

8-4-2017

## State v. Ibison Respondent's Brief Dckt. 44744

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Ibison Respondent's Brief Dckt. 44744" (2017). *Not Reported*. 3803.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/3803](https://digitalcommons.law.uidaho.edu/not_reported/3803)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

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. 44744
Plaintiff-Respondent,	)	
	)	Bingham County Case No.
v.	)	CR-2016-4229
	)	
LISA MARIE IBISON,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Ibison failed to establish that the district court abused its discretion by imposing an underlying unified sentence of four and one-half years, with one and one-half years fixed, upon her guilty plea to accessory to a felony?

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

Ibison pled guilty to accessory to a felony and the district court imposed a unified sentence of four and one-half years, with one and one-half years fixed, but suspended the sentence and placed Ibison on probation for a period of four years. (R., pp.82-87.)

Ibison filed a notice of appeal timely from the judgment of conviction. (R., pp.88-90.)

Ibison asserts her underlying sentence is excessive in light of her “willing[ness] to participate in substance abuse treatment (even though the instant offense was not related to any substance abuse),” her assertion that her “conduct did not pose any danger to the public,” and the fact that this is her first felony conviction. (Appellant’s brief, pp.3-5.) 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)).

The maximum prison sentence for accessory to a felony is five years. I.C. § 18-206. The district court imposed an underlying unified sentence of four and one-half years, with one and one-half years fixed, which falls well within the statutory guidelines. (R., pp.82-87.)

While this is Ibison’s first felony conviction, she has six misdemeanor convictions, most of which are drug related. (PSI, pp.4-6.) She has served jail time and been placed on numerous periods of probation for her crimes. (PSI, pp.4-6.) In 2012, Ibison was charged with felony possession of a controlled substance, but the charge was later amended to misdemeanor drug paraphernalia and she was sentenced to two years of probation and required to participate in Drug Court. (PSI, p.6.) Ibison failed to complete Drug Court and her probation was revoked in 2013. (PSI, p.6.)

Ibison’s conviction in this case arose out of an incident in which she allowed her fiancé to stay at her residence, knowing that he had a felony warrant. (PSI, p.3.) Although Ibison claims on appeal that “the instant offense was not related to any substance use” (Appellant’s brief, p.4), she admitted to the presentence investigator that she was under the influence of drugs when the incident occurred (PSI, p.4) and also identified “[h]anging out with wrong crowds that were using drugs” as a factor contributing to her criminal behavior (PSI, p.12).

At sentencing, the district court addressed Ibison’s substance abuse issues and need for treatment, her failure to recognize the seriousness of the offense, and her

moderate risk to reoffend. (12/5/16 Tr., p.22, L.23 – p.27, L.25.) The state submits that Ibison 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 Ibison’s conviction and sentence.

DATED this 4th day of August, 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 August, 2017, 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](mailto:briefs@sapd.state.id.us).

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

# APPENDIX A

1 make a statement on your own behalf?

2 (A discussion was held off the record between  
3 the defendant and their attorney.)

4 THE DEFENDANT: No. Sorry. I'm kind of  
5 nervous.

6 THE COURT: Understood.

7 MR. MURDOCH: She does not wish to make a  
8 statement, Your Honor.

9 THE COURT: All right. Are you satisfied with  
10 the representation Mr. Murdoch has provided to you?

11 THE DEFENDANT: Yes, I am.

12 THE COURT: Do you know of any legal reason  
13 why I should not sentence you today?

14 THE DEFENDANT: I do not.

15 THE COURT: Mr. Murdoch, do you?

16 MR. MURDOCH: No, Your Honor.

17 THE COURT: Mr. Chandler, do you?

18 MR. CHANDLER: No, Your Honor.

19 THE COURT: Ms. Ibison, based upon your plea  
20 of guilty, it is the judgment of the Court that you are  
21 guilty of the crime of accessory to a felony, as  
22 outlined in the Information filed in this case.

23 I've reviewed your record, as set forth in the  
24 presentence investigation. You have six prior  
25 misdemeanor offenses. This is your first felony

1 offense. You had at least one prior probation  
2 violation.

3 The presentence report does recommend  
4 probation; however, they recommend -- or they indicate  
5 that you're a moderate candidate for probation.

6 Your substance abuse evaluation indicates that  
7 you're in need of Level 2.1 and you do present with some  
8 mental health issues that need to be addressed,  
9 primarily major depression, as outlined on page 14 of  
10 the presentence report.

11 In addition I've reviewed the objectives of  
12 criminal punishment, which includes protection of  
13 society, deterrence, rehabilitation, and punishment, and  
14 the criteria under Idaho Code 19-2521, relative to the  
15 question of whether I should place you on probation or  
16 confine you to prison.

