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## State v. Pollard Respondent's Brief Dckt. 44936

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44936
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR-2016-10557
	)	
MICHAEL P. POLLARD,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Pollard failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with five years fixed, upon the jury verdict finding him guilty of domestic battery with traumatic injury?

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

A jury found Pollard guilty of domestic battery with traumatic injury and the district court imposed a unified sentence of 10 years, with five years fixed, and ordered that the sentence run concurrently to Pollard's sentence in a separate case. (R., pp.117-18.) Pollard filed a notice of appeal timely from the judgment of conviction. (R., pp.124-27.)

Pollard asserts that the district court abused its discretion by imposing an excessive sentence in light of his mental health issues, substance abuse issues, employment, family support, and because he had a stable place to live if he was released. (Appellant’s brief, pp.3-5.) Pollard has failed to establish an abuse of discretion.

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 domestic battery with traumatic injury is 10 years. I.C. § 18-918(2)(b). The district court imposed a unified sentence of 10 years, with five years fixed, which falls within the statutory guidelines. (R., pp.117-18.) Pollard's sentence is not excessive in light of his ongoing, violent criminal behavior.

Pollard's criminal record demonstrates his disregard for the law and the well-being of others. Pollard has 10 misdemeanor convictions that include: inflict corporal injury on a spouse, under the influence of a controlled substance, selling liquor to a minor, driving with license suspended, disturbing the peace, malicious injury to property, and two counts of DUI. (PSI, pp.5-9.) Pollard also has three previous felony convictions for burglary, inflict corporal injury on a spouse, and DUI. (PSI, pp.5-8.) Pollard has previously been charged with misdemeanor assault, battery, unlawful transportation of alcoholic beverage, and maliciously injure or destroy real or personal property; he also has felony charges for receiving stolen property and passing completed checks. (PSI, pp.5-8.) Due to his lengthy criminal history, Pollard has been assessed as having a high risk for recidivism, and neither a rider program nor multiple terms of probation have deterred Pollard from his criminal thinking. (PSI, pp.9-10, 21.) Though it is clear that Pollard has mental health and substance abuse issues, these issues do not outweigh the seriousness of the offense. Also, while Pollard asserts that he was gainfully employed at the time of the offense, he held that job for only two months and lost it when he was incarcerated for the instant offense. (PSI, p.15.) Pollard's relationships with his siblings and son have not deterred him from continued criminal conduct.

At sentencing, the state addressed the seriousness of the offense, the effect Pollard's crime had on the victim, his level of violence, and that his sentence from a previous case had been imposed in light of the instant offense. (2/14/17 Tr., p.366, Ls.5-17 (Appendix A).) The

state submits that Pollard has failed to establish that his sentence is excessive for all of the above reasons and for the reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal.

Conclusion

The state respectfully requests this Court to affirm Pollard's conviction and sentence.

DATED this 18th day of January, 2018.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of January, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON  
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 is going to recommend a sentence of 5 years fixed followed  
2 by 5 years indeterminate on the domestic battery with  
3 traumatic injury. On the petit theft, we're simply  
4 recommending for time served.

5 Your Honor, the defendant -- this is his fourth  
6 felony conviction, his tenth misdemeanor. The Court had  
7 the opportunity to see the photos in this case. The level  
8 of injuries experienced by the victim was extremely severe.  
9 The defendant was obviously on probation at the time of  
10 this incident. Had been ordered to live at a particular  
11 residence. He had been living with the victim for  
12 approximately three weeks.

13 I don't think the Court can place the defendant on  
14 probation particularly in light of the fact his other  
15 sentences were imposed. But given the level of violence  
16 and his criminal history, I think that sentence is  
17 appropriate.

18 Your Honor, we have restitution that we're  
19 requesting for Crime Victim's Compensation in the amount of  
20 \$1,590.59. If I may approach with that, Your Honor?

21 COURT: Sure.

22 MS. MORRISON: We would ask the Court to extend the  
23 no-contact order with the victim for the term of the  
24 defendant's sentence. I'd submit on any other terms, Your  
25 Honor.