15 years, with two years fixed, and retained jurisdiction. (R., pp.58-61.) Following the period of retained jurisdiction, the district

court relinquished jurisdiction. (R., pp.71-72.) Sheltra filed a timely notice of appeal. (R., pp.81-83.)

Sheltra asserts his sentence is excessive in light of the nature of the offense, Sheltra's status as a first-time felon, his substance abuse and mental health issues, the psychosexual evaluator's recommendation for treatment in a structured environment, and the presentence investigator's statements that Sheltra appears to be successful in structured environments and would benefit from co-occurring mental health and substance abuse treatment. (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 sexual abuse of a child under the age of 16 is 25 years. I.C. § 18-1506(5). The district court imposed a unified sentence of 15 years, with two years fixed, which falls well within the statutory guidelines. (R., pp.58-61.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Sheltra's sentence. (3/19/15 Tr., p.41, L.8 – p.44, L.22.) The state submits that Sheltra 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.)

Sheltra next asserts that the district court abused its discretion by relinquishing jurisdiction, in light of his "insight into his behavior and expressed desire to be successful." (Appellant's brief, pp.6-7.) Sheltra has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

At the jurisdictional review hearing, the state addressed Sheltra's abysmal conduct in the rider program, his high risk to sexually reoffend, and his refusal to

participate in rehabilitative programming. (9/10/15 Tr., p.48, L.18 – p.49, L.25 (Appendix B).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for relinquishing jurisdiction. (9/10/15 Tr., p.54, L.2 – p.55, L.22 (Appendix C).) The state submits that Sheltra has failed to establish that the district court abused its discretion by relinquishing jurisdiction, for reasons more fully set forth in the attached excerpts of the jurisdictional review hearing transcript, which the state adopts as its argument on appeal. (Appendices B and C.)

Conclusion

The state respectfully requests this Court to affirm Sheltra's conviction and sentence and the district court's order relinquishing jurisdiction.

DATED this 5th 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 5th day of February, 2016, 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

LORI A. FLEMING

Deputy Attorney General

APPENDIX A

1 from Washington, and I made a mistake and I really would
 2 like treatment.
 3 THE COURT: All right. Thank you.
 4 Does either party have any legal cause why
 5 sentence cannot be imposed?
 6 MS. GUZMAN: The state does not.
 7 MR. MARX: No, Your Honor.
 8 THE COURT: Mr. Sheltra, I've considered the
 9 same factors I consider in every case, the protection of
 10 society, the deterrence of crime, the rehabilitation of
 11 the offender as well as punishment, and I've considered
 12 the criteria under 19-2521 for imposing probation or
 13 imprisonment and then I've also considered the lack of a
 14 felony criminal history related to a withheld judgment
 15 under 19-2601. Due to the seriousness of the offense,
 16 I'm not going to withheld judgment on this case.
 17 I'm going to enter a judgment of conviction with
 18 2 years fixed, 13 years indeterminate for a total of 15
 19 years. I am going to retain jurisdiction in this case.
 20 Quite frankly, in reading the police reports and the
 21 description of the offense, especially, related to the
 22 misrepresentation of the age, I was -- I don't want to
 23 say surprised because I'm never surprised -- but, in
 24 looking at Dr. Johnston's report, you show up as much
 25 higher risk to recidivate. Some of that you can't do

1 straight on into prison at 20 years old, while you were
 2 trying to express leadership in this particular
 3 environment, it concerns me. That you go into prison
 4 and you very well may wind up not in a leadership role
 5 in that environment because it's a different world, so
 6 I'm going to give you the opportunity for rehabilitative
 7 programming in the rider program, but I am concerned
 8 about that because of your age and your criminal
 9 history, including the batteries and disturbing the
 10 peace and, well, those types of offenses, because you
 11 are going to be in close quarters with a number of
 12 people with some of the same issues, so you need to make
 13 sure that you are behaving yourself as a way that you
 14 are there to get treatment. You are there to better
 15 your situation, and you are not there to be the ring
 16 leader or to impact negatively the other inmates, and,
 17 so whenever I say for evaluative purposes, I want you to
 18 understand that at the end of this rider, the Department
 19 of Corrections is either going to decide that you're
 20 unable or unwilling to engage in the treatment and send
 21 me a report saying that I should relinquish jurisdiction
 22 and just send you on to prison, or they're going to send
 23 me a report that says that they believe that you're
 24 amenable to treatment and the rest of it is available in
 25 the community.

