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State v. Guilford Respondent's Brief Dckt. 45059

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45059
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2016-8353
)	
AARON ZACHARY GUILFORD,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Guilford failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with three years fixed, upon the jury's verdict finding him guilty of lewd conduct with a minor under sixteen?

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

A jury found Guilford guilty of lewd conduct with a minor under sixteen and the district

court imposed a unified sentence of 10 years, with three years fixed. (R., Vol. II, pp.1, 14-16.¹) Guilford filed a timely notice of appeal. (R., Vol. II, pp.17-22.)

Guilford asserts his sentence is excessive in light of his status as a first-time felon, desire for treatment, support from family, and purported remorse. (Appellant’s brief, pp.3-6.) 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,

¹ The electronic Clerk’s Record is separated into two files labeled #1 and #2. For ease of reference, the state will refer to those files, respectively, as “R., Vol. I” and “R., Vol. II.”

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 sentence for lewd conduct with a minor under sixteen is fixed life imprisonment. I.C. § 18-1508. The district court imposed a unified sentence of 10 years, with three years fixed, which falls well within the statutory guidelines. (R., pp.14-16.) Guilford’s sentence is also appropriate in light of his failure to accept full responsibility for his crime and the risk he poses to the community.

In May of 2016, Guilford led a 14-year-old boy to a secluded place in a park and, while giving him a massage, touched his genitals. (PSI, pp.3, 28.) Instead of expressing remorse for the victim, Guilford stated that he felt “horrible, I shouldn’t of Put myself in The position in The First place.” (PSI, p.3 (verbatim).) Guilford also contradicted himself when he stated in his version of events that he “purposely touched” the victim’s genitals, but later told the psychosexual evaluator that he “accidental[ly]” “grazed [the victim’s] penis” while he was giving him a massage. (PSI, pp.3, 29.) Despite having previously been told by the victim’s brother to have no contact with the victim, Guilford sought out the victim, went to a skate park with him, and began to text and skype with him. (PSI, pp.28-29.) Guilford also told his victim not to tell his parents about their contacts. (2/24/17 Tr., p.65, Ls. 7-11.)

In fashioning an appropriate sentence, the district court found that the most concerning thing about the circumstances of the offense was the grooming behavior Guilford exhibited (2/24/17 Tr., p.64, Ls.14-20), noting, “That – there’s a level of sophistication there with what you’re doing that really concerns the court. There’s a level of planning and implementation that I find very, very disturbing” (2/24/17 Tr., p.65, Ls.16-19). Guilford’s status as a first-time felon,

his desire for treatment, and has family support do not outweigh the seriousness of the offense and the danger Guilford poses to the community.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Guilford's sentence. The state submits that Guilford 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. (2/24/17 Tr., p.58, L.12 – p.66, L.8 (Appendix A).)

Conclusion

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

DATED this 29th day of December, 2017.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of December, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
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

APPENDIX A

1 having my pastor help me, my family support me. I would
2 have much more success with being on a probationary
3 period with my family supporting me, my friends
4 supporting me, and my church. I'm just -- I'm asking
5 for a second chance to prove myself, that I'm more than
6 willing to do so if I'm given the chance.

7 Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Guilford.

9 I'm going to take a short break and I'll come
10 back and announce sentence when I return.

11 (Recess taken.)

12 THE COURT: Thank you. Please be seated.

13 Before the court for sentencing is
14 Aaron Guilford. The jury found Mr. Guilford guilty of
15 lewd conduct with a minor after a trial last November, I
16 believe it was, and we are here for sentencing today.

17 I've considered the matters that were
18 presented, including the presentence investigation, the
19 psychosexual evaluation without a polygraph, the letters
20 that were provided, testimony from individuals who gave
21 statements, the arguments of counsel, and, of course,
22 Mr. Guilford's statement as well. These are difficult
23 cases.

24 Mr. Guilford, you come before the court in a
25 position that is very much different from many of the

1 ladies and gentlemen who joined you in the jury box this
2 morning. You come with no history whatsoever from a
3 criminal standpoint. You are a very young man, 24 years
4 old. Is that right?

