

8-17-2016

State v. Smith Respondent's Brief Dckt. 43980

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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,)	
)	NO. 43980
Plaintiff-Respondent,)	
)	Valley County Case No.
v.)	CR-2015-3022
)	
TAYLOR ELLISON SMITH,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Smith failed to establish that the district court abused its discretion by imposing a unified sentence of 15 years, with seven years fixed, for aggravated battery, and a concurrent five-year fixed sentence for battery on a police officer?

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

Smith pled guilty to aggravated battery and battery on a police officer, and the district court imposed a unified sentence of 15 years, with seven years fixed, for aggravated battery, and a concurrent five-year fixed sentence for battery on a police

officer. (R., pp.62-66.) Smith filed a notice of appeal timely from the judgment of conviction. (R., pp.86-88.)

Smith asserts his sentences are excessive in light of his substance abuse, mental health issues, purported remorse, and family support. (Appellant's brief, pp.3-6.) The record supports the sentences 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 aggravated battery is 15 years. I.C. § 18-908. The maximum prison sentence for battery on a police officer is five years. I.C. § 18-915(3). The district court imposed a unified sentence of 15 years, with seven years fixed, for aggravated battery, and a concurrent five-year fixed sentence for battery on a police officer, both of which fall within the statutory guidelines. (R., pp.62-66.) At

sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Smith's sentences. (Tr., p.58, L.24 – p.64, L.12.) The state submits that Smith 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 Smith's convictions and sentences.

DATED this 17th day of August, 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 August, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
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 in the CAP program here, that rider program.
 2 It's not the really short form CAP
 3 rider. I think it addresses all these issues that
 4 Mr. Smith does need addressed if he is going to be
 5 a contributing member of society. He has the
 6 potential to do it. I mean, since I've been
 7 talking with him, he has been fairly soft spoken,
 8 very cooperative to deal with.
 9 The court came in here. He came in.
 10 He waived. He pled guilty. He's here to take
 11 accountability. He is looking at the rest of his
 12 life. He is under no illusions that he is going
 13 to walk out of here today and be placed on
 14 probation. He understands that. But I do think
 15 he would be a good candidate for that type of
 16 programming.
 17 If the court is hesitant to send him on
 18 a rider and just thinks there just needs to be
 19 more of a punishment component to this, I would
 20 ask that the court not impose the seven plus
 21 eight. I think the court can get the message
 22 across as far as punishment, as far as retribution
 23 without having to go up that high. I mean, I
 24 understand there does have to be an escalation for
 25 punishment. But considering the last punishment,

1 the total, he did really 1-1/2 years fixed, I
 2 think the court can accomplish that without
 3 getting up to seven years.
 4 In fact, I think what the court can hit
 5 would be to exceed his entire last sentence with
 6 just the fixed portion and give him the 3-1/2
 7 years as a fixed portion of his sentence. And
 8 then 11-1/2 indeterminate. That's a very
 9 significant sentence. That's a 15-year sentence,
 10 and Mr. Smith understands there has to be a long
 11 tail. And this court wants, is going to want some
 12 type of supervision even after he is released, and
 13 he is not arguing for less than that.
 14 But, Your Honor, I think it is quite a
 15 long time. He has been incarcerated since this
 16 has happened. He does have a family, the court
 17 can see, who understands that he does have issues,
 18 and they have supported him and want to be there
 19 for him when he gets out, want to be a source of
 20 support for him.
 21 He understands that if he drinks,
 22 really all bets are off with him. I mean, it's
 23 not only is it going to be a probation violation,
 24 but he leads him to much less worse things.
 25 I mean, the Yellow Pine Harmonica

1 Festival, in and of itself, is not a great place
 2 to be for someone who is trying to stay sober.
 3 But his sobriety is directly related to his
 4 success whether he is out on parole or out on
 5 probation, and that's something he needs to get a
 6 handle on. Because all the other issues he's had
 7 with anger and aggression get magnified when he
 8 drinks. And so I think that's number one for him,
 9 addressing that, addressing the thinking errors.
 10 You know, he does have a career path
 11 where he does feel comfortable. He does love
 12 doing tattoos as a tattoo artist. That's
 13 something he does want to be able to pursue. He
 14 has had other jobs. He does have a child to
 15 support as well.
 16 He understands there is going to be
 17 some significant punishment from this, Your Honor,
 18 but I think with some programming and help and
 19 given the fact what he is looking at here is doing
 20 more time than he's ever done in the past. We are
 21 at the point where he looking in the eye of a very
 22 significant sentence, and he understands that.
 23 It's important for him to know that if
 24 he screws up, it's not just a few months here or a
 25 few months there in the county jail. He is