1 anything about. You're 20 years old and you have the
 2 number of convictions that you have. Those are static
 3 factors. But, in looking at your criminal history and
 4 the number of violent intimidating crimes, it is -- I
 5 can certainly see why that is the result.
 6 I am ordering this rider for evaluative
 7 purposes, and I'm going to specifically recommend the
 8 sex offender assessment group. I am concerned, not just
 9 about the dynamics related to sex offense, I'm also very
 10 concerned at your age with the substance abuse. The sex
 11 offender group does touch on substance abuse, not as
 12 extensively as the other programs. I am concerned about
 13 both of those, quite frankly, because if you are using
 14 substances, you are actually much more likely to
 15 re-offend in a sexual way, and, if you're likely to
 16 re-offended in a sexual way anyway, it is of great
 17 concern.
 18 And the primary factors out of all of those that
 19 I read to you, is the protection of society, and, the
 20 fact that you show up as an opportunist, to take
 21 advantage of young women who may put themselves in
 22 similar circumstances, the law of Idaho is the way that
 23 it is, to protect the youth of the state, quite frankly,
 24 and I think it should be, but, at the same time, I am
 25 concerned about putting you in a prison setting, just

1 I don't have to take that recommendation either
 2 way, but, what I am looking for, are exactly those
 3 markers. Whenever it says that you're an "opportunist"
 4 related to sex offenses, and, those opportunities,
 5 you're going to demonstrate whether you are able to
 6 follow someone else's supervision and take advantage of
 7 treatment, and, if you can't do that in a supervised
 8 setting without committing additional crimes or causing
 9 other difficulty for inmates around you, I would simply
 10 not believe that you're able to do it with with less
 11 supervision out in the community. So your behavior and
 12 your engagement on the rider is particularly important,
 13 and I will tell you that I'm giving you this opportunity
 14 because you came in and you entered a guilty plea and
 15 you saved the state, as well as the victim, the trauma
 16 of a trial.
 17 That's exactly why I'm giving you this
 18 opportunity because I do view that as taking
 19 responsibility for your crimes, but at the same time you
 20 need to demonstrate that you're capable of being
 21 released in the community with less supervision and that
 22 the community would be safe.
 23 I'm not going to impose a fine. I am going to
 24 impose a no contact order that's under Idaho Code
 25 18-920. It is for no contact at this time with K.M., a

APPENDIX B

1 minor, and no unsupervised contact with all other
 2 females. I've entered it as effective until March 18,
 3 2030. I'm not actually required to have a rider review
 4 hearing. Typically, I do. If there is a recommendation
 5 for probation, I could revisit that at the rider review
 6 hearing, but, given the fact that you're going to be in
 7 the institution without any unsupervised conduct with
 8 anyone, I am going to impose that no contact order at
 9 this time.

10 I'm going to order court costs, restitution of
 11 \$482.92. That will be a separate order of restitution.
 12 It will begin accruing interest at the judgment rate.
 13 I'm going to order public defender reimbursement of
 14 \$500, up to \$100 for the presentence report that was
 15 prepared in this case, and I'm going to require you to
 16 submit a DNA sample and a right thumbprint and pay \$100
 17 restitution for that sample.

18 Mr. Sheltra, this is a final judgment in this
 19 case. You have the right to appeal to the Idaho Supreme
 20 Court. The time for taking an appeal is 42 days from
 21 the date the judgment is made and filed. You may be
 22 represented by counsel in brining any appeal. If you
 23 cannot afford to hire an attorney for the appeal, one
 24 will be provided for you at public expense if you're an
 25 indigent person.

