

10-19-2016

## State v. Vattes Respondent's Brief Dckt. 43995

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43995
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2015-5001
	)	
RYAN G. VATTES,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Vattes failed to establish that the district court abused its discretion, either by imposing a unified sentence of 10 years, with five years fixed, upon his guilty plea to conspiracy to deliver a controlled substance, with a second or subsequent offense enhancement, or by denying his Rule 35 motion for a reduction of sentence?

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

Vattes pled guilty to conspiracy to deliver a controlled substance ("bath salts"), with a second or subsequent offense enhancement, and the district court imposed a unified sentence of 10 years, with five years fixed. (R., pp.47, 105-08.) Vattes filed a

notice of appeal timely from the judgment of conviction. (R., pp.112-15.) He also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (Motion for Correction or Reduction of Sentence, ICR 35; Order Denying Motion for Reduction of Sentence (Augmentations).)

Vattes asserts his sentence is excessive in light of his mental health issues, “difficult childhood,” acceptance of responsibility, and substance abuse problems. (Appellant’s brief, pp.4-6.) 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 conspiracy to deliver a controlled substance (“bath salts”), with a second or subsequent offense enhancement, is 10 years. I.C. §§ 18-1701, 37-2732(a)(1)(B), 37-2739. The district court imposed a unified sentence of

10 years, with five years fixed, which falls well within the statutory guidelines. (R., pp.105-08.) At sentencing, the state addressed Vattes' ongoing involvement in dealing drugs – even while on parole for a previous drug trafficking case, his abysmal performance while on parole, his failure to rehabilitate or be deterred, and the risk he presents to the community. (Tr., p.22, L.14 – p.25, L.3 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Vattes' sentence. (Tr., p.31, L.3 – p.34, L.10 (Appendix B).) The state submits that Vattes has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Vattes next asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his desire to “spend more time with his two young sons and his aging mother,” the support from his mother, and his good conduct while incarcerated. (Appellant's brief, pp.6-7.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Vattes must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Vattes has failed to satisfy his burden.

Vattes provided no new information in support of his Rule 35 motion. (Motion for Correction or Reduction of Sentence, ICR 35 (Augmentation).) The district court was

aware, at the time of sentencing, that Vattes had support from his mother, who had health problems (Tr., p.25, Ls.17-22; p.29, Ls.22-24), that Vattes wished to be with his “loved ones” and to be a positive role model for his children (Tr., p.30, Ls.6-19), and that he had “not been a problem while in custody” (Tr., p.26, Ls.3-6). Because Vattes presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court’s order denying his Rule 35 motion. The state further submits that by failing to establish his sentence was excessive as imposed, Vattes has also failed to establish that the district court abused its discretion by denying his Rule 35 motion.

#### Conclusion

The state respectfully requests this Court to affirm Vattes’ conviction and sentence and the district court’s order denying Vattes’ Rule 35 motion for a reduction of sentence.

DATED this 19th day of October, 2016.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of October, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON  
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

