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## State v. Irving Respondent's Brief Dckt. 43692

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43692
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2014-15654
	)	
PATRICK SEAN IRVING,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Irving failed to establish that the district court abused its discretion by imposing a unified sentence of 20 years, with 15 years fixed, for one count of first degree arson, and a consecutive sentence of 20 years indeterminate, for a second count of first degree arson?

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

Irving pled guilty to two counts of first degree arson and the district court imposed a unified sentence of 20 years, with 15 years fixed for one count, and a consecutive

sentence of 20 years indeterminate for the second count. (R., pp.109-13.) Irving filed a notice of appeal timely from the judgment of conviction. (R., pp.118-20.)

Irving asserts his sentences are excessive in light of his capability to rehabilitate, purported remorse, the support of family and friends, and because, he claims, his actions were due to a mental health situation. (Appellant's brief, pp.4-7.) 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 first degree arson is 25 years. I.C. § 18-802. The district court imposed a unified sentence of 20 years, with 15 years fixed, for one count, and 20 years indeterminate for the second count, both of which fall well within the statutory guidelines. (R., pp.109-13.) At sentencing, the district court addressed the

seriousness of the offenses, the danger Irving presents to the community, and his prior criminal history. (10/5/15 Tr., p.25, L.1 – p.31, L.12.) The state submits that Irving 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 Irving's convictions and sentences.

DATED this 22nd 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 22nd day of April, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

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

# APPENDIX A

**STATE OF IDAHO VS. PATRICK SEAN IRVING CASE NO: CR-FE-2014-15654**

1 All right, Mr. Irving. On your plea of guilty,  
2 I find you guilty. In an exercise of my discretion in  
3 sentencing, I have considered the Toohill factors,  
4 including the nature of the offense and the character of  
5 the offender, the information in mitigation and in  
6 aggravation of the crime.  
7 In fashioning a sentence I am mindful of and  
8 take into account the objectives of, first and foremost,  
9 protecting society; also achieving deterrence, the  
10 potential for rehabilitation and the need for retribution  
11 or punishment.  
12 I have reviewed the PSI materials, and I've  
13 considered them. I've reviewed the psychological  
14 evaluation that's been done, and I have considered it. I  
15 have considered the arguments of counsel today. I have  
16 considered the victim impact statements that have been  
17 made today. And I have considered your statement that  
18 you have made today.  
19 I have considered also, as is required of me,  
20 the factors outlined in 19-2523. In particular, I have  
21 considered the extent to which the defendant is mentally  
22 ill. I have considered the degree of illness and the  
23 impairment that it has given him or has restricted his  
24 functional abilities.  
25 I have considered the prognosis for the  
25

1 potential for improvement or rehabilitation. I have  
2 considered the risk that he presents to the community and  
3 to others if he is not treated. I have considered the  
4 availability of that treatment and the level of care  
5 required.  
6 I have, as I indicated, considered and perhaps  
7 most importantly, the danger that the defendant may  
8 create to the public, particularly if he is not medicated  
9 appropriately and is not treated appropriately.  
10 I have considered the capacity the defendant has  
11 to appreciate the wrongfulness of his conduct and to  
12 conform himself to the requirements of law at the time in  
13 particular that the conduct in this case occurred.  
14 I have considered the availability of treatment  
15 and where that treatment can best be provided, being  
16 whether that can be provided in a community now or in the  
17 future or whether it can be provided to him if  
18 incarcerated.  
19 This, clearly, was a crime that is -- to call it  
20 a property crime would be a misleading characterization.  
21 This was a crime that was perpetrated on the victims,  
22 that struck them literally to where they lived. It  
23 struck them in the home that should be a sanctuary. It  
24 should be a refuge from fear of attack, fear of violence.  
25 And did so in a way that was particularly insidious in  
26

1 that it was an attack on them and in their home not once  
2 but twice.  
3 It was an attack that was, at best, a complete  
4 disregard for the life and safety of others. I think  
5 that it was an attack that under any circumstances should  
6 have been recognized to have presented a risk of death to  
7 innocent people; and that's whether or not the attack was  
8 motivated by mental illness.  
9 The reasons for the attack and whether they were  
10 motivated by mental illness does not change the fact that  
11 the defendant, even in that state of psychosis, shouldn't  
12 have been able to recognize that the potential result of  
13 that attack could be death or injury to others.  
14 The defendant eloquently and I think  
15 appropriately today stated his remorse for the attack.  
16 And from what I can tell from the materials, that seems  
17 to be genuine. And I hope that does provide some degree  
18 of relief and closure to the victims.  
19 But the defendant himself is not -- this is not  
20 a single isolated incident of criminal conduct. The  
21 defendant has a history of criminal conduct of,  
22 effectively, being a drug dealer.  
23 That is not something that is motivated or is  
24 perpetrated solely because of a mental illness. That is  
25 a calculated decision to go into the business of selling  
27

