

10-20-2017

## State v. Bogan Respondent's Brief Dckt. 44771

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

---

### Recommended Citation

"State v. Bogan Respondent's Brief Dckt. 44771" (2017). *Not Reported*. 3817.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/3817](https://digitalcommons.law.uidaho.edu/not_reported/3817)

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

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44771
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2015-8827
	)	
CRAIG BOGAN,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Bogan failed to establish that the district court abused its discretion by imposing a unified sentence of eight years, with three years fixed, upon his guilty plea to aggravated battery?

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

Bogan pled guilty to aggravated battery and the district court imposed a unified sentence of eight years, with three years fixed. (R., pp.202-05.) Bogan filed a timely notice of appeal. (R., pp.206-09.)

Bogan asserts his sentence is excessive in light of his mental health issues, substance abuse and willingness to participate in treatment, and support from family and friends. (Appellant's brief, pp.2-4.) 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 penalty for aggravated battery is 15 years. I.C. § 18-908. The district court imposed a unified sentence of eight years, with three years fixed, which falls well within the statutory guidelines. (R., pp.202-05.) Bogan asserts that the district court abused its discretion because it did not take the mitigating factors listed above into consideration; however, the district court explicitly stated that it had reviewed the presentence investigation report (which details Bogan's mental health and substance abuse issues) and the letters of support. (12/5/16 Tr. p.31, L.22 – p.32, L.8.) That Bogan believes the district court should have given the information he cites more mitigating weight does not establish an abuse of discretion. Bogan's sentence is appropriate in light of the seriousness of the offense, Bogan's ongoing criminal offending, his failure to rehabilitate or be deterred despite multiple prior legal sanctions and treatment opportunities, his high risk to reoffend, and the recommendation for imprisonment from the presentence investigator. (PSI, pp.5, 7-19, 28, 30.)

At sentencing, the district court articulated its reasons for imposing Bogan's sentence. (12/5/16 Tr., p.31, L.22 – p.37, L.21.) The state submits that Bogan 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 Bogan's conviction and sentence.

DATED this 20th day of October, 2017.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of October, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JASON C. PINTLER  
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

29

1 an angry child. I know that, and then he always  
2 regrets it later, but it's all I can think of  
3 because he hasn't returned any calls to me. He  
4 has talked to Cresta and he said, yeah, hey, he  
5 would write a letter of recommendation for me  
6 and he never did it, and he won't answer her call  
7 either.

8 THE COURT: Okay. Anything else you want  
9 to tell me, sir?

10 THE DEFENDANT: I was -- you know, until  
11 the PSI came out, it was hopeful I might have a  
12 chance for probation as long as I was doing my  
13 counseling. I see that's probably not going to  
14 happen.

15 THE COURT: So let me ask you this:  
16 Prior to you being charged with this crime, what  
17 type of treatment did you seek out personally  
18 for your alcoholism?

19 THE DEFENDANT: I have tried AA  
20 throughout the years. I couldn't seem to get  
21 the program. It seemed so simple, but then for  
22 some reason I couldn't do it. I would end up  
23 inevitably back to drinking, and then I finally  
24 realized -- it was Cresta that turned me onto  
25 this -- and I do have a psychiatric disorder,

31

1 to have a great life with my wife. Give her the  
2 husband that she deserves.

3 THE COURT: All right.

4 THE DEFENDANT: And not hurt anybody  
5 else.

6 THE COURT: All right. Anything else,  
7 sir?

8 THE DEFENDANT: No.

9 THE COURT: All right. Mr. Reynolds,  
10 anything else then?

11 MR. REYNOLDS: It's interesting to be  
12 with Mr. Bogan today. My interactions with him,  
13 he has been far more blustery and borderline  
14 belligerent. Not a lot of humility and  
15 contrition. This is behavior that I have not  
16 seen, and I think it speaks well of him.

17 THE COURT: All right. Thank you,  
18 Mr. Reynolds.

19 Mr. Stoddard, anything else from the  
20 State?

21 MR. STODDARD: No, Your Honor.

22 THE COURT: All right. So, sir,  
23 certainly I have reviewed the presentence  
24 investigation report here and the facts and  
25 circumstances of this case along with your

30

1 and it doesn't make me weak or bad.

2 So I finally went  
3 to a psychiatrist and went through hours of  
4 testing and I think we have kind of nailed it  
5 down and getting medication and now I'm going  
6 to Recovery 4 Life. I take early recovery  
7 skills, anger management, relapse prevention and  
8 life skills or -- I'm sorry. I think they  
9 changed the name of that to positive thinking.  
10 I take all of those. That's helping me along with  
11 my medication and seeing my psychiatrist.

12 I have my primary care physician who is  
13 taking care of all of the physical ailments that  
14 are not helping my mental illness ailments as  
15 well.

16 So even though this was a path that  
17 could be taken before that, it was just occasional  
18 AA, and I found out in these classes that I  
19 learned that prolonged excessive use of alcohol  
20 actually changes the chemistry of your brain  
21 that explains why, as the years went by, I just  
22 kept getting worse and worse. I never knew that  
23 before.

24 So I'm learning a lot about myself, about  
25 my addiction. I know what I want in life. I want

32

1 prior criminal record and considered the  
2 comments from counsel here today along with  
3 Mrs. Bogan and you.