17 Your LSI score is a 29, which puts you in the  
18 moderate risk category.

19 You're 32 years of age.

20 When I go through your presentence report,  
21 there's no question, based upon your admissions and the  
22 versions outlined in the report, that there was a crime  
23 committed; yet, on page 4, you indicate that you weren't  
24 harboring and you shouldn't be in trouble. So, quite  
25 frankly, I'm at a little bit of a loss to where that

1 comes from.

2 Then, on page 6, you failed to complete Drug  
3 Court as part of a prior sentence on probation, and your  
4 probation was revoked in 2013. And you still have an  
5 active misdemeanor warrant out of California for failure  
6 to appear on a charge back in 2010. So you still have  
7 some legal issues in another state that need to be  
8 addressed.

9 So what happened with Mr. Lake's warrant?

10 THE DEFENDANT: He was sentenced to felony  
11 probation.

12 THE COURT: Okay. So you may not be allowed  
13 to be together. What's going to happen then?

14 THE DEFENDANT: I'm hoping that that's, you  
15 know, not the case, but if it is, I guess we'll see  
16 what -- you know, what we can do.

17 THE COURT: What was he charged with?

18 THE DEFENDANT: Possession of a controlled  
19 substance.

20 THE COURT: Okay. The other thing that was  
21 interesting, in the relationship comments, you said the  
22 defendant reported that none of her friends or  
23 acquaintances are involved in illegal behavior; yet  
24 Mr. Lake had that warrant and new charge.

25 And then when you look at page 12 under Values

1 & Outlook on Life, she wrote that contributing factors  
2 to her criminal behavior include hanging out with wrong  
3 crowds that were using drugs, and she will avoid  
4 those -- avoid future legal problems.

5 If they're using drugs, they're involved in  
6 criminal activity, because that's a crime.

7 THE DEFENDANT: Oh, I understand.

8 Josh is -- he's been sober for a while. And,  
9 I mean, I don't --

10 THE COURT: Well, I'm not talking just about  
11 Josh --

12 THE DEFENDANT: Well, I know.

13 THE COURT: -- because you're saying hanging  
14 out with other crowds, which contradicts your statement  
15 on page 8, which makes me wonder if you understand that  
16 using drugs is illegal and is a crime.

17 THE DEFENDANT: I do understand. And,  
18 Your Honor, I honestly don't even talk to anybody  
19 anymore. I stick to myself and...

20 THE COURT: Okay.

21 THE DEFENDANT: I don't even live in town or  
22 really have -- I'm on a limited plan where I only have  
23 500 minutes; so, you know, I kind of save that for my  
24 family in California.

25 THE COURT: Okay. To your benefit, you have

1       obtained your GED.

2                    You have not had a job since 2015. How come  
3       you're not working?

4                    THE DEFENDANT: Kind of medical. I mean, I  
5       have arthritis in my back, and it's just really hard for  
6       me. I'm having a hard time --

7                    THE COURT: Are you on disability?

8                    THE DEFENDANT: I'm not.

9                    THE COURT: Okay. The other thing that  
10       concerned me is on page 12 too. And it says "Her goals  
11       include," and then it says "At the moment, none."

12                    Sir?

13                    Okay. So somebody -- you don't have any  
14       goals?

15                    THE DEFENDANT: Well, no. When I was  
16       answering that question, I just -- I didn't know how to  
17       answer it at the moment. I mean, I have goals. I mean,  
18       I plan on -- I would like to get a job that I'm  
19       comfortable with, you know, and be able to provide for  
20       my kids and myself.

21                    THE COURT: All right.

22                    THE DEFENDANT: Get my GED and my license  
23       back.

24                    THE COURT: All right. Based on all of the  
25       circumstances, it is the judgment of this Court that you

1 be sentenced to the Idaho Department of Corrections for  
2 a fixed and determinate period of one and a half years,  
3 followed by an indeterminate period of three years -- in  
4 other words, not less than one and a half nor more than  
5 four and a half.

6 You're fined the amount of \$800.

7 Court costs are \$245.50.

8 You'll reimburse the county for the services  
9 of the public defender in the amount of \$500.

10 You're ordered to serve 34 days of local  
11 incarceration. You'll be given credit for 34 days  
12 served.

13 I'm going to suspend the imposition of the  
14 sentence and place you on probation for a period of  
15 four years, during which time you'll be under the  
16 supervision and direction of the Idaho Department of  
17 Probation and Parole and this Court. If you accept  
18 probation, you'll be subject to the standard terms and  
19 conditions of probation as well as the following  
20 conditions.

21 I know your attorney and the State have  
22 recommended informal probation, but under the  
23 circumstances and what needs to be accomplished in your  
24 case, informal probation is not appropriate; so I'm  
25 declining that request.