<p style="text-align: right;">Page 20</p> <p>1 BOISE, IDAHO 2 January 29, 2016, 1:49 p.m. 3 4 THE COURT: Why don't we take up Mr. Vattes, 5 if we have Mr. Chastain here. This is Case 6 No. CRFE-2015-5001. All right. The defendant is 7 present in custody, represented by Mr. Chastain. 8 The state is represented by Ms. Longhurst. We're 9 here today for sentencing. 10 On November 13, Mr. Vattes pleaded 11 guilty to conspiracy to deliver bath salts and to 12 being a persistent narcotics law violator. 13 He entered that plea pursuant to a plea 14 agreement that called for open recommendations as 15 to the sentence, and there was an agreement that 16 no federal charges resulting from these events 17 would be filed. 18 Counsel, is there any legal cause why 19 judgment should not be pronounced against the 20 defendant today? 21 MR. CHASTAIN: None I'm aware of, 22 Your Honor. 23 THE COURT: Thank you. 24 Have the parties had a full opportunity 25 to examine the presentence report?</p>	<p style="text-align: right;">Page 21</p> <p>1 MS. LONGHURST: Yes, sir. 2 MR. CHASTAIN: Yes, Your Honor. 3 THE COURT: Mr. Vattes, have you read the 4 report? 5 THE DEFENDANT: Yes, sir. 6 THE COURT: Does either party contend there 7 are any deficiencies or errors in the report? 8 MS. LONGHURST: No, sir. 9 MR. CHASTAIN: Judge, I guess we took some 10 issue with the GAIN Assessment. It said he had 11 three prior convictions. We don't think that's 12 really the case. 13 I explained to Ryan that I thought that 14 was a minor point at best, but he wanted the court 15 to know that. So it's not a huge deal, but he 16 just thought the court should know. 17 THE COURT: I appreciate that. Thank you. 18 And does either party contend there 19 should be any additional investigation or any 20 additional evaluation of the defendant before 21 sentencing? 22 MS. LONGHURST: No, sir. 23 MR. CHASTAIN: No, Your Honor. 24 THE COURT: We have a restitution claim to 25 make, Ms. Longhurst?</p>
<p style="text-align: right;">Page 22</p> <p>1 MR. CHASTAIN: Judge, as I recall we agreed 2 to that back at the time of sentencing, so we're 3 fine with the court signing it. At the time of 4 the plea, I'm sorry. 5 THE COURT: And the agreed amount is 6 \$6,351.79. Correct? 7 MR. CHASTAIN: Yes, Your Honor. 8 THE COURT: Given the parties' agreement on 9 that point, I'll go ahead and sign the order. 10 Just argument from this point? 11 MS. LONGHURST: Yes, sir. 12 MR. CHASTAIN: Yes, Your Honor. 13 THE COURT: Go ahead, Ms. Longhurst. 14 MS. LONGHURST: Judge, last February 15 detectives from Garden City were involved in the 16 investigation to the defendant having bath salts 17 shipped to him through a domestic shipment within 18 the United States. During the course of their 19 investigation, they delivered the package, and it 20 was tied to him. When he went to be arrested, 21 realizing what was going to happen, he 22 intentionally destroyed his cell phone hoping to 23 destroy evidence. 24 The state believes of his dealing in 25 bath salts as part of the process, meanwhile</p>	<p style="text-align: right;">Page 23</p> <p>1 unbeknownst both to Garden City and Ada County 2 Prosecutor's Office, the defendant was being 3 investigated for an international shipment of bath 4 salts in excess of one pound. And that was part 5 of the agreement that when he plead guilty to 6 these charges, the federal government wasn't going 7 to file for the pound-plus that was being shipped 8 internationally to him that they were 9 investigating when this delivery occurred. 10 The defendant at the time of all of 11 these events was on parole for a drug-trafficking 12 case. He had previously been paroled and been 13 unsuccessful repeatedly for drug trafficking on 14 the case. But in 2012 while on parole, he also 15 was involved in a bath salt case. 16 Now, the state believes that was a 17 simple possession that wasn't filed, but the state 18 believes that it was actually an intent to deliver 19 case. In 2012, during the course of our 20 investigation into this case, we found on the 21 defendant's hard drive photographs and other 22 evidence relating to that 2012 Meridian Police 23 Department investigation. 24 Detectives took it much as a bragging 25 rights, "I got away with it last time." But the</p>

1 (Pages 20 to 23)

