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State v. Winn Respondent's Brief Dckt. 44345

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44345
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2014-6665
)	
SAMARI PRENTICE WINN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Winn failed to establish that the district court abused its discretion by imposing an aggregate sentence of life, with 40 years fixed, upon his convictions for two counts of aiding and abetting first degree murder and one count of aiding and abetting attempted first degree murder?

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

The state charged Winn with two counts of aiding and abetting first degree murder and one count of aiding and abetting attempted first degree murder based on his involvement in the murders of Elliott Bailey and Travonte Calloway, and the attempted murder of Jeanette Juraska. (R., pp.90-92, 292-94.) The jury found Winn guilty as charged (R., p.402), and the district court

imposed concurrent unified sentences of life, with 40 years fixed, for both of the aiding and abetting first degree murder convictions, and a concurrent fixed 15-year sentence for the aiding and abetting attempted first degree murder conviction (R., pp.405-08). Winn filed a notice of appeal, timely from the entry of judgment. (R., pp.411-15, 426-31.)

Winn argues his sentence is excessive in light of his purported “remorse for the victims and his lesser culpability of the alleged crimes.” (Appellant’s brief, pp.5-6.) The record supports the sentence imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed 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 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens,

146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

Aiding and abetting first degree murder carries a mandatory minimum sentence of indeterminate life, with 10 years fixed, and a maximum sentence of fixed life. I.C. §§ 18-204, 18-4004 . The maximum penalty for aiding and abetting attempted first degree murder is 15 years fixed. I.C. §§ 18-204, 18-306(1), 18-4004. Winn’s concurrent sentences of life, with 40 years fixed, for two counts of aiding and abetting first degree murder and 15 years fixed for one count of aiding and abetting attempted first degree murder fall squarely within the limits prescribed by statute. (R., pp.405-08.) Contrary to Winn’s assertions on appeal, the sentences are also reasonable in light of the seriousness of the offenses and Winn’s role in them, his unwillingness to accept responsibility for his actions, and his long history of criminal behavior.

Winn played an instrumental role in the murders and attempted murder of which he was convicted in this case. In October 2013, someone stole approximately 30 pounds of marijuana from Anthony Robins. (Tr., p.888, L.18 – p.894, L.20.) Robins was Winn’s drug supplier, and both Robins and Winn were “certain” that Winn’s “good friends,” Travonte Calloway and Elliot Bailey, had stolen Robins’ marijuana. (Tr., p.883, L.2 – p.884, L.6, p.896, Ls.21-25, p.898, L.7 – p.900, L.16.) When Robins later recruited John Douglas to “handle the situation” with Travonte and Elliot, Winn facilitated the plan by picking Douglas up from the airport, housing him for several days, showing him where Travonte and Elliot lived, and helping him load the murder weapon. (Tr., p.901, Ls.6-21, p.905, L.9 – p.914, L.7). On the night of the murders, Winn set a trap for Travonte and Elliot by making plans to go out with them to celebrate Travonte’s birthday. (Tr., p.403, L.16 – p.404, L.12, p.409, L.17 – p.414, L.11, p.917, L.18 – p.

918, L.10.) When Winn arrived at Travonte's apartment at the predetermined time, Douglas entered the apartment behind him and shot Travonte, Elliot, and Jeanette Juraska multiple times. (Tr., p.417, L.25 – p.433, L.23.)

Winn argues on appeal that his sentence is excessive because he “was the least culpable actor compared to the other individuals involved with the shooting.” (Appellant's brief, p.5.) While it is true, as Winn contends, that Winn did not personally shoot the victims or provide the gun, ammunition or getaway vehicle (see id.), Winn actively assisted the shooter in a number of ways, including by showing the shooter where the victims lived, donning gloves and helping the shooter load the murder weapon with hollow point bullets, “put[ting] himself out there to find out where [the victims] were going to be” on the night of the murders, and making sure the victims would be home when he accompanied the shooter to their apartment (Tr., p.403, L.16 – p.404, L.12, p.409, L.17 – p.414, L.11, p.901, Ls.6-21, p.905, L.9 – p.914, L.7, p.917, L.18 – p.918, L.10). Winn claims it is mitigating that he “was not involved in the dispute between” Robins and the victims, and he argues it was Robins, not he, who “wanted to retaliate for the stolen marijuana.” (Appellant's brief, p.5.) The record, however, belies both claims. The testimony at trial established that, although it was Robins' marijuana that was stolen, Winn took the theft personally and believed the victims were profiting from the stolen marijuana and were spending money that would otherwise have belonged to Robins, Anton Raider, and himself. (Tr., p.898, L.21 – p.900, L.21.) While Robins may have come up with the plan to have the victims killed, it was Winn, not Robins, who ultimately ensnared the victims and facilitated the shooter's access to them. (Tr., p.409, L.17 – p.414, L.11, p.417, L.25 – p.420, L.9, p.426, Ls.14-17.) That he did so despite having no personal dispute with the victims is, as found by the district court, an aggravating circumstance, not a mitigating one. (See Tr., p.1337, Ls.8-11.)