5 THE DEFENDANT: (Nods head.)

6 THE COURT: But many people who come before the
7 court who are even younger than you come with sometimes
8 a fairly extensive history. This is not only your first
9 incarceration, it's your first arrest I would imagine,
10 the first charge that you've ever had. That is somewhat
11 unusual. It is certainly something that I take into
12 account.

13 As your attorney indicated, there's really no
14 substance history here. There's nothing that we're
15 dealing with. Your circumstances, I think, are somewhat
16 unique to the type of crime that was committed.

17 There are lots of things that the court takes
18 into account. I mentioned listening to the statements
19 of the individuals, to arguments of counsel, to reading
20 these reports. I don't know if you have been in court
21 before, Mr. Guilford, when I have sentenced other people
22 and talked about sentencing factors.

23 THE DEFENDANT: (Shakes head.)

24 THE COURT: No? That's right. I tried this
25 case in place of Judge Christensen, so we hadn't met

1 before trial --

2 THE WITNESS: No.

3 THE COURT: -- and so this is probably the
4 second time that we've met all together. That's right.

5 Well, in terms of sentencing, there are factors
6 that the court takes very seriously, and I believe your
7 attorney probably mentioned all of those factors.

8 One of the factors is public safety, and that
9 is the primary factor that we consider when it comes to
10 sentencing. Are you someone who can be safely
11 supervised in the community? And, of course, we look at
12 all kinds of things, including your history. I mean
13 that's why we have a presentence investigation. We look
14 at the circumstances of the crime and the information
15 that surrounds that.

16 And, as you can imagine, public safety in a
17 case like this is very important to the court. There is
18 a victim, unlike, say, kind of a run-of-the-mill
19 possession of controlled substance case where the victim
20 truly is the person who is using the drug. In this
21 case, we have someone who was violated by your conduct,
22 and violated in a way that is very serious indeed.

23 This person was a very young, impressionable,
24 vulnerable individual, as are boys of his age. I'm sure
25 you're not so old that you don't recall being a

1 14-year-old yourself and how weird it is to get to that
2 point when you have reached adolescence, you've grown
3 6 inches in the last six months, you're not a child but
4 you know you're not a man, and you're just in that weird
5 in-between phase. Hormones are raging, you're angry,
6 other things are going on, and it's just a really
7 strange and unsettling time.

8 And then here you are. You're 24 years old, 23
9 last May, if my math is correct, and you are a man in
10 the eyes of the law. Granted, you are perhaps an
11 immature man, as many men your age are, as many women
12 your age are. But you are, nevertheless, a man. And
13 there is a big age difference between you and young
14 Kiernan. You've grown up a lot in the 9 or 10 years'
15 difference in age that you have over Kiernan. You are a
16 man, and you are a man in his eyes. And you are someone
17 who befriended him, and you victimized him.

18 You tell me that you've taken ownership of
19 that. The PSI indicates that you stated that what you
20 did was purposeful. That's the only time I've heard
21 that. Every other time you've said, "well, I used bad
22 judgment," or "I didn't mean to," or "It only happened
23 once. It was an accident. It was just a grazing,"
24 things like that.

25 But I don't really think you have taken

1 responsibility. I hear you are homosexual but you're
2 not interested in young boys and yet you're with a young
3 boy. I hear all kinds of things that don't really ring
4 true, all kinds of things that don't really ring true
5 today. I think you're trying to perhaps convince
6 yourself, convince your family that things are different
7 from what they are. I suspect that you're in denial of
8 some things that you really do need to face.

9 But in any event, getting back to the factors,
10 that public safety factor is of utmost important to the
11 court, and keep that in mind and understand that.

12 Ms. Howe talked about deterrents. When we deal
13 with deterrents, we're looking at deterrents in a couple
14 different ways. What consequences that the court
15 imposes will deter you from future similar conduct?
16 That's one thing that we're looking at. But we also
17 look at what consequences will deter others who may be
18 looking at your case. So there's both that specific and
19 general deterrent.