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<p style="text-align: right;">Page 24</p> <p>1 message that the state takes away from it is, when  2 the defendant is out on patrol for trafficking, he  3 is dealing. He is delivering. He is continuing  4 to be emersed in the drug community.  5 As part, further this investigation,  6 while the defendant after being arrested in this  7 case was making jail calls, detectives were  8 monitoring those calls and received information  9 sufficient for them to locate the safe that he had  10 been storing at another location where his  11 drug-trafficking proceeds, as I recall, it was in  12 the tens of thousands of dollars that were seized  13 as part of the proceeds of the drug-dealing in  14 that case from that safe.  15 The defendant, in the state's mind, is  16 being misleading to the court to say that this is  17 just a drug addiction issue, and I stepped off the  18 wagon, I wasn't putting my recovery first.  19 The state believes the defendant is a  20 drug dealer, and he will deal as long as he is  21 out. The fact that he has not once but twice been  22 caught in this sort of compromised situation while  23 on parole for drug trafficking communicates to the  24 state that he is not a person who is here for  25 rehabilitation, he is not getting the message, he</p>	<p style="text-align: right;">Page 25</p> <p>1 is not learning, and he is not stopping the  2 dealing. He is making a living from furthering  3 the sale of bath salts in our community.  4 For those reasons, Judge, I'm asking  5 the court as to Count 1 that he pled guilty to  6 impose a five-year sentence. And because of the  7 Information Part II, which doubles the sentence to  8 make that a ten-year sentence, to run  9 consecutively to any time he is currently serving.  10 And I would ask the court for a three plus seven  11 underlying sentence on that.  12 THE COURT: Three plus seven consecutive?  13 MS. LONGHURST: Yes, sir.  14 THE COURT: Thank you.  15 All right. Mr. Chastain?  16 MR. CHASTAIN: Thank you, Your Honor.  17 Judge, I do want to note that Ryan has  18 family here today, his mom and some other folks,  19 and they've been in court almost every time over  20 the long history of this case since February and  21 March of last year. So I want the court to know  22 that he does have good support.  23 Judge, one thing that Ryan has done  24 that he has taken responsibility for what has gone  25 on, he absolutely believes he has been treated</p>
<p style="text-align: right;">Page 26</p> <p>1 fairly in terms of the plea offer. He has been in  2 custody almost 10-1/2 months, and it's not an easy  3 time. He has been sitting in the county jail, and  4 with the exception of one, what I'm going to  5 really say is a pretty minor write-up. He has not  6 been a problem while in custody.  7 Ryan fully knows that the court is  8 going to impose a prison sentence. He is on  9 parole. He has a fairly significant period of  10 time still on that old trafficking case, and he  11 has acknowledged to me right along that he put  12 himself here, that he is the one who messed up.  13 I'm sure the court can tell from the  14 police reports, that had the case gone to trial,  15 the state would have at least been put to a fairly  16 severe proof circumstance, not that they couldn't  17 have proven it, but a lot of "i's," a lot of "t's"  18 to be crossed, and it would have probably been a  19 significant trial.  20 Ryan really has never been in that  21 frame. This case has a little bit of an unusual  22 posture in that the federal involvement was there.  23 To some extent my trial schedule interfered with  24 getting this done sooner, and Ryan has fortunately  25 sat here patiently and been eager to get sentenced</p>	<p style="text-align: right;">Page 27</p> <p>1 because he knows the court is going to treat this  2 with the severity it requires.  3 I also want to add that he does have,  4 has had a financial impact on this. Although it's  5 not really part of this case, there was a civil  6 forfeiture filed, and significant amounts of  7 Ryan's personal property funds, things like that,  8 have been attached. And my best guess is he has  9 lost or is going to loss that. He has not been in  10 a position really to defend the case. So there  11 has been other avenues.  12 I do want to indicate that Ryan -- the  13 one thing I don't think he quite understands here  14 is how significant having the federal government  15 step back, was that could have turned to a very  16 ugly result for him had this gone to trial. And,  17 again, we appreciate Ms. Longhurst's fair-dealing  18 in terms of dealing with the DEA, the postal  19 inspector and I assume the U.S. attorney, in  20 making this result, in making this resolution come  21 forward.  22 But, Judge, I don't think this is a  23 consecutive time case. Again, this is not a  24 probation case. I think this is a situation where  25 Ryan knows full well that as he is rapidly</p>