Despite the jury verdicts finding him guilty, Winn has consistently failed to admit or take any responsibility for his roles in the murders and attempted murder of his victims. He asserts on appeal that “his statements at sentencing showed he felt remorse for the victims” (Appellant’s brief, p.5 (citing Tr., p.1322, Ls.18-19, p.1333, Ls.6-12)), but the statements to which he refers constitute only nine lines out of a 14-page allocution (see Tr., p.1321, L.6 – p.1335, L.1), during which Winn’s primary focus appears to have been attempting to persuade the district court that the witnesses against him lied (Tr., p.1321, L.6 – p.1324, L.8, p.1329, L.1 – p.1332, L.6), that being under the influence of alcohol was “the only wrong thing [he] did” the night of the murders (Tr., p.1327, Ls.2-4), and that he was “charged with something that [he] didn’t do” (Tr., p.1334, Ls.1-14). Winn also chose to not participate in the presentence investigation or GAIN evaluation. (See PSI, pp.5, 9-14, 16.) Although it was Winn’s constitutional right to make that choice, his decision to deprive the district court of any information (aside from his repeated denials of responsibility) left the court without any basis to determine whether Winn is amenable to rehabilitation. And, in fact, a review of the record the district court did have shows he is not.

Winn has a long criminal history which includes juvenile adjudications for receiving stolen property and escape, misdemeanor convictions for driving under the influence (two separate convictions) and fighting, and three prior felony drug-related convictions. (PSI, pp.6-9.) It appears he moved to Idaho in 2012 or 2013, after serving four years in Fulsom Prison. (PSI, pp.8-9.) Less than two years later, Winn committed the crimes of which he was convicted in this case. (PSI, p.8.) While in custody on the charges, Winn received “multiple write ups and disciplinary actions for,” among other things, “refusing to obey orders, disrespect and/or threats of physical harm to staff,” and “interfering with staff duties.” (PSI, p.9.)

Although Winn claimed at sentencing that he “tried to come [to Idaho] to live better” (Tr., p.1323, Ls.4-7), his actions show that he has been either unwilling or unable to live a law-abiding life. As he apparently had in California (see PSI, pp.6-7, 9), Winn made a living in Idaho by selling drugs for profit (Tr., p.883, L.2 – p.884, L.6, p.886, L.25 – p.887, L.15, p.898, L.21 – p.900, L.16). Winn did not stop at drug trafficking, however. Rather, as found by the district court, Winn “involved [himself] in the planning and the execution of two people and the attempted execution of another to protect the drug trade that [he] had developed here in Boise.” (Tr., p.1337, Ls.12-15.)

In fashioning an appropriate sentence, the district court specifically considered the goals of sentencing, noting that its primary consideration was the protection of society. (Tr., p.1335, Ls.7-17.) The court recognized but rejected Winn’s protestations of innocence, finding Winn’s “involvement” in the murders and attempted murder “was clear” and noting the jury “found unanimously beyond a reasonable doubt that [he] had been involved instrumentally in each one of these crimes.” (Tr., p.1136, L.12 – p.1337, L.1.) The court indicated it was sentencing Winn for the conduct of which he was convicted and, in doing so, found:

It’s clear that your involvement was not as a reckless person, and, in fact, your lack of trying to stop or remove yourself from the crime, was devoid of the fact that these were truly your friends. So this is obviously an execution for hire that came about because of the criminal enterprise of drug trafficking, and it wasn’t even your affront that caused the situation in the first place.

(Tr., p.1337, Ls.2-11.) The court also considered and commented on the lifelong impact Winn’s crimes would have on the surviving victim and the deceased victims’ families. (Tr., p.1337, Ls.15-19.)

The district court considered all of the relevant information and reasonably determined that a lengthy prison sentence was warranted based on the seriousness of the offenses and

Winn's culpability. The sentence is also reasonable based on Winn's continued denials of responsibility and his extensive criminal history. Given any reasonable view of the facts, Winn has failed to establish an abuse of discretion.

Conclusion

The state respectfully requests this Court to affirm Winn's convictions and sentences.

DATED this 11th day of October, 2017.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of October, 2017, 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