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1 Good luck to you on the rider. I hope that you
 2 do take advantage of this opportunity.

3 If the parties have any sentencing materials,
 4 they can be returned at the rider review hearing because
 5 typically I do conduct one.

6 MR. MARX: Your Honor, before you pass that to
 7 the marshal, the information says that the initials are
 8 K.A., rather than K.M.

9 THE COURT: Oh, what she has on here is K.M.A.
 10 minor. I read it too quickly. The initials are K.M.A.,
 11 a minor.

12 MR. MARX: Okay.

13 THE COURT: So I read it too quickly. Thank you
 14 for bringing that to my attention though.
 15 (Proceedings concluded.)

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1 BOISE, IDAHO
 2 SEPTEMBER 10, 2015
 3 RIDER REVIEW HEARING

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5
6

7 THE COURT: State of Idaho vcrsus Shawn Sheltra.
 8 CR-FE-2014-17363. Mr. Sheltra is present in custody.
 9 He's represented by Mr. Marx. The state is represented
 10 by Mr. Dinger in this case. This is the time set for a
 11 rider review hearing.

12 I've received the report of a North Idaho
 13 Correctional Institution that's recommending
 14 relinquishment of jurisdiction. I've had the
 15 opportunity to review that report. The defense also
 16 filed a request to amend the presentence report, which
 17 included a letter from Mr. Sheltra.

18 Is there any objection to me amending the report
 19 to consider Mr. Sheltra's letter?

20 MR. DINGER: No, Your Honor.

21 THE COURT: Okay. So I will sign that order.

22 Mr. Dinger, have you had an opportunity to
 23 receive and review the report?

24 MR. DINGER: Yes, Judge.

25 THE COURT: Did you note any additions or

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1 corrections?

2 MR. DINGER: No, Judge.

3 THE COURT: Mr. Marx, have you had the
 4 opportunity to receive and review the report?

5 MR. MARX: Yes, Your Honor.

6 THE COURT: Mr. SHeltra, have you had an
 7 opportunity to receive and review the report?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have you talked with your counsel
 10 about whether there's any additions or corrections?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Mr. Marx, are there any other
 13 additions or corrections?

14 MR. MARX: No, Your Honor. Anything, I'll
 15 address in argument.

16 THE COURT: Mr. Dinger, you can argue.

17 MR. DINGER: Thank you, Judge.

18 Your Honor, I think it would be fair to
 19 characterize that the state and the court took a gamble
 20 on this defendant when they sent him on a rider. He was
 21 a high risk to re-offend sexually and less likely to
 22 comply with supervision than the average sex offender,
 23 and Your Honor informed him very clearly that the rider
 24 was for evaluative purposes only. Your Honor, he also
 25 has a full-fledged personality disorder, a severe

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1 substance abuse, OCD and other problems.
 2 When he arrived at NICI, he came with a poor
 3 attitude. He did not accomplish the SOAG, New Direction
 4 before release. He basically just outright refused to
 5 participate. He had a number of informal disciplinary
 6 sanctions and a formal disciplinary sanction. He was
 7 defiant. He undermined his own ability to program to
 8 the serious and persistent criminal belief system that
 9 he had. He said he quit the rider because he goes for
 10 the easy way out. He also lacked accountability for his
 11 offense, stating he shouldn't even be in the program and
 12 said the program was useless. He now writes that he
 13 wants either probation or another chance at the rider.
 14 I'd ask for neither of those. I'd ask that you
 15 impose it. He states that it was his quitting his meds
 16 that impacted his rider. Yet, Your Honor, I'd note that
 17 he quit his meds on 7/18 -- well, July 18 of '15, after
 18 stating he already wanted to relinquish himself, so he'd
 19 already made up his decision before he quit his meds.
 20 All of his write-ups were also prior to that time. He
 21 just doesn't get that the rider was a privilege and
 22 probation is a privilege, and, quite honestly, Your
 23 Honor, he hasn't earned a second chance. His second
 24 chance was the rider, so, Your Honor, we'd ask that you
 25 impose the underlying sentence.