1 drugs. It is a crime that is not necessarily simply the  
2 product of mental illness.  
3 The concern the Court has is that the defendant,  
4 as is recognized in the psychological evaluation,  
5 prevents a -- or, pardon me -- presents a very  
6 significant risk to the community with the potential for  
7 serious harm or death to others if he is in the community  
8 and not medicated.  
9 There's a concern that the defendant has  
10 demonstrated a history of not being compliant with  
11 treatment recommendations, being compliant with his  
12 medication requirements.  
13 The Court's primary consideration above all  
14 others is the protection of the community. This is  
15 clearly a crime that requires a significant penalty, but  
16 it also needs to be structured in a way that it protects  
17 not only these victims specifically but protects other  
18 members of the community from future acts of violence of  
19 this type; that protects the defendant, should he be in  
20 the community and be unsupervised or even if supervised,  
21 go off his medications or elect to go off his  
22 medications, because we have seen what that can produce.  
23 I don't doubt that the defendant is, when  
24 appropriately treated, a -- can be a good person. I'm  
25 sure that he is a loving son. And I know that this is a  
28

**KASEY REDLICH, CERTIFIED COURT REPORTER**

**STATE OF IDAHO VS. PATRICK SEAN IRVING CASE NO: CR-FE-2014-15654**

1 difficult thing for him and for his family. And I don't  
2 mean to miss the fact that those are other victims in  
3 this, his family, because it truly has an impact on them  
4 as well.  
5 Given the danger the defendant presents, given  
6 the seriousness of this crime, the potential for death or  
7 serious injury and the other factors that I've outlined,  
8 but also in considering the mitigating factors, some of  
9 which I have outlined, including other mitigating factors  
10 I haven't mentioned and, frankly, I don't have time to  
11 mention all of them, but I've considered them; some of  
12 them include the difficult circumstances that he had  
13 growing up, obviously his mental illness, his substance  
14 abuse, this Court believes that a lengthy penal  
15 incarceration is appropriate and necessary.  
16 And, accordingly, Mr. Irving, I sentence you to  
17 the custody of the Idaho State Board of Corrections under  
18 the unified sentencing laws of the state of Idaho on  
19 Count I for an aggregate term of 20 years. Court  
20 specifies a minimum period of confinement of 15 years  
21 fixed followed by a subsequent indeterminate period of  
22 custody of five years.  
23 On Count III, the Court specifies a minimum  
24 period of confinement of zero years fixed and a  
25 subsequent indeterminate period of custody of 20 years,  
29

1 for a total sentence of 15 years fixed followed by 25  
2 years indeterminate, or for a total of 15 fixed -- a  
3 sentence of 40 years with 15 years fixed.  
4 That lengthy period of indeterminate time, in my  
5 view, is necessary to ensure that the defendant is, when  
6 released from custody, safe because he's being  
7 supervised, effectively for the better portion of his  
8 life.  
9 And I hope genuinely that the defendant is able  
10 to potentially have an opportunity for release and that  
11 he is able to take his medications; that he is able to,  
12 in a safe way, have a meaningful life when he has and if  
13 he is paroled.  
14 I remand you, Mr. Irving, to the custody of the  
15 sheriff of the county to be delivered to the proper agent  
16 of the board of correction in execution of this sentence.  
17 Bail is exonerated. Credit will be given for 347 days  
18 served prior to entry of judgment.  
19 These sentences, Count I and III, shall be  
20 served consecutive to one another.  
21 It's further ordered that the defendant provide  
22 a DNA sample and right thumb print impression and  
23 otherwise comply with the DNA Database Act.  
24 I'll order court costs. I'm not going to order  
25 a fine or public defender reimbursement. I am going to  
30

1 order the restitution that's been requested because that  
2 is the damage that has been inflicted on a financial  
3 basis. Obviously it's not reflected, as Ms. Jones  
4 appropriately pointed out. It's reflective of the damage  
5 in general that has been inflicted, but of the economic  
6 damage, that is what -- the damage that has been done.  
7 I don't know that it will ever be able to be  
8 collected from the defendant, but I think it is  
9 appropriate that I order it. So I'm going to order  
10 restitution in the amount of \$262,077.07.  
11 I did sign the no contact order for a period  
12 of -- for the duration of the sentence of 40 years.  
13 Mr. Irving, you have the right to appeal. If  
14 you cannot afford an attorney, you can request to have  
15 one appointed at public expense. Any appeal must be  
16 filed within 42 days of the date of today's order or the  
17 entry of the written order of judgment of conviction  
18 order imposing your sentence and commitment. Mr. Irving,  
19 good luck to you, sir.  
20 MR. BLEAZARD: Your Honor, I'm returning the  
21 State's copy of the PSI.  
22  
23 (End of proceedings.)  
24  
25  
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**KASEY REDLICH, CERTIFIED COURT REPORTER**