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State v. Jarrett Respondent's Brief Dckt. 45080

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. SPENCER ALEXANDER JARRETT, Defendant-Appellant.	)	NO. 45080 Canyon County Case No. CR2016-13885 RESPONDENT'S BRIEF

Issue

Has Jarrett failed to establish that the district court abused its discretion by imposing concurrent, unified sentences of 15 years, with five years fixed, for sexual abuse of a child under the age of 16, and 10 years, with five years fixed, for each of his two counts of possession of sexually exploitative material?

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

After a jury found Jarrett guilty of sexual abuse of a child under the age of 16 and two counts of possession of sexually exploitative material, the district court imposed concurrent, unified sentences of 15 years, with five years fixed, for sexual abuse of a child under the age of

16, and 10 years, with five years fixed, for each count of possession of sexually exploitative material. (R., pp.189-91.) Jarrett filed a notice of appeal timely from the judgment of conviction. (R., pp.192-95.)

Jarrett asserts his sentences are excessive in light of his age, substance abuse issues, remorse, and because "these offenses were certainly not as serious as they could have been". (Appellant's brief, pp.3-6.) The record supports the sentences 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 sexual abuse of a child under the age of 16 is 25 years in prison, and the maximum prison sentence for possession of sexually exploitative material is 15 years. I.C. § 18-1506(d)(5). The district court imposed concurrent, unified sentences of 15 years, with five years fixed, for sexual abuse of a child under the age of 16, and 10 years, with five years fixed, for each count of possession of sexually exploitative material, all of which fall well within the statutory guidelines. (R., pp.189-91.) Furthermore, Jarrett's sentences are appropriate in light of the appalling nature of the offenses and the danger he poses to society.

Even at the age of 24, Jarrett's criminal record includes three misdemeanor convictions for possession of drug paraphernalia and resisting or obstructing officers, and two felony convictions for grand theft and burglary. (PSI, pp.4-7.) Jarrett also has one juvenile adjudication for aggravated battery (amended from lewd conduct with a child under 16): When he was 12 years old, Jarrett engaged his four-year-old sister in sexual behavior that included fondling her vagina, exposing his penis, and masturbating in front of her, and this behavior lasted "on and off" for a year. (PSI, pp.4, 7, 116.) Additionally, Jarrett has a history of poor performance on probation despite many rehabilitative programs and classes. (PSI, p.7.) While Jarrett does have a substance abuse problem, he completely disregarded the treatment that he was enrolled in at the time of the offense by offering to bring ecstasy if the victim would meet and have sex with him. (PSI, pp.11, 90.) While Jarrett asserts that "these offenses were certainly not as serious as they could have been" (Appellant's brief, p.5), the offenses were still egregious: Jarrett sought out two 13-year-old girls and got them to send him pictures of their bare breasts and vagina, engaged in phone sex 10 times, masturbated while he was on the phone with them, tried to get them to

meet with him so they could do ecstasy and have sex, and told one of the victims he "wished he could come over and kidnap her, it's not like I would rape you." (PSI, pp.91, 95.) Even after having been found guilty of the instant offenses, Jarrett continued to blame his roommates for using his phone to "sext" underage girls while pretending to be him, even though he admitted to talking with one of the victims at least 20 times by phone and thinks he may have said "suggestive" or "x-rated" things during those conversations. (PSI, pp.4, 95.)

The psychosexual evaluator reported that Jarrett is a high risk to re-offend within the next five-ten years, is not amenable to treatment, and would be less likely to comply with supervision than a typical sexual offender. (PSI, pp.110-11.) The psychosexual evaluator concluded:

> The examinee was determined to be less likely to comply with supervision than the typical sexual offender, based on the denial of his sexual offense, number and severity of static risk variables, number and severity of dynamic risk variables, antisocial attitude, concern regarding his capacity to maintain sobriety, limited protective variables, and what appeared to be overall resistance to being held accountable for his behavior.

(PSI, p.150.) The presentence investigator's assessment also aligned with the psychosexual evaluator as it stated that Jarrett posed a significant threat to minor children and that Jarrett had little regard for supervision. (PSI, p.14.) Jarrett's sentences are appropriate in light of his high risk to sexually reoffend, the seriousness of the offenses, and Jarrett's ongoing deception and attempts to avoid responsibility.

At sentencing, the state addressed the harm done to the victims, Jarrett's high risk to sexually reoffend, his continued dishonesty, his lack of amenability for sex offender treatment, his failure to rehabilitate in the community, and the need for the community to be protected. (4/18/17 Tr., p.3, L.20 – p.7, L.24.) The district court agreed and stated, "Mr. Jarrett, the conduct that went on in this case could have been much worse, yes, but it also is pretty offensive to the

court, and it's offensive to society." (4/18/17 Tr., p.11, Ls.6-9.) Given any reasonable view of the facts, Jarrett has failed to establish that the district court abused its discretion.

Conclusion

The state respectfully requests this Court to affirm Jarrett's convictions and sentences.

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.

__/s/_ Lori A. Fleming_____
LORI A. FLEMING
Deputy Attorney General