

2-17-2016

State v. Alders Respondent's Brief Dckt. 43594

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43594
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-7563
)	
MARK M. ALDERS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Alders pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with three years fixed. (R., pp.16-14, 29-

32.) Alders filed a notice of appeal timely from the judgment of conviction. (R., pp.39-41.)

Alders asserts his sentence is excessive in light of his substance abuse, character, and claim that the instant offense “presented no danger to the community.” (Appellant’s brief, pp.3-5.) 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 possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with three years fixed, which falls well within the statutory guidelines. (R., pp.29-32.) Alders’ sentence is reasonable in light of his ongoing criminal offending and failure to rehabilitate or be deterred.

As a juvenile, Alders incurred multiple charges in the State of California for which no disposition is reported, including charges for possession of marijuana to sell, two counts of burglary, carrying a concealed weapon, criminal conspiracy, and “transport/manufacture/sell dangerous drugs.” (PSI, pp.4-5.) He was also charged with possession of narcotics, for which he was “referred to probation,” and assault with a deadly weapon, in which the victim declined to testify and prosecution was “released.” (PSI, pp.4-5.)

Alders’ adult criminal record includes convictions for burglary, DWS, false identification to a peace officer, two convictions for false identification to specific officers, two convictions for exhibiting a firearm (one of which was amended from assault with a firearm on a person), “DU alcohol/drugs infraction,” “false proof – financial responsibility,” grand theft, possession of a controlled substance, trespassing on a railroad train, “use of a communication facility drug offense,” conspiracy to launder money, and DUI. (PSI, pp.5-11.) Alders also amassed numerous charges in California and Oregon for which no disposition is reported, including charges for burglary, theft of personal property, resisting/obstructing officers, carrying a loaded firearm in a public place, two counts of attempted conspiracy, “conspiracy to commit offense or defraud US,” “use of I/S HWY for racket or unlawful act,” “unlawful activity defined,” “reports on EXP and IMP monetary instruments,” hit and run – property damage, false identification to a peace officer, exhibiting a firearm, two counts of DUI. (PSI, pp.5-11.) He was on federal supervised release for the money laundering conviction, and had failed to show up for an appointment with his federal probation officer, when he committed the instant possession of methamphetamine offense. (PSI, pp.3, 11.)

Alders admitted that he consumed alcohol and used methamphetamine “off and on” while he was on probation. (PSI, pp.15-16.) He has previously completed substance abuse programming and was “attending treatment through AIS while on federal probation;” however AIS “closed” and Alders did not bother to find another treatment facility. (PSI, p.16.) Alders acknowledged that he has “had many opportunit[ie]s,” but he nevertheless chose to resume his use of illegal substances and commit new crimes. (PSI, p.17.)

The presentence investigator reported that Alders scored on the highest end of the “moderate risk category” (30 on a scale of 16 to 30). (PSI, pp.17, 19.) The presentence investigator stated:

Considering the defendant was on federal parole and using illegal drugs at the time of his arrest suggests that he might pose an undue risk to the community. The defendant might benefit from a structured environment where there is strict rule enforcement and regular treatment for his substance abuse dependency issues. It appears that previously imposed sanctions have failed to satisfy the goals or [sic] rehabilitation and deterrence.

(PSI, p.20.)

The district court considered all of the relevant information and imposed a reasonable sentence. The sentence imposed is appropriate in light of Alders’ ongoing criminal offending, his failure to rehabilitate or be deterred despite numerous prior legal sanctions and treatment opportunities, and the risk he poses to the community. Given any reasonable view of the facts, Alders has failed to establish an abuse of discretion.

Conclusion

The state respectfully requests this Court to affirm Alders' conviction and sentence.

DATED this 17th 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 17th 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
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Deputy Attorney General