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## APPENDIX B

<p style="text-align: right;">Page 28</p> <p>1 approaching the age of 50, that it's time to grow  2 up, get out of this sort of behavior.  3 Clearly importing drugs through the  4 mail from California, especially when the UPS  5 people are ratting you off when it comes through  6 their facility, is not the best criminal  7 enterprise in the world.  8 Ryan, again, has the parole hold. He  9 knows that whatever this court imposes, that his  10 chances at parole with the Board of Correction are  11 slim for a number of years.  12 As I indicated, he only got  13 10-1/2 months in on this case, and while that is  14 certainly significant credit, I don't want the  15 court simply to think that sitting in jail is easy  16 time. I know the court knows it is not, but I  17 don't think adding a ten-year pop to the end of  18 whenever he might get out of his first sentence is  19 really appropriate.  20 I think this court can find appropriate  21 punishment, and I know that is going to be the  22 court's main focus here with a five-year sentence,  23 the first two fixed, three indeterminate, all to  24 run concurrent.  25 Again, this is a situation where I</p>	<p style="text-align: right;">Page 29</p> <p>1 suspect Ryan is a few parole dates away from  2 getting back out on the street. They're going to  3 be looking at him much more carefully, and I think  4 you can tell from the presentence and from what I  5 know he is going to tell the court, he is  6 essentially manning up and taking the medicine.  7 I just don't want it to be too severe,  8 Your Honor, so I think two plus three concurrent.  9 I think fines are really -- he stipulated to the  10 restitution. He has lost most of his other  11 property. I would ask the court not to impose a  12 fine. Thank you, Your Honor.  13 THE COURT: Thank you, Mr. Chastain.  14 Mr. Vattes, would you like to make a  15 statement?  16 THE DEFENDANT: Yes, Your Honor.  17 Your Honor, I want to take full responsibility for  18 my actions I have no excuses for. I also want to,  19 from day one I admitted to the crime, and that is  20 why I pleaded guilty, and I hope you take that  21 into consideration today.  22 I also want to apologize to my mother.  23 She just had a triple bypass in November, and this  24 is the last thing she needed.  25 Last 10-1/2 months I've been in</p>
<p style="text-align: right;">Page 30</p> <p>1 Ada County Jail. I've used the time to journal  2 about poor choices I've made and my addiction. I  3 have many resentments from failing as a parent  4 with my own son and to get kicked out of the  5 military with my addiction.  6 Also journaled about some goals, about  7 sobriety. Sobriety is number one. Being a  8 positive role model for my kids, and also being  9 successful on parole, something I haven't done  10 yet.  11 I've also made a goal of going to  12 school. I've looked into being an aviation  13 mechanic, two-year school. It's something that  14 I've looked into. It's a goal.  15 I'm going to use whatever time I get  16 today, make a positive out of it, can move forward  17 with my life. At age 44, I realize my greed, an  18 addiction that is keeping from my goals and loved  19 ones.  20 In closing, like I said, I want to  21 apologize to my mother. She doesn't need this.  22 And, Judge, this past year has been tough in the  23 Ada County Jail. And I can promise you, Judge,  24 and I want to promise mom, you'll never see me in  25 this courtroom again. I don't want to go through</p>	<p style="text-align: right;">Page 31</p> <p>1 this again.  2 That's all I got, Your Honor.  3 THE COURT: All right. Thank you,  4 Mr. Vattes. I appreciate your comments. Of  5 course, it's a shame to find ourselves here with  6 you at the age you're at, Mr. Vattes, where you  7 have lived long enough to certainly know better  8 where you've undergone prior opportunities through  9 the correctional system, to try to get you started  10 on a better course in life, and it hasn't taken at  11 this point.  12 I'm sure the last ten months or so in  13 custody have been very sobering, and sobering  14 partly because you know that you're looking at  15 more to come given where we are here.  16 I've, of course, reviewed all the  17 presentence materials in this case. This is, as  18 counsel have noted, your second felony conviction.  19 The kicker is, of course, that the prior felony  20 conviction was for trafficking in meth dating back  21 to 2009. So it's involved similar kind of  22 conduct. It presents a danger to the public.  23 Idaho law directs me to consider four  24 factors in determining what an appropriate  25 sentence is. The preeminent factor is protection</p>

