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State v. Adams Respondent's Brief Dckt. 44216

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44216
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-2015-9070
)	
ZACKERY DOUGLAS ADAMS,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE PATRICK H. OWEN
District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Zachary Douglas Adams appeals from the district court's judgment, challenging his sentences and the district court's restitution order.

Statement Of The Facts And Course Of The Proceedings

Adams went on a one-man crime spree across two counties, prowling in neighborhoods, breaking into houses, and stealing items including firearms, jewelry and credit cards. (PSI, pp. 3-5.) In relation to some of the crimes the state charged Adams with grand theft, burglary, possession of a controlled substance, unlawful possession of a firearm, possession of drug paraphernalia (misdemeanor), resisting and obstructing officers (misdemeanor), and providing false information to officers (misdemeanor). (R., pp. 38-40.) The state later added a persistent violator sentencing enhancement based on five prior felony convictions. (R., pp. 64-66.) Pursuant to a plea agreement Adams pled guilty to grand theft and unlawful possession of a firearm and the state dismissed the other charges and the enhancement. (R., p. 70; 2/19/16 Tr., p. 1, L. 15 – p. 2, L. 18; p. 28, L. 13 – p. 29, L. 2.)

The district court imposed consecutive sentences of 14 years with eight years determinate for grand theft and six years indeterminate for unlawful possession of a firearm, concurrent with any incarceration from convictions in other cases. (4/20/16 Tr., p. 35, Ls. 4-22; R., pp. 85-88; see also PSI, pp. 10-12 (showing pending charges and sentences).) Adams filed a notice of appeal

timely from the entry of judgment. (R., pp. 91-92, 101-03.) The district court also ordered restitution of \$267.00. (R., pp. 107-11.)

ISSUES

Adams states the issues on appeal as:

1. Did the district court abuse its discretion when it sentenced Mr. Adams to an aggregate unified sentence of nineteen years, with eight fixed, following his pleas of guilty to grand theft and possession of a firearm?
2. Did the district court abuse its discretion in awarding restitution?

(Appellant's brief, p. 4.)

The state rephrases the issues as:

1. Has Adams failed to show an abuse of sentencing discretion?
2. Is Adams' argument he should not have been ordered to pay \$267 in restitution because he cannot afford it without merit?

ARGUMENT

I.

Adams Has Failed To Show An Abuse Of Sentencing Discretion

A. Introduction

On appeal Adams argues that although the district court considered all the relevant factors it did not “fully” consider them. (Appellant[s] brief, pp. 5-6.) Adams has failed to show an abuse of sentencing discretion.

B. Standard Of Review

“Sentencing decisions are reviewed for an abuse of discretion.” State v. Anderson, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)).

C. The District Court Considered The Facts, The Relevant Law, And Reached A Sentencing Conclusion Within The Bounds Of Its Discretion

Where a sentence is within statutory limits, an appellant is required to establish that the sentence 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, Adams must show that his sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable if appropriate to achieve the primary objective of protecting society, and any or all of the related sentencing goals of deterrence, rehabilitation, or retribution. State v. Wolfe, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978). The Court reviews the whole sentence on appeal and presumes that the fixed portion of the sentence will be the

defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). In deference to the trial judge, the Court will not substitute its view of a reasonable sentence where reasonable minds might differ. State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

The district court in sentencing stated that Adams' conduct surrounding his convictions "reflect a high level of criminality" that very detrimentally affected the victims of his many home invasions. (4/20/16 Tr., p. 27, L. 25 – p. 31, L. 5.) The district court took into account Adams' "significant mental health issues." (4/20/16 Tr., p. 31, L. 6 – p. 32, L. 9.) The district court also "couldn't ignore the fact that [Adams has] a significant past criminal history of the [sic] similar conduct, of forgeries and burglaries, drugs." (4/20/16 Tr., p. 32, Ls. 10-22.) The district court considered Adams' childhood (4/20/16 Tr., p. 32, L. 23 – p. 33, L. 2); the involvement of guns in the crimes (4/20/16 Tr., p. 33, Ls. 3-19), Adams' remorse (4/20/16 Tr., p. 33, Ls. 20-22), and his behavior in jail (4/20/16 Tr., p. 33, L. 22 – p. 34, L. 2). The district court considered all of the goals of sentencing, but came "firmly to the conclusion that the public needs protection" from Adams. (4/20/16 Tr., p. 34, Ls. 3-18.) Application of the law to the facts found by the district court shows it was well within its sentencing discretion.

Adams argues the district court "failed to fully consider" his remorse, mental health and drug use. (Appellant's brief, pp. 5-8.) He cites neither the record nor the applicable law for what this alleged failure to "fully" consider mitigating facts consists of. Moreover, he fails to recognize the district court's findings regarding the criminality of his conduct, the harm he caused the victims,

and his extensive criminal history. Because his argument goes to the weight given mitigating factors, while ignoring aggravating factors, Adams has failed to show any abuse of discretion.

II.

Adams Has Shown No Error In The Court's Order That He Pay \$267 In Restitution

A. Introduction

The state requested \$267 for the victim's cleaning costs and \$100 for the drug lab reimbursement, but the district court denied the latter and granted the former. (R., pp. 110-11.) In doing so the district court stated:

The Court recognizes that Adams' current financial resources and earning ability are limited. Adams also suffers from significant mental health issues. At the same time, Adams has a GED and appears to be able-bodied.

As an exercise of discretion, the Court will order Adams to pay restitution in the amount of \$267.00 to the [victims]. The Court will decline to order restitution for the drug testing.

(R., pp. 110-11.) Adams claims the district court "failed to adequately consider his current and future ability to pay." (Appellant's brief, p. 8.) Adams' argument fails because it is unsupported by the law and the record.

B. Standard Of Review

The decision whether to order restitution and in what amount is committed to the trial court's discretion. State v. Hill, 154 Idaho 206, 211, 296 P.3d 412, 417 (Ct. App. 2013). The trial court's factual findings in relation to restitution will not be disturbed if supported by substantial evidence. State v. Straub, 153 Idaho

882, 885, 292 P.3d 273, 276 (2013); State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011).

C. Adams Has Shown No Abuse Of Discretion

Idaho's restitution statute provides that the sentencing court "shall" order restitution for economic loss actually suffered by the victim. I.C. § 19-5304(2). Nevertheless, the court may decline to order restitution or order less than full restitution after considering other factors, including "the financial resources, needs, and earning ability of the defendant." I.C. § 19-5304(3), (7). While a district court is required to *consider* these factors, inability to pay neither precludes nor limits a restitution award; rather, ability to pay is only one factor for a court's consideration when it makes a discretionary restitution determination. State v. Olpin, 140 Idaho 377, 379, 93 P.3d 708, 710 (Ct. App. 2004) (citing State v. Taie, 138 Idaho 878, 880, 71 P.3d 477, 479 (Ct. App. 2003)). In addition, "[t]he immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution." I.C. § 19-5304(7).

Adams does not argue that the district court failed to *consider* his ability to pay, only that it failed to "adequately" consider it. (Appellant's brief, pp. 8-11.) This argument is unsupported by the law and the record. Adams has failed to show an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment and restitution order of the district court.

DATED this 22nd day of February, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of February, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
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