1 looking at going away for quite some. From what
 2 the state is asking for is very significant time,
 3 and what we're recommending is a few years in the
 4 state penitentiary.
 5 So with that, Your Honor, I'll leave
 6 that in your discretion and ask the court to give
 7 him a fair sentence.
 8 THE COURT: All right. Thank you,
 9 Mr. Erikson.
 10 Mr. Smith, would you like to make a
 11 statement?
 12 THE DEFENDANT: Yes.
 13 THE COURT: Go ahead.
 14 THE DEFENDANT: I just want to say I'm sorry
 15 for what I did, and I regret even drinking and
 16 going to Yellow Pine. That was a stupid decision.
 17 That place is designed just to get trashed.
 18 So I'm trying to take this time to try
 19 and get recovery, my recovery figured out so I can
 20 have a better future and be there for my kid and
 21 my family and stuff. They deserve better. But
 22 that's all I have to say. Thank you.
 23 THE COURT: Thank you, Mr. Smith.
 24 Of course, as I noted at the outset, I
 25 have read all the presentence materials, including

1 the psychological evaluation from Dr. Sombke,
 2 including the letters of support that were handed
 3 to me today. Idaho law directs me to consider
 4 four factors in determining an appropriate
 5 sentence. The preeminent of those factors is
 6 protecting society, fashioning a sentence that
 7 would protect society. I'm also to consider
 8 deterrence, rehabilitation of the offender, and
 9 punishment for the offense.

10 Now, I think it's clear that this
 11 defendant is in need of rehabilitative programming
 12 for certain. Mr. Smith has a significant history
 13 of drug and alcohol use. Now, I understand that
 14 he is indicating that the use of illegal drugs,
 15 he's left in the past even before this incident,
 16 and I'll accept his word on that.

17 It's clear nevertheless that the
 18 defendant does have a significant problem with
 19 alcohol, that he abuses alcohol, and that that has
 20 played a significant role in this incident and at
 21 least some of the defendant's prior run-ins with
 22 the criminal justice system. So the defendant
 23 certainly is in need of programming and assistance
 24 to get on top of that problem.

25 Mr. Smith also has anger management

1 issues. That's clear. And he is also in need of
 2 treatment to deal with those kinds of problems as
 3 well as needing mental health treatment to deal
 4 with mental health conditions that he appears to
 5 have and has, according to Dr. Sombke in his
 6 mental health evaluation, a borderline personality
 7 disorder and antisocial personality disorder.

8 The defendant has certainly a lot of
 9 problems that he is going to need to work on and
 10 is going to need significant treatment and help to
 11 work on. These aren't things that can just be
 12 readily conquered or addressed successfully by a
 13 person acting on his own.

14 Now, it's clear, of course, as I
 15 mentioned, that the abuse of alcohol played a
 16 significant role in this incident. It appears
 17 that the defendant lacks much of any measure of
 18 inhibition when he is drinking, that he is not
 19 able to think clearly and act responsibly when he
 20 is under the influence leading to do things like
 21 he has done in this case.

22 Now, I mentioned that protection of
 23 society is the preeminent sentencing factor.
 24 That, of course, plays a significant role in the
 25 sentence I'll impose in this case. While the

1 defendant is in need of treatment and
 2 rehabilitation, as I've noted, it doesn't appear
 3 to me that defendant could be safely released back
 4 into the community until he has had a significant
 5 opportunity to receive appropriate treatment,
 6 which he can receive in a structured setting with
 7 the Idaho Department of Corrections.

8 He will need to do that well before he
 9 could be released safely into the community. And
 10 it appears that there is good reason in this case
 11 just for a period also of incarceration even
 12 regardless of whether it's rehabilitative as a
 13 punishment and as an incapacitation factor while
 14 the defendant is behaving in the way he has
 15 behaved here.

16 So I think all of these factors combine
 17 to indicate that a prison sentence is the
 18 appropriate disposition in this case as opposed to
 19 some lesser alternative, either a rider or a
 20 probation sentence.

21 Prison is warranted based on the
 22 severity of the incident based on the defendant's
 23 criminal history, which we have discussed some
 24 today, based on the risk he presents to the
 25 community if not incarcerated while in his current

1 state.

