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State v. Dalton Respondent's Brief Dckt. 45379

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45379
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-01-2017-17946
)	
TERRY RAY DALTON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Dalton failed to establish that the district court abused its discretion, either by imposing a unified sentence of three years, with one and one-half years fixed, upon his guilty plea to battery against a health care worker, or by denying his Rule 35 motion for a reduction of sentence?

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

Dalton pled guilty to battery against a health care worker and the district court imposed a unified sentence of three years, with one and one-half years fixed. (R., pp.40-43.) Dalton filed a notice of appeal timely from the judgment of conviction. (R., pp.44-46.) He also filed a timely

Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.49-53, 54-56.)

Dalton asserts that the district court abused its discretion by imposing an excessive sentence in light of his substance abuse issues, desire for community-based treatment, acceptance of responsibility, and Dalton's claim that the district court's sentencing decision "may have been influenced by [then] current events." (Appellant's brief, pp.3-7.) Dalton 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 battery against a health care worker is three years. I.C. § 18-915C. The district court imposed a unified sentence of three years, with one and one-half years fixed, which falls within the statutory guidelines. (R., pp.40-43.) Dalton’s sentence is also appropriate in light of his extensive criminal history and his failure to rehabilitate while in the community.

Dalton’s criminal history demonstrates his disregard for the law, the terms of community supervision, and the well-being of others. Dalton’s criminal record dates back to the 1980’s and includes three prior felony convictions, over 25 misdemeanor convictions, and dozens of additional charges. (PSI, pp.6-17.) Most of Dalton’s convictions are for alcohol related or violent offenses. (PSI, pp.6-17.) He has been afforded multiple opportunities on probation, has served jail time, and has been sentenced to prison for his crimes, but he has failed to rehabilitate or be deterred by prior legal sanctions. (PSI, pp.6-17.)

Dalton’s assertions that the district court’s sentencing decision may have been influenced by the events that occurred at a white supremacist rally at the University of Virginia the weekend before Dalton was sentenced are unfounded. (See Appellant’s brief, pp.4-5.) Although the district court noted it was “ironic” that Dalton – who outwardly expressed hatred toward the health care worker he battered based on the health care worker’s race (see PSI, p.4) – was being sentenced in close proximity to the racially-motivated events that had occurred “in the south” (Tr., p.38, Ls.1-12), the court explicitly stated it was sentencing Dalton, not “for what is in his heart,” but “for his actions” (Tr., p.38, Ls.12-17). As found by the district court those “actions

[were] to get drunk again, and then lash out at the very people trying to help him.” (Tr., p.38, Ls.16-17.) Also as found by the district court those actions are entirely, and unfortunately, consistent with Dalton’s prior history: “The charge and charges that he has faced for these kinds of actions goes on and on and on and on and on and on multiple felony convictions and a – it’s just frankly too many to calculate the number of misdemeanors that he’s either been charged with or convicted of for this kind of drunk and disorderly and violent conduct.” (Tr., p.38, L.21 – p.39, L.2.) Dalton’s purported remorse, acceptance of responsibility and desire for treatment do not outweigh the seriousness of the offense or Dalton’s continued violent criminal offending.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Dalton’s sentence. (Tr., p.37, L.12 – p.40, L.17.) The district court concluded,

Our healthcare workers in the ERs work hard hours trying to help people, trying to save lives, and I think as was recognized by the victim in this case that sometimes this is the price of their work, which is to be subject to being belittled, to hatred and to violence, but it shouldn’t be. And that’s why the legislature has deemed fit to make this crime a felony.

(Tr., p.39, Ls.17-24.) The state submits that Dalton has failed to establish that his sentence is excessive 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.)

Dalton next asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence because he apologized to the victim and wants to get into a treatment program sooner. (Appellant’s brief, pp.8-9.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Dalton must “show that the sentence

is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Dalton has failed to satisfy his burden.

Dalton’s complaint that he wants to start his treatment program sooner and his reiteration that he apologized to the victim is not new information that entitles him to a reduction of sentence. The district court was aware, at the time of sentencing, of Dalton’s desire to participate in the River of Life treatment program. (R., pp.54-56.) The district court stated, “While the Court applauds the Defendant’s acceptance in the program and his willingness to address his chronic alcohol problem, this is not new or additional information which would render his sentence excessive under ICR 35.” (R., p.55.) Dalton has not shown that he was entitled to a reduction of sentence simply because he apologized to the victim and wanted to start treatment sooner. Given any reasonable view of the facts, Dalton has failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence.

Conclusion

The state respectfully requests this Court to affirm Dalton’s conviction and sentence and the district court’s order denying Dalton’s Rule 35 motion for a reduction of sentence.