1 There are and a variety of medications now that he's at
 2 the main penitentiary pending this court date. I think
 3 one of the unfortunate things for Shawn is that he was
 4 quite eager to begin treatment and programming. He was
 5 amenable to programming, and, unfortunately, under the
 6 Department of Corrections, sat him for two months at the
 7 CAPP program waiting to send him up to Cottonwood to
 8 start the programming.
 9 Some of the formal DORs, as well as the majority
 10 of the infractions, came while he was sitting in the
 11 CAPP program but before he actually started programming.
 12 The amount of trouble that he was written up for
 13 significantly decreased while he was programming at
 14 North Idaho.
 15 You know, I think the APSI's position that he
 16 refused to accept accountability isn't completely born
 17 out based on some of the statements he made in there,
 18 but, it's also based on the letter that he wrote to the
 19 court in anticipation of today's date. There's also
 20 reference in the report that when he was engaged in
 21 treatment he actually was insightful and showed interest
 22 in the programming, so I think that there is some
 23 positives there. He comes from a position where there's
 24 a lot of instability in his family. He comes from a
 25 position where the offense that he's charged with, part

1 THE COURT: Mr. Marx, would you like to be
 2 heard?
 3 MR. MARX: Yes, Your Honor.
 4 I certainly understand the recommendation from
 5 the program is relinquishment. I think that there are
 6 some positives that came out of the programming. I think
 7 many of those come from the letter that Shawn drafted
 8 while he was waiting for the court's hearing. I think
 9 that letter is reflective of some of the tools and
 10 skills that he learned in the programming. He put some
 11 of those things into use. I think, certainly, sitting
 12 back and looking at how he performed and what he needs
 13 to do going forward, is reflected in that letter.
 14 I think that in looking at the C-notes from
 15 7/2015, it indicates that while he quit his medicines,
 16 or, at least formally quit them toward the end of the
 17 rider program, when he was relinquished from the
 18 program. He also indicates that there's some reference
 19 in there that the medications weren't properly working
 20 and that they needed to do some modifications on those.
 21 Very rarely is the first time somebody's given a
 22 mental-health med does that actually work. There's
 23 usually some type of modification, dosage or otherwise,
 24 to address those out.
 25 He's been placed back on those medications.

1 of the survival mechanism you have when you're in a
 2 prison facility, is not to discuss the details of your
 3 offense for fear of retribution against you, and so it
 4 takes a little bit to overcome that. I think he started
 5 to make that progress much slower than had been hoped,
 6 but he's clearly behaving himself while in custody now.
 7 He's been granted a job in the kitchen scheduled to
 8 start tomorrow at ISCI.
 9 He clearly identifies in the APSI why he
 10 committed the offense. Certainly, I think that that's a
 11 form of taking accountability, and he indicates on the
 12 bottom of page 3 of the report why he did what he did
 13 and what he needs to do to address those things. If he
 14 learned nothing from the program as the report seems to
 15 suggest, I don't think he would have had those
 16 insightful comments in the report. And so we'd ask the
 17 court, the court has plenty of jurisdiction left to send
 18 him back to the programming and direct him to continue
 19 programming while the court's retaining jurisdiction.
 20 THE COURT: All right. Thank you.
 21 Mr. Sheltra, is there anything that you would
 22 like for me to consider?
 23 THE DEFENDANT: Another chance at the rider. I
 24 know that I relinquished myself, quit it, but I feel
 25 that I have a better chance at it now. Yeah; it was

