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## State v. Dockins Respondent's Brief Dckt. 44659

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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. 44659
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2016-26583
	)	
ADAM R. DOCKINS,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Dockins failed to establish that the district court abused its discretion by declining to place him on probation when it imposed a unified sentence of four years, with one year fixed, upon his guilty plea to possession of methamphetamine?

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

Dockins pled guilty to possession of methamphetamine and the district court imposed a unified sentence of four years, with one year fixed, and retained jurisdiction.

(R., pp.38-41.) Dockins filed a notice of appeal timely from the judgment of conviction.  
(R., pp.42-44.)

Dockins asserts “the district court abused its discretion by declining to suspend his sentence and place him on probation,” in light of his claimed lack of “a serious criminal record” and his assertion that, “[w]ith proper treatment and supervision, [he] can lead a productive life in the community while still providing adequate protection to society.” (Appellant’s brief, pp.3-6.) The record supports the court’s exercise of discretion in retaining jurisdiction rather than immediately placing Dockins on probation.

Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Windom, 150 Idaho 873, 875, 253 P.3d 310, 312 (2011); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Windom, 150 Idaho at 875, 253 P.3d at 312 (citations omitted). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary “to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.” State v. Sheahan, 139 Idaho 267, 284, 77 P.3d 956, 973 (2003) (quoting State v. Toohill, 103 Idaho 565, 568, 650, P.2d 707, 710 (Ct. App. 1982)). A sentence need not serve all sentencing goals; one may be sufficient. Id. at 285, 77 P.3d at 974 (citing State v. Waddell, 119 Idaho 238, 241, 804 P.2d 1369, 1372 (Ct. App. 1991)). However, as a matter of policy in Idaho, the primary factors are subservient to that end. State v. Jimenez, 159 Idaho 466, 475, 362 P.3d 541, 550 (Ct. App. 2015) (citations omitted).

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). Pursuant to I.C. § 19-2521(1) :

The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

(a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(c) A lesser sentence will depreciate the seriousness of the defendant's crime; or

(d) Imprisonment will provide appropriate punishment and deterrent to the defendant; or

(e) Imprisonment will provide an appropriate deterrent for other persons in the community; or

(f) The defendant is a multiple offender or professional criminal.

I.C. § 19-2521(1).

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c). The district court imposed an underlying unified sentence of four years, with one year fixed, which falls well within the statutory guidelines and, incidentally, is a less severe underlying sentence than Dockins requested at the sentencing hearing. (R., pp.38-41; 11/9/16 Tr., p.38, Ls.4-19.) While Dockins would have liked the district court to place him on probation immediately, the court's decision to not do so and to instead retain jurisdiction was appropriate in light of Dockins' crime,

his inability or unwillingness to take accountability, his need for intensive substance abuse treatment, and his poor attitude during the presentence investigation process.

The district court was aware when it sentenced Dockins that this was his first felony conviction. (See PSI, pp.4-5<sup>1</sup> (between 2004 and 2006, Dockins was convicted of four or five misdemeanors, one of which was amended from a felony); 11/9/16 Tr., p.38, Ls.4-5.) The court was also aware, however, that Dockins was an intravenous methamphetamine user, that his LSI score was 27 – placing him in the moderate risk category – and that, although he met the criteria for Level 2.1 Intensive Outpatient Treatment Services, it was “unknown” whether “his needs [could] be met in the community.” (PSI, pp.3, 12-16, 19-21.) Although the state recommended that the court place Dockins on probation, it did so with the caveat recommendation that Dockins be required to spend the first 120 days of his probation in jail and that he complete the SAP and ABC programs before being released in the community. (11/9/16 Tr., p.33, L.3 – p.35, L.4.) The presentence investigator likewise concluded Dockins was in need of treatment but recommended a period of retained jurisdiction to allow the court additional “time for further assessments and evaluation” of Dockins’ suitability for community supervision. (PSI, pp.16-17.) Although Dockins argues otherwise, his attitude during the presentence investigation process clearly shows that treatment in a retained jurisdiction program would be beneficial. The presentence investigator reported that, when Dockins entered the room for his presentence interview, he said, “What the fuck, you ain’t my attorney”; and, during the interview, Dockins “was angry, refused to answer

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<sup>1</sup> PSI page citations correspond with the page numbers of the electronic file “Dockins 44659 psi.pdf.”

most questioning and continually used profanities like, ‘I’m not signing shit’ and ‘this is fucking stupid.’” (PSI, pp.4, 16.)

