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State v. Soliz Respondent's Brief Dckt. 44081

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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. 44081
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-14242
)	
ADRIAN RENEE SOLIZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Soliz failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with two years fixed, upon his guilty plea to burglary?

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

Soliz pled guilty to burglary and the district court imposed a unified sentence of 10 years, with two years fixed, and ordered that the sentence “run consecutive to all other cases the defendant is currently serving.” (R., pp.39-42.) Soliz filed a notice of appeal timely from the judgment of conviction. (R., pp.46-48.)

Soliz asserts that the consecutive nature of his sentence is excessive in light of his substance abuse, family support, acceptance of responsibility, and purported remorse. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

Idaho Code § 18-308 authorizes the district court to impose consecutive sentences. Whether the sentence for one crime should be consecutive to the sentence for another is a decision within the sound discretion of the trial court. State v. Helms, 130 Idaho 32, 35, 936 P.2d 230, 233 (Ct. App. 1997); State v. Elliott, 121 Idaho 48, 52, 822 P.2d 567, 571 (Ct. App. 1991). 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 burglary is 10 years. I.C. § 18-1403. The district court imposed a unified sentence of 10 years, with two years fixed, which falls

well within the statutory guidelines. (R., pp.39-42.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Soliz's sentence and for ordering that the sentence run consecutively to Soliz's sentences in his other cases. (Tr., p.34, L.11–p.39, L.18.) The state submits that Soliz 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 Soliz's conviction and sentence.

DATED this 26th day of September, 2016.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of September, 2016, served a true and correct copy of the attached RESPONDENTS BRIEF by emailing an electronic copy to:

MAYA P. WALDRON
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

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1 our conversations, his intent is to just go out to the
2 prison, do his time, do his punishment, get some help and
3 get back over and start -- get out and start his life
over.

Judge, we're asking for a sentence of a
total of two plus eight for a total of ten. Impose and
make that concurrent to everything. And I understand that
basically Judge Scott's case would be -- would lead this.
But he would still -- he's still even after being on
parole would have seven to eight years of parole time
hanging over his head and he's so young at the age of 25.

I'm asking this court to make it concurrent
to everything because I don't think he needs a longer
sentence hanging over his head. Because he knows if he
gets into more trouble, he'll be going away for a lot
longer than that. So that's why we're asking for that.

I'd also like to point out his mother is in
the courtroom today. He's not a hopeless cause nor does
he see himself as that, and he wants the court to know
that he does intend on changing his life and he knows his
actions have not shown that. And he's ready for the
punishment from this court.

I did ask him if he wanted to make a
statement. Adrian gets a little shy in the courtroom and
decided not to say anything. So I just wanted to let the
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1 -- it looks like that from my documentation that there was
2 a claim number. The restitution amount is being sought
3 for that insurance company, and so there is restitution
4 reflected in this case from that case. But beyond that,
5 I'm not sure how that 14,000 vetted out. If it was
6 covered by insurance and then this is what is left of
7 that. But I just wanted the court to have that
8 information.

THE COURT: Anything to add to that?
MS. DAVIS: No, judge.

THE COURT: All right. Well, I think what
I'll do is leave it open for the State to seek to file a
motion to amend or supplement the restitution order. I'll
leave that open for 60 days. I think it needs to be
addressed and make sure that if restitution is accurate,
then it needs to be accurate. Let me see that restitution
order too.

MS. WAGER: I'll follow up with restitution
and the handling attorney to make sure that there isn't
any additional that needs to be sought, Your Honor. I do
appreciate you giving us that time.

THE COURT: In this case the only joint and
several amount is that \$1,000 from Farm Bureau. But it
seems to me that either the victims from those forgery
charges or the bank or the bank's insurance company -- I
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1 court know that.
2 Thank you.
3 THE COURT: All right. Thank you, Ms.
4 Davis.
5 Mr. Soliz, I know your lawyer already
6 mentioned this, but I do want to just be clear for the
7 record. You have the absolute right to speak to the court
8 before final sentencing, but you don't have to if you
9 don't want to and I can appreciate it can be kind of
10 intimidating speaking in public and things of that nature.
11 So I never hold it against anybody if they
12 don't want to speak. But if you do have anything to say
13 and want to say it, now would be the time and place to do
14 that. And if you want to say anything, I'd be happy to
15 hear what you have to say, sir.

THE DEFENDANT: No, Your Honor.
THE COURT: Okay. All right then.

Ms. Davis, is there any legal cause why we
should not proceed with final sentencing at this time?
MS. DAVIS: No, judge.

MS. WAGER: Your Honor, if I could give you
just a bit of information related to the restitution
amount that you asked for on the 16566 case. So that Farm
Bureau designation in our restitution order before the
court today is related to that 16566 case. So it appears
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1 have ever reason to understand that the defendant and his
2 girlfriend and this other fellow, Vincent Lopez, in some
3 combination received again approximately a thousand
4 dollars a day for two weeks. And I note that all of that
5 was overlapping the same time he was stealing somewhere
6 between 750 and thousand dollars a day from Wal-Mart. And
7 it seems to me that there should be some appropriate
8 restitution in there.