APPENDIX C

1 hard for me to handle, but I did it and everything
 2 started falling apart. Like, Brian said, it was the
 3 fact that I didn't want to talk about my crime, and it
 4 was a lot harder for me to -- and then when people
 5 started confronting me and getting on me that's how I
 6 felt. It was it wasn't something I'm used to so I had
 7 to address that.
 8 Yes; I did feel like my meds were not working.
 9 I tried to do it several times to get them changed, and,
 10 they said, yeah; you're on the list. You'll be there
 11 next week. Three to four weeks later, I'm never there,
 12 so, yeah; I got upset. I quit my meds. I started
 13 feeling sick, got withdrawals. And then we had a group
 14 and the group was about somebody asking me to relinquish
 15 myself to go do time with him, and I felt like everybody
 16 was ganging up on me, saying, you're wrong. You're in
 17 the wrong for not saying anything, and so I decided,
 18 like, they were talking about my family saying I didn't
 19 care about my sisters, which my sisters mean a lot to
 20 me. Started saying stuff about my mom, and I was, like,
 21 I can't do this no more. I can't do it, and I'd just go
 22 back to my bunk, and then that's when they was, like,
 23 all right. You're done. We're going to send you back,
 24 so I would really like another chance at the rider
 25 program, so I can farther learn from my mistakes.

1 way when you won't engage meaningfully in treatment and
 2 take benefit of the insight that other people are
 3 offering, you still remain a high risk to the community.
 4 And, when I look at offenses of this particular nature
 5 and the risk and the effect of returning you to the
 6 community of actually re-offending in this way, my
 7 concern of the primary concern of protecting the
 8 community is outweighed by my concern of the
 9 rehabilitation of the offender.
 10 So, with this, it doesn't mean that that
 11 treatment isn't going to be made available to you in
 12 some other aspect of the Department of Corrections
 13 because, quite frankly, I think that the parole board
 14 will look for your engagement in that treatment before
 15 you're actually eligible to be returned to the
 16 community, so they'll offer you other opportunities just
 17 not in that particular program.
 18 So, in this particular case, I am going to
 19 relinquish jurisdiction, so you'll be returned to the
 20 Department of Corrections, and they'll place you in
 21 whatever programs they have available for you before you
 22 would be eligible for parole.
 23 Mr. Sheltra, this is a final judgment of this
 24 court. You have the right to appeal to the Idaho
 25 Supreme Court. The time for taking an appeal is 42 days

1 THE COURT: All right.
 2 Mr. Sheltra, I know that it took 60 days before
 3 you actually arrived up in North Idaho. I watch that,
 4 and, part of the reason is that program, there's a lot
 5 of people that are in need of that treatment, and they
 6 don't have sufficient bed space for the demand, and so I
 7 appreciate the difficulty that that downtime causes in
 8 advance. However, my focus is on what you did whenever
 9 you were given the opportunity for treatment.
 10 I know for sex-offender treatment, that is
 11 long-term treatment. It can't all be delivered in a
 12 short period of time, but, what I look for in the rider
 13 is, whether you're actually amenable to participating in
 14 that treatment. And I know you say you felt like being
 15 ganged up on, but it's not ganging up; it's actually
 16 treatment, and I look seriously as to the amenability of
 17 treatment because the recommendations were that you were
 18 high risk to recidivate if you were not amenable to
 19 treatment, and your lack of engagement in that treatment
 20 hasn't lowered your risk to the community, and that's
 21 what I have to consider at this point.
 22 And so at this point, I'm not going to return
 23 you to the rider to take up that space because
 24 empirically under their evaluations you're a high risk
 25 to recidivate, but, quite frankly, in a very practical

1 from the date the judgment is made and filed. You may
 2 be represented by counsel in bringing that appeal.
 3 If the bailiff would not stand in front of me.
 4 If you cannot afford to hire an attorney for the
 5 appeal, one will be provided for you at public expense
 6 if you're an indigent person.
 7 If the parties have any sentencing materials,
 8 they can be returned to the court and sealed in the
 9 court file. Good luck to you, Mr. Sheltra.
 10 MR. MARX: The defense is returning the
 11 presentence materials.
 12 (Proceedings concluded.)
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