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State v. Luna Respondent's Brief Dckt. 44163

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44163
Plaintiff-Respondent,)	
)	Canyon County Case No.
v.)	CR-2015-16247
)	
RICHARD HENRY LUNA, JR., AKA)	
RICHARD HENRY LUNA, RICHARD RUSH,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	

Issue

Has Luna failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with three years fixed, upon his guilty plea to felony DUI?

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

Luna pled guilty to felony DUI (second felony DUI within 15 years) and the district court imposed a unified sentence of 10 years, with three years fixed. (R., pp.55-56.)

Luna filed a notice of appeal timely from the judgment of conviction. (R., pp.65-67.)

Luna asserts his sentence is excessive in light of the nature of the offense, his character, and the protection of the public interest. (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 felony DUI (second felony DUI within 15 years) is 10 years. I.C. §§ 18-8005 (6)(a), -8005(9). The district court imposed a unified sentence of 10 years, with three years fixed, which falls within the statutory guidelines. (R., pp.55-56.) At sentencing, the district court addressed the seriousness of the offense, Luna's past DUI offenses, his failure to rehabilitate, and the risk he poses to the public. (3/28/16 Tr., p.14, L.9 – p.15, L.16.) The state submits that Luna 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 Luna's conviction and sentence.

DATED this 28th day of Septemeber, 2016.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of Septemeber, 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
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 shoot myself up three times a day. I have to do
2 uncontrollable stuff. I never thought I would put myself
3 in this situation. And I just hope for the best and I
4 hope for better recovery.

5 THE COURT: Thank you.

6 Mr. Grove, is there any lawful cause to show why
7 judgment should not be pronounced at this time?

8 MR. GROVE: No, Your Honor.

9 THE COURT: Mr. Luna, in formulating a sentence,
10 the Court is given certain guidelines. These include
11 factors set forth in Idaho Code Sections 19-2521 and
12 19-2601 as well as the four goals of sentencing which
13 include the protection of society and the public,
14 deterrence to the Defendant and others in society and the
15 possibility of rehabilitation and the issue of punishment.

16 I want you to know that I have carefully
17 considered each of these factors in light of all the
18 information that I have received.

19 In looking at your lifetime history, you have six
20 DUIs, not including this one. This is the seventh. And
21 this is your third felony DUI. Your first one was in
22 2007. Your second one was in 2013. And there were
23 allegations of injury to a child along with that one.

24 In this case, you were in a car accident. And
25 fortunately, you were not severely injured, but you did

1 have an accident.

2 You've previously served a period of retained
3 jurisdiction in 2013. And unfortunately, the treatment
4 that you got there was not sufficient to rehabilitate you.
5 You've had an opportunity to address your issue over and
6 over again. You've driven on a suspended license.

7 And I do understand it's not the use of alcohol
8 that is the criminal act here. The criminal act is
9 driving while you're under the influence of that alcohol.
10 And it's unfortunate that you have continued to do that on
11 multiple occasions.

12 And because of that, I believe that there is
13 significant risk to the public at this time. I think that
14 you'll continue to do so as your pattern and practice has
15 shown in the past. And because of that, I am going to
16 impose sentence in this case.

17 It's the judgment of the Court that upon your
18 plea of guilty to the crime of felony DUI, a third,
19 preceded by a prior felony DUI within 15 years that you be
20 sentenced to the custody of the Idaho State Board of
21 Corrections for a unified sentence of ten years,
22 consisting of a minimum determinate period of three years,
23 less credit for time served, during which period of time
24 you shall not be eligible for parole or discharge,
25 followed by a subsequent indeterminate period of custody