DATED this 31st 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 31st day of January, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED
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

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1 Vodka, I go on a binge, I don't know, I black out, I
2 don't even remember until I wake up in jail. And I'm
3 tired of it. I truly am tired of it, your Honor. I'm
4 ashamed of it.

5 I don't know what to say Mr. Hippler, I
6 truly need help and I wish you would give me this
7 chance. I have -- this is a great chance. The man
8 wrote me and gave me a chance. I really want to take
9 it. I can do this.

10 THE COURT: Okay. Thank you.

11 THE DEFENDANT: Thank you.

12 THE COURT: Mr. Dalton, on your plea of guilty I
13 find you guilty. In an exercise of my discretion in
14 sentencing, I've considered the Toohill factors,
15 including the nature of the offense and the character of
16 the offender, as well as the information in mitigation
17 and in aggravation. In determining an appropriate
18 sentence, I'm mindful of the objectives of protecting
19 society, achieving deterrence, the potential for
20 rehabilitation and the need for retribution or
21 punishment.

22 I have reviewed and considered carefully
23 the PSI materials, I've considered the arguments and
24 recommendations of counsel, and the statement the
25 defendant made today.

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1 It is, I suppose, ironic, nonetheless
2 worth noting the defendant is here to be sentenced today
3 for his actions that expressed a degree of hate and
4 malignancy of thought directed towards a person simply
5 because of the color of their skin, and I recognize
6 Mr. Dalton says that he doesn't remember doing this and
7 he does not think I way.

8 I say it's ironic, because of course what
9 happened, unfortunately, this weekend where hate and
10 bigotry and that kind of thought resulted in terrorist
11 action killing at least one person and injuring many
12 others in the south. But Mr. Dalton is not here for
13 what is in his heart and only he knows what is in his
14 heart. I'm not here to sentence him for what is in his
15 heart, I'm here to sentence him for his actions.

16 His actions are to get drunk again, and
17 then lash out at the very people trying to help him.
18 And I say "again" because he, as indicated here, has a
19 long history of drinking and then disorderly conduct
20 after drinking. He is a terrible drunk, he is a mean
21 drunk, and he is a violent drunk. The charge and
22 charges that he has faced for these kinds of actions
23 goes on and on and on and on and on and on multiple
24 felony convictions and a -- it's just frankly to o many
25 to calculate the number of misdemeanors that he's either

39

1 been charged with or convicted of for this kind of drunk
2 and disorderly and violent conduct.

3 And the defendant stands before the court
4 today and asks for one more chance. I can't help but
5 think he's asked for one more chance each time
6 previously. That's not to say that in his heart he
7 truly doesn't want one more chance and doesn't have
8 faith in himself that given one more chance that he
9 might be able to this time maintain sobriety. Maybe he
10 would be able to, I don't know, but what I do know by
11 his history is that it's not a very high likelihood.

12 THE DEFENDANT: I never had a chance, never had
13 a alcohol treatment program, your Honor, I haven't.

14 THE COURT: The defendant's behavior and conduct
15 certainly should have caused him to seek treatment and
16 help, there's no doubt about that. These many times and
17 these many places throughout the country. Our healthcare
18 workers in the ERs work hard hours trying to help people,
19 trying to save lives, and I think as was recognized by
20 the victim in this case that sometimes this is the price
21 of their work, which is to be subject to being belittled,
22 to hatred and to violence, but it shouldn't be. And
23 that's why the legislature has deemed fit to make this
24 crime a felony.

25 I know the defendant wants help and

40

1 regardless of what happens today, I hope that he seeks
2 help. But I'm going to sentence the defendant to the
3 custody of the Idaho State Board of Corrections under
4 the Unified Sentencing Laws of the State of Idaho for a
5 term of three years. The court specifies a minimum
6 period of confinement of one-and-a-half-years, fixed
7 followed by a subsequent indeterminate period of
8 one-and-a-half years.

9 Frankly, I considered doing a three-years
10 fixed in this case because your history is that bad, but
11 I want you to have some incentive to get that treatment
12 that you're talking about. The program you asked to be
13 part of is a good program and I suspect they will be
14 there for you when you get out, but you need to
15 understand that that kind of conduct simply will not be
16 tolerated any longer and there is a price to be paid for
17 it.

18 So I'm going to impose that sentence, and
19 I'm going to remand you to the custody of the sheriff of
20 the county to be delivered to the proper agent of the
21 state board of correction in execution of the sentence.
22 Any bail is exonerated. I'm going to order that you
23 provide a DNA sample and right thumbprint impression.
24 I'm going to order that you comply with the DNA Database
25 Act in that regard. I'll order that you pay court cost,