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<p style="text-align: right;">Page 32</p> <p>1 of the public. I'm also to consider the penal  2 goal of punishment of deterrence and of  3 rehabilitation.  4 Now, it seems to me that there's ample  5 reason to think, given the prior conviction and  6 the very difficult history on parole from that  7 conviction, that you do present a significant risk  8 of reverting to the same type of behavior and  9 presenting the same kinds of dangers to the public  10 that you have to this point involved in  11 distributing illegal drugs.  12 The performance on parole is, of  13 course, particularly unsettling given that you  14 were, after being paroled in 2012, you had your  15 parole revoked for engaging in the very similar  16 conduct for that which brings you here today.  17 Your parole was revoked. You were  18 reinstated and revoked again, and then you were  19 released again in September 2014. And not long  20 after that, we're back in the same kinds of  21 behavior that have plagued you all along, so  22 looking at undoubtedly a third revocation of your  23 parole in the underlying case.  24 In terms of mitigating information, I'm  25 aware that you have some mental health issues that</p>	<p style="text-align: right;">Page 33</p> <p>1 may play some role in your conduct here. I also  2 understand that you did take responsibility for  3 the offense here, and that's to your credit as  4 well. Considering all the mitigating information  5 that is set forth in the PSI materials and in  6 light of the underlying offense here as well as  7 your prior criminal history, most importantly the  8 that trafficking conviction and your poor  9 performance on parole in that case, it does appear  10 to me that a prison sentence is an appropriate  11 outcome today, and that it must be a significant  12 one both for protection of the community purposes  13 and for the purposes of ensuring that you're  14 adequately punished for the offense and detouring  15 you from committing further offenses along the  16 same lines in the future as you will undoubtedly  17 be paroled again some day and will have another  18 opportunity to reside in the community.  19 And I want to make very sure, as sure  20 as I can, that whatever temptation you have to do  21 this kind of thing again is tempered by the fact  22 that you know a significant punishment is the  23 outcome.  24 So taking all of this into account, on  25 your plea of guilty to the crime of conspiracy to</p>
<p style="text-align: right;">Page 34</p> <p>1 deliver bath salts as well as to being a  2 persistent narcotics law violator, I find you  3 guilty, and I will sentence you to the custody of  4 the Idaho State Board of Correction under the  5 unified sentence law to an enhanced sentence of  6 ten years. I'll specify a minimum period of  7 confinement of five years and a subsequent  8 indeterminate period of confinement of five years.  9 I'll run this sentence concurrent to your sentence  10 in Case No. CRFE-2008-10756.  11 You'll be remanded to the custody of  12 the sheriff of this county to be delivered to the  13 proper agent of the State Board of Correction in  14 execution of this sentence.  15 You'll be given credit for the time you  16 have spent in custody so far in this case. By our  17 count, that's a total of 295 days.  18 I won't impose a fine. I don't think  19 it would be constructive to do that, particularly  20 in light of the substantial restitution obligation  21 that I've imposed. I will order court costs.  22 All right. Mr. Vattes, you have the  23 right to appeal, and if you cannot afford an  24 attorney, you can request to have one appointed at  25 public expense. Any appeal must be filed within</p>	<p style="text-align: right;">Page 35</p> <p>1 42 days. I was going to say counsel would need to  2 return presentence materials to be sealed, but  3 frankly, I'm not exactly sure if we're operating  4 under that same regime when they're electronically  5 delivered in the first place.  6 MR. CHASTAIN: We're returning ours in any  7 event, Judge.  8 THE COURT: I think that's fine. We can  9 take them anyway.  10 Anything else, counsel?  11 MS. LONGHURST: No, sir. Thank you.  12 (Proceedings concluded 2:11 p.m.)  13  14  15  16  17  18  19  20  21  22  23  24  25</p>