2 Now, I also take note that this
 3 happened, this incident happened, while the
 4 defendant was on parole in California, and that
 5 the defendant has had some history of time on
 6 probation in the past that was unsuccessful. So
 7 the defendant has a history of having trouble
 8 abiding by the rules of society, and, further,
 9 when he acts out, there is a significant history
 10 of him doing so in a violent way.

11 Indeed in the psychological evaluation,
 12 Dr. Sombke concluded that the defendant presented
 13 a very high potential for future violence, that he
 14 showed some psychopathic personality traits, and
 15 that his capacity for empathy was not very well
 16 developed. These are all things that cause a
 17 great deal of concern to me, Mr. Smith, in terms
 18 of how you would do if you were released now back
 19 into the community or in the near future.

20 Now, there is certainly some mitigating
 21 factors that I have taken note of in the
 22 presentence materials. I would include among
 23 those factors that you have some support from
 24 family, that you have, as your counsel has said
 25 here today, you've accepted responsibility for

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1 this offense. You waived your preliminary
 2 hearing, pleaded guilty, and are ready to accept
 3 the punishment that results from that. And that
 4 is certainly to your credit.
 5 I also noted from the presentence
 6 investigation that you had a very difficult
 7 childhood with a father who doesn't seem to have
 8 been a father in the positive sense of that word.
 9 And those kinds of things are difficult for people
 10 to overcome sometimes, and I understand that.
 11 I note you also have had a history of
 12 mental health problems dating back to childhood,
 13 leading to psychiatric hospitalizations at a very
 14 young age. And no doubt that all of these other
 15 problems tied into your starting to use alcohol at
 16 a very young age, even preteen, and experiment
 17 with illegal drugs from there.
 18 Now, as I've said, I think for the
 19 reasons I have noted, that a prison sentence is
 20 appropriate. I think there is some good in you,
 21 and I think it can be found and developed, and
 22 hopefully we can see the best side of you in the
 23 future instead of the side that makes these bad
 24 judgments and commits these kinds of crimes.
 25 Of course, you're on parole. You

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1 hadn't ought to be at a festival where everyone is
 2 drinking. As you said, that was a bad decision.
 3 Not just a bad decision, undoubtedly you were not
 4 where you were permitted to be while on parole.
 5 I think all of these things taken
 6 together suggests to me that the plea agreement,
 7 the state's recommendation under it is a fair and
 8 appropriate resolution of the case.
 9 You put people at risk, a significant
 10 risk, and there has to be a consequence. I think
 11 the plea agreement consequence is a fair one under
 12 the circumstances.
 13 So, Mr. Smith, on your plea of guilty
 14 to the crime of aggravated battery, I find you
 15 guilty. I will sentence you to the custody of the
 16 Idaho State Board of Correction under the unified
 17 sentence law of the State of Idaho for an
 18 aggregate term of 15 years. I'll specify a
 19 minimum period of confinement of seven years and a
 20 subsequent indeterminate period of confinement of
 21 eight years.
 22 Additionally, on Count 2, battery on a
 23 law enforcement officer, on your plea of guilty to
 24 that charge, I find you guilty. I will sentence
 25 you to the custody of the Idaho State Board of

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1 Correction under the unified sentence law of the
 2 State of Idaho for an aggregate term of five
 3 years, all of which will be determinate time. The
 4 sentence on that count will run concurrent with
 5 the sentence imposed on the aggravated battery
 6 count.
 7 You'll be remanded to the custody of
 8 the sheriff of this county to be delivered to the
 9 proper agent of the state Board of Correction in
 10 execution of these sentences.
 11 You'll receive credit against these
 12 sentences for the time you have spent in custody
 13 so far in connection with this case. By our
 14 count, that's 154 days.
 15 I won't impose a fine. I don't think
 16 it would be constructive to do that. I have
 17 previously indicated that restitution will be left
 18 open insofar as it relates to the expense of the
 19 psychological evaluation. Of course, court costs
 20 will be imposed as well.
 21 Mr. Smith, you have the right to
 22 appeal, and if you cannot afford an attorney, you
 23 can request to have one appointed at public
 24 expense. Any appeal must be filed within 42 days.
 25 Counsel will need to return presentence materials

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1 to be sealed.
 2 Anything else, counsel?
 3 MR. EREKSON: No, Your Honor.
 4 MS. BROCKMANN: No, Your Honor. Thank you.
 5 THE COURT: I wish you well, Mr. Smith.
 6 We'll be in recess.
 7 (12:03 p.m. The proceedings adjourned.)
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