20 We consider rehabilitation. And in our modern
21 and somewhat, or at least so-called, evolved society, we
22 do believe that rehabilitation is important; recognizing
23 that if individuals who violate the law can be fixed,
24 can be treated, can learn new behaviors, can learn where
25 their behaviors were bad or they crossed boundaries, can

1 learn to have empathy for victims and things like that,
2 then perhaps, then perhaps society can be protected,
3 that person can go on to live a good productive life,
4 things can be turned around. And that's an admirable
5 goal. It's important. We spend billions of dollars in
6 attempting to rehabilitate individuals, to get them off
7 drugs, to keep them from drinking, to keep them from
8 committing new sexual offenses. It's an important and a
9 worthy goal.

10 The final factor is punishment, and while, as a
11 modern and somewhat-enlightened society, we don't focus
12 on punishment a lot of the times, there are crimes that
13 do call out for punishment, where a person needs to be
14 sanctioned for that person's conduct.

15 And then there are things that -- these aren't
16 some of the factors of sentencing, but these are some
17 things, Mr. Guilford, you will understand, if you don't
18 already, there are consequences, collateral consequences
19 for acts that you engage in.

20 For example, we know that you will have to
21 register as a sex offender for the rest of your life.
22 The Supreme Court tells us that that is not a punishment
23 but that is a collateral consequence of this conduct
24 that you engaged in.

25 You are a convicted felon at this point. The

1 jury found you guilty of a felony crime. There are
2 consequences from that.

3 As Mr. Verharen indicated when he began his
4 sentencing argument, the court's job is to determine
5 where to go with sentencing. Is probation a realistic
6 consideration for sentencing? Is a rider something that
7 the court would consider? Or is imposition of a prison
8 sentence something that would be appropriate under the
9 circumstances of this case?

10 And I have heard an awful lot this morning.
11 This sentencing, appropriately, has involved a lot of
12 testimony, a lot of argument, a lot of things for the
13 court to consider.

14 And the thing that concerns me about the
15 circumstances of this crime, more than anything else, is
16 what I would consider to be grooming behavior, whether
17 someone else has used that term before or not, whether
18 there was evidence of prior contact that you had with
19 Kiernan in years past or not. Your behavior in May of
20 last year involved some grooming behavior.

21 There is just this level of how you deal with
22 this young guy and get him from one place to another, to
23 a partially-secluded place, to taking pictures of him,
24 you know, in almost modeling-type poses, different kinds
25 of things, where you talk to him about eastern

1 philosophies, where you did that before.

2 I don't really need to hear that they're in the
3 past, in past years that there was discussion of sexual
4 topics or that there were threats that were made; but
5 your befriending him in the way that you did and just
6 carrying on with that and, you know, the discussion
7 about -- and I remember the testimony from Kiernan at
8 trial -- about telling him not to tell his parents about
9 contacts that you had with him, that doesn't just raise
10 a red flag, as happened with Kiernan and his folks a few
11 years ago; that causes just a huge concern. You need to
12 stay away from this kid, and yet you didn't, you came
13 back.

14 And as I said, even on that day last May, and
15 in days prior to that, you engaged in this grooming
16 activity. That -- there's a level of sophistication
17 there with what you're doing that really concerns the
18 court. There's a level of planning and implementation
19 that I find very, very disturbing.

20 The public safety aspect of this right now, as
21 I indicated, does rise to the forefront for me. I
22 believe that this case does call for imposition of a
23 prison sentence. I don't think it calls for a sentence
24 quite as lengthy as what Mr. Verharen asked for.

25 I do recognize that this is a first offense for

1 you. I hope that this is an only offense for you,
2 Mr. Guilford. I hope beyond hope that the argument that
3 has been presented by Ms. Howe -- I know it's very
4 sincere on her part, I don't question that -- but I hope
5 that we realize over time that it's true, that this will
6 be a lesson for you, that there won't be future
7 offenses. But in the meantime, I don't know that that's
8 the case and I am concerned about your behavior.

9 I am going to sentence you for the crime of
10 lewd conduct with a minor under 16 to a unified term of
11 10 years, to commence with a fixed term of 3 years, and
12 I am going to impose that sentence. And I will leave it
13 to the Board of Parole to determine when it feels that
14 you will be safe to be released to the community. That
15 will be the court's order.

16 Anything further from counsel?

17 MR. VERHAREN: No, judge.

18 THE COURT: All right. Thank you.

19 * * * * *