The defendant having pled guilty to Count
One, burglary, in this case the court does find you guilty
of burglary as charged. And I will dismiss Counts Two
through Five pursuant to the plea bargained agreement.

As you've heard others -- probably other
judges as well as me tell other people in this courtroom
today, I have to use my best judgment and discretion to
sort out what I believe to be is the most appropriate
sentence in the circumstance guided by the laws enacted by
our legislature and the cases decided by our courts that
outline the objective of sentencing to protect society, to
deter crime generally, to defer the defendant from future
crime and to provide rehabilitative opportunities when and
where available.

In exercising that discretion, I do consider
the facts and circumstances of the crime charged, prior
criminal history, the information, materials in the PSI.
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1 Victim impact, various aggravating, mitigating factors,
2 the arguments and recommendations of counsel and so on.
3 Having considered those, it's the judgment
of this court that the following sentence will be imposed.
4 Court will impose a judgment of imprisonment
5 of two years fixed, followed by eight years indeterminate
6 for a total sentence of ten years. Court is not going to
7 otherwise suspend the sentence or retain jurisdiction.
8 Further the court is going to make that sentence
9 consecutive to all other cases of which the defendant is
10 currently under sentence in one way or another, including
11 particularly Judge Scott's case.
12 I appreciate that the plea bargained
13 agreement called for the sentences to be running
14 concurrent. I feel like the parties deserve a fair
15 explanation as to why I'm running this sentence
16 consecutive with all others as opposed to concurrently.
17 That's because if the sentence was run
18 consecutive, even the sentence that the State requested,
19 the three plus seven for ten, I think it would essentially
20 get consumed by Judge Scott's case of four plus six for
21 ten. Such that effectively you might just as well have
22 dismissed all the charges in this case because the
23 sentence serves no public safety purposes. It serves no
24 deterrent purposes. And it serves no rehabilitative
25 purposes. And it serves no rehabilitative
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1 serves no public safety purposes, serves no specific
2 deterrent purposes, serves no rehabilitative purposes, I
3 don't see that the sentence in this case frankly serves
4 any meaningful purposes.
5 For all of those reasons, I felt like the
6 sentence in this case had to run consecutive to any other
7 sentences that the defendant is currently serving under.
8 In addition to that, imposition was required
9 in my mind because the defendant had essentially done two
10 previous riders and essentially violated his probation
11 immediately thereafter. And so further rehabilitative
12 efforts didn't seem to me to be of any value in this case.
13 I recognize the defendant has a daughter,
14 Addison. I noted in the 2012 Presentence Investigation
15 Report that he owed somewhere in the vicinity of \$14,000
16 in past due child support that many years back. Meaning
17 that he owes a lot more in past due child support now.
18 And so fundamentally I think that the defendant has been
19 major danger to society, a major drain on society.
20 I think he needs these additional two years
21 fixed time, plus the additional time of -- indeterminate
time to sit and have a good long talk with himself and
hopefully when he does get out and has the first
24 opportunity to hold his children again and such, it will
25 then and there be a sufficient lesson in deterrence and
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1 purposes because it's all consumed by the sentence that
2 Judge Scott had previously given.
3 In this case the defendant was charged with
4 two felonies of burglary. As part of his plea bargained
5 agreement in this case, the State dismissed three other
6 felony charges of forgery.
7 I disagree frankly with the presentence
8 report. When I reviewed the presentence investigation and
9 the prior criminal record, I counted eight felonies. A
10 2012 burglary. Another 2012 burglary. A 2013 grand theft
11 by possession. A 2013 burglary. A 2014 burglary. And
12 then a 2015 grand theft by possession; three counts.
13 That's three felonies in my math department; not one.
14 So as far as I was concerned, that added up
15 to eight felonies. This being the ninth and it seemed to
16 me that the 10th, 11th, 12th and 13th were being
17 dismissed. That's not just one and a few.
18 And, secondly, when I looked at the
19 significant amount that the defendant was stealing over
20 the course of really just a few weeks or months, that
21 seemed like it was a lot more than was needed to satisfy a
22 particular defendant's drug addiction. Frankly, it seemed
23 to me to be a very sophisticated scheme that was done
24 intelligently and very effectively.
25 So if I impose a sentence in this case that
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1 rehabilitation for him to then become a productive member
2 of society and to be able to begin paying back the
3 multiple thousands of dollars that he might owe to
4 victims, to his children and to society.
5 I will not impose a fine given all the
6 financial situation. I will impose standard court fees
7 and costs. As I think about that, it seemed to me like I
8 saw several thousand dollars of past due fees and costs
9 that he also owed.
10 I will impose standard court fees and costs
11 as part of the deal. I won't order any Public Defender
12 fees. I won't order any fines. There's no DNA needed.
13 If I didn't previously mention it, Counts
14 Two through Five will be dismissed according to the plea
15 bargained agreement.
16 Defendant will be remanded to the sheriff
17 for the IDOC as needed to begin imposition of the
18 sentence.
19 Counsel should return their written PSI's
20 and delete or destroy any electronic versions.
21 Is there anything further we need to do in
22 this case?
23 MS. DAVIS: No.
24 MS. WAGER: State has returned PSI. And for
25 the court's information, I have -- I sent an E-mail
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