At the sentencing hearing the district court addressed Dockins’ failure to take accountability for his actions, his failure to cooperate and his aggression during the presentence process, and his need for more intense programming than that offered in the county jail. (11/9/16 Tr., p.40, L.10 – p.22, L.7.) The state submits that Dockins 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 Dockins’ conviction and sentence.

DATED this 4th day of May, 2017.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of May, 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](mailto:briefs@sapd.state.id.us).

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

# APPENDIX A

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<p>1 work, continue to live in society rather than, as 2 the PSI recommends, a rider. And somebody who 3 perhaps may have some kind of a personality 4 disorder or antisocial behavior, just stick them 5 in a situation with a bunch of other people on a 6 rider, I don't think he would do well in that 7 program, not simply because of his attitude, but 8 because he would be uncomfortable and when he gets 9 uncomfortable, I believe he could be disagreeable 10 and have a negative impact on his ability to 11 successfully complete any kind of treatment. 12 The PSI recommends an outpatient 13 treatment program. His mother's comments about 14 his drug use, you know, it seems that they are 15 estranged. I don't know how accurate those would 16 be. He's not from here and so when he got to 17 Idaho, he had no support network after he found 18 out that his kids were in the custody of the state 19 of Idaho. 20 He tried to access programs in the 21 jail, didn't have the money to fund those 22 programs. He states that he was trying to get 23 some kind of help right before this incident 24 happened, trying to get into a rehab program. I'm 25 told that he has arranged a place to live once he</p>	<p>1 gets out of custody and we could get some 2 paperwork from them, but I don't know anything on 3 that. 4 Your Honor, given this is his first 5 felony, given that there may be other problems 6 going on or at least the diagnosis he's been given 7 may serve as a catalyst for the problems, for the 8 drug use that he already has, we would ask that 9 the Court impose a one-year fixed sentence 10 followed by four indeterminate for a total of five 11 years, place him on probation. We'd ask that the 12 Court not impose a fine in this case. He doesn't 13 have a job at this point. He does have employable 14 skills and would like to get back working. He's 15 got children to support. Obviously he's got child 16 support back -- or back child support that he 17 needs to pay and needs to focus on that and any 18 treatment that a probation officer would 19 recommend. 20 He's been in custody for some time. 21 When I met with him just yesterday, he was in 22 white. He's an inmate worker. He overslept today 23 so he's now in red. So I don't think he was a 24 problem child at the jail because somehow up until 25 yesterday he had worked up to be an inmate worker.</p>
39	40
<p>1 So that's some of the things. In the 2 PSI, Your Honor, on page six Ada County Jail 3 records reflect that the defendant has not 4 received any jail topic reports during his 5 incarceration. Then the next sentence says that 6 he has received reports and was reassigned to 7 another housing unit. It's one of those instances 8 that my client, it's just kind of internally 9 contradictory, as well as the justification for 10 him losing his children. 11 Again, based on the sparse PSI, Your 12 Honor, I looked at it as more -- perhaps there was 13 something else going on rather than just simply a 14 bad attitude. But we'd ask that you at least give 15 him a chance at probation before doing any more 16 severe punishment. 17 Thank you, Your Honor. 18 THE COURT: Thank you. Mr. Dockins, is 19 there anything you want to tell me before I decide 20 what sentence to impose? 21 THE DEFENDANT: Yes, Your Honor. I would 22 just like to make it apparent to the Court there 23 were extenuating circumstances that led up to my 24 using drugs. I had gone from making \$50 an hour, 25 having a home, having my kids, to having nothing.</p>	<p>1 I got hit by a semi truck. I lost my kids. I was 2 homeless for seven months. I came to Idaho to see 3 my kids and found out I wasn't allowed. All of it 4 had to do with using. And that's all I'm going to 5 say. 6 THE COURT: Is there any legal cause why 7 judgment can't be entered? 8 MR. WITWER: No, Your Honor. 9 MR. COONTS: No, Your Honor. 10 THE COURT: Based upon your plea of guilty, 11 Mr. Dockins, I am going to find you guilty of 12 possession of a controlled substance, a felony. 13 As I read through the presentence 14 investigation and now as I've listened to your 15 allocution, it occurs to me that you may have some 16 difficulty with accountability. It seems to me 17 your knee jerk reaction is to assign blame for 18 your circumstances to other people and 19 characterize other people's impressions of you as 20 being unfair or inaccurate. I'm not convinced 21 that either of those things are true. 22 It appears to me based upon the 23 comments in the presentence investigation that 24 this wasn't just a one-time you popped off at this 25 guy. You were, in his words, continually hostile</p>