4 I also had several letters provided  
5 to me along with a letter from a treatment  
6 provider and now employer from World Connection,  
7 and then also the statement from the victim,  
8 Shawna Houser.

9 I have also considered protection of  
10 society, punishment, deterrence, and rehabilitation  
11 in this particular case and considering whether  
12 or not you're a viable candidate for probation.  
13 I have to look at 19-2521 because that's the first  
14 thing I need to consider is whether or not you're  
15 a viable candidate for probation.

16 First consideration is whether or not  
17 your conduct either caused or threatened harm.  
18 Well, of course, it did. You harmed this victim,  
19 and I think whether or not if you contemplated  
20 whether or not your conduct would cause harm  
21 based on your intoxication and no one forced you  
22 to drink, but you took an innocent victim and  
23 imposed a great deal of harm on this individual.  
24 There was no -- there is nothing that I found  
25 in the record that shows that you did this under

33

1 strong provocation. I don't think that  
2 there is any substantial grounds tending to excuse  
3 your conduct, nor did the victim abuse or facilitate  
4 this particular crime.

5       Nothing suggests right now that you're  
6 able to -- I have no idea what the compensation  
7 for the victim is going to be at this point in  
8 time, but whether or not you're in a position  
9 to be able to compensate or not is yet to be  
10 seen.

11       You have a prior history, a very  
12 strong prior history. There is a real  
13 propensity to violence that you have. You have  
14 not led a law-abiding life up until this point in  
15 time. That's clear. And my concern, too, is  
16 that this particular conduct, your prior history  
17 and such, that and the conduct here, I don't know  
18 that it won't recur, because that's what happens is  
19 you drink and you cause chaos in people's lives.  
20 It is what you do.

21       You're quite contrite today, but,  
22 certainly, you're here for sentencing, and so I  
23 would simply expect that from you. I agree with  
24 Mr. Stoddard and Mr. Reynolds in the idea that  
25 I think you pose an undue risk to be placed on

35

1 drinking, and he got belligerent. He said if  
2 someone calls, to say he lives with me. I went  
3 fishing with him last week, and he was so drunk  
4 he was swerving off the road and I called Cresta  
5 and she said he mixes vodka and Gatorade.

6 Mr. Wade noted he visits but doesn't  
7 even reside here in Idaho.

8       That's interesting because reading  
9 the police report I got from Colorado and what  
10 you purchased at that liquor store, Gatorade and  
11 that sort of thing, is very interesting because  
12 that is -- that adds some weight to what he tells  
13 me.

14       THE DEFENDANT: Yeah, he has been  
15 around me when I have been drinking.

16       THE COURT: So, you know, I don't  
17 really have any reason not to believe it, and,  
18 quite frankly, I think that's what you have  
19 been doing. I think also looking at this  
20 charge, it's an Aggravated Battery, I think a  
21 little lesser sentence would depreciate the  
22 seriousness of the crime. You threw the victim  
23 into the fire. You caused her not only to burn  
24 her hand, but some serious burns on your backside,  
25 and you had no justification. There was absolutely

34

1 probation at this point in time. I think if you  
2 were to be placed on probation at this point,  
3 I think that there would be an undue risk that  
4 you would commit another crime out there.

5 The facts that go along with that is that  
6 you're charged with Domestic Battery while  
7 you're awaiting disposition in this particular  
8 case, and you haven't been compliant with  
9 pretrial release. In fact I have had to issue  
10 a bench warrant for your arrest.

11       I do think that you're in need of  
12 correctional treatment in this case. Your  
13 past periods of incarceration have not changed  
14 your criminal behavior or thinking. You have a  
15 propensity toward violence, and you put society  
16 at great risk by your behavior.

17       You say it's not true, but I read this  
18 from Mr. Long who says, number one, Craig does not  
19 live with me. He lives with Cresta. He is lying.  
20 Parks his Suburban in Cresta's garage. She pays  
21 for a motel when her son Sam is home. I was  
22 friends with Cresta for four or five years before  
23 I met Craig. When he is sober, he is good. He  
24 called me yesterday, November 8th. He was so  
25 drunk he couldn't talk. I asked him if he was

36

1 no justification to do what you did. I certainly  
2 believe imprisonment will provide appropriate  
3 punishment and deterrence for you.

4       At some point in time the Court just  
5 has to say protection of society is the number  
6 one factor here, and I have to protect society  
7 from your and your behaviors. You have got an  
8 extensive prior record, and you have got a felony  
9 conviction, which you served prison time for, and  
10 yet you continue with your felony thinking, your  
11 criminal behavior each and every time.

12       So what the Court is going to do here  
13 is I'm going to impose a sentence of three years  
14 fixed, five years indeterminate.

15       I'm going to give you credit for  
16 all time served in this particular case. I'm  
17 going to impose a fine of \$750, plus court costs,  
18 and I'm also going to order reimbursement to  
19 Bannock County of \$750 for partial costs of  
20 your attorney.

21       I'll leave the restitution open for  
22 sixty days, Mr. Stoddard, but the last amount  
23 that you cited me, \$1,112 and how much?

24       MR. STODDARD: \$1,112.22.

25       THE COURT: That will be ordered unless