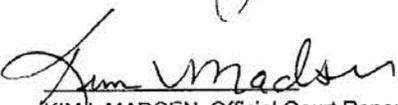
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1 and uncooperative throughout the interview and you  
 2 refused to answer a number of questions.  
 3 Theoretically that could be a violation of the  
 4 plea agreement, but the State is not asserting  
 5 that as a reason to make a different  
 6 recommendation.  
 7 My sense is that in order to achieve  
 8 the goals of sentencing, that I need to focus on  
 9 some kind of programming that might support you  
 10 thinking differently about who's responsible for  
 11 where you are. And I don't think that that  
 12 happens by putting you in a 28-day substance abuse  
 13 program in the jail and active behavioral change.  
 14 I think that it needs a little bit more intensity  
 15 than what is available through that program. And  
 16 I don't think you're ready for probation.  
 17 So what I'm going to do is impose a  
 18 judgment of conviction of an aggregate term of  
 19 four years consisting of one year fixed and  
 20 followed by three years indeterminate and I'm  
 21 going to retain jurisdiction. And it's my  
 22 expectation that when you are incorporated into  
 23 the rider program, whether that's a CAPP rider or  
 24 some other form of rider, that you will receive  
 25 thinking for a change and substance abuse

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1 treatment and that you might actually get some  
 2 benefit out of that.  
 3 And more importantly you're either  
 4 going to learn how to cooperate with others and  
 5 not blame other folks for your stuff or you're not  
 6 going to make it on the rider. Do you know what  
 7 I'm saying?  
 8 THE DEFENDANT: Yes, sir.  
 9 THE COURT: Okay. Mr. Dockins, you have the  
 10 right to appeal this judgment. You have 42 days  
 11 in which to take the appeal from the date judgment  
 12 is entered and filed. You have the right to be  
 13 represented by an attorney in pursuing the appeal.  
 14 If you can't afford one, one will be appointed for  
 15 you at public expense. And also the payment of  
 16 costs will be at public expense.  
 17 I'm specifically going to reserve the  
 18 issue of whether or not I impose public defender  
 19 reimbursement and/or a fine for the rider review.  
 20 Like I said before, I will order the \$374 in  
 21 restitution.  
 22  
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 24  
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1 REPORTER'S CERTIFICATE  
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 3  
 4 I, KIM I. MADSEN, Official Court  
 5 Reporter, County of Ada, State of Idaho, hereby  
 6 certify:  
 7 That I am the reporter who took the  
 8 proceedings had in the above-entitled action in  
 9 machine shorthand and thereafter the same was  
 10 reduced into typewriting under my direct  
 11 supervision; and  
 12 That the foregoing transcript contains  
 13 a full, true, and accurate record of the  
 14 proceedings had in the above and foregoing cause,  
 15 which was heard at Boise, Idaho.  
 16 IN WITNESS WHEREOF, I have hereunto set  
 17 my hand this 7 day of January 2017.  
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 20   
 21 KIM I. MADSEN, Official Court Reporter  
 22 CSR No. 428  
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