8-3-2017

State v. Barrett Respondent's Brief Dckt. 43947

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43947**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2015-8160**
JASON ROY BARRETT,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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STATEMENT OF THE CASE

Nature Of The Case

Jason Roy Barrett appeals from the judgment entered upon his conviction for possession of methamphetamine with intent to deliver. He challenges the amount of credit for time served found by the district court and asserts his sentence of 10 years with three and one-half years determinate is an abuse of discretion.

Statement Of The Facts And Course Of The Proceedings

Barrett was arrested on a warrant for a parole violation related to a prior conviction. (Tr., p. 21, Ls. 3-6.) When arrested he was in possession of two baggies, one containing marijuana and the other containing "13.66 grams of methamphetamine" divided and packaged for sale. (Tr., p. 21, Ls. 12-17.)

The state filed a criminal complaint charging Barrett with possession of methamphetamine with intent to deliver, possession of marijuana, possession of drug paraphernalia, and resisting and obstructing an officer. (R., pp. 5-7.) Upon a finding of probable cause, the court issued a warrant for his arrest. (R., p. 8.) Barrett was transported from the penitentiary for his initial appearance in court in this case on September 9, 2015, at which time he was served with the arrest warrant. (R., pp. 9-10, 21-26.)

The state charged Barrett by information with the felony and three misdemeanors listed in the complaint. (R., pp. 62-63.) He pled guilty to possession of methamphetamine with intent to deliver and the state dismissed the misdemeanor charges. (R., pp. 72-80; Tr., p. 5, L. 21 – p. 7, L. 13.) The

district court imposed a sentence of 10 years with three and one-half years determinate, concurrent with the prior sentence. (R., pp. 87-90; Tr., p. 39, Ls. 19-25.)

On the issue of credit for time served, the state contended Barrett was entitled to credit for time served from the date he was arrested on the warrant in this case, on September 9. (Tr., p. 39, Ls. 5-16; p. 41, L. 1 – p. 43, L. 2.) Barrett requested credit from July 24 because, "[e]ven though the official warrant was not served on him, there was actually notice to him that he's going to be held from that date." (Tr., p. 40, Ls. 12-19; Defendant's Exhibit 1.) The district court found that the arrest warrant issued on June 8, 2015, was received by the Ada County Sheriff's Office on June 9, and served on September 9. (Tr., p. 43, Ls. 14-19.) It awarded credit from the September 9 arrest date. (Tr., p. 43, L. 24 – p. 44, L. 2; R., pp. 87-90.) Barrett filed a timely notice of appeal. (R., pp. 96-97.)

Barrett filed a *pro se* motion requesting reconsideration of the district court's ruling on the credit for time served. (Aug., pp. 1-8.) The district court denied the motion, finding Barrett was not incarcerated on the instant offense until he was served with the warrant. (Aug., pp. 9-10.) Prior to service of the arrest warrant in this case, Barrett "was in custody for a probation [sic] violation." (Aug., p. 10.)

ISSUES

Barrett states the issues on appeal as:

> I. Did the district court err when it denied Mr. Barrett's motion for credit for time served?
>
> II. Did the district court abuse its discretion when it imposed upon Mr. Barrett, a unified sentence of ten years, with three and one-half years fixed, following his plea of guilty to possession of a controlled substance with intent to deliver?

(Appellant's brief, p. 4 (commas original).)

The state rephrases the issues as:

1. Has Barrett failed to show he was incarcerated for the possession with intent to deliver charge prior to his arrest on that charge?

2. Has Barrett failed to show an abuse of discretion in his sentence of 10 years with three and one-half years determinate for his conviction for possession of methamphetamine with intent to deliver?

ARGUMENT

I.
Barrett Has Failed To Show He Was Incarcerated For The Possession With Intent To Deliver Charge Prior To His Arrest On That Charge

A. Introduction

The district court granted Barrett credit for time served from his arrest on the possession with intent charge. (Tr., p. 43, L. 24 – p. 44, L. 2; R., pp. 87-90.) Barrett argues on appeal that he was entitled to credit for time served starting 45 days before his arrest, when the Ada County Sheriff's office notified IDOC and Barrett of the existence of the charge. (Appellant's brief, pp. 5-10.) Barrett's argument that he was incarcerated for the offense of possession with intent prior to his arrest for that offense is without merit.

B. Standard Of Review

"The interpretation of a statute is a question of law over which this Court exercises free review." Simono v. House, 160 Idaho 788, 791, 379 P.3d 1058, 1061 (2016) (internal quotations omitted).

C. Barrett Has Failed To Show He Was Incarcerated For Possession With Intent To Deliver Prior To His Arrest For That Offense

"Statutory interpretation begins with the statute's plain language. That language is to be given its plain, obvious and rational meaning. If that language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." State v. Flores, 162 Idaho 298, ___, 396 P.3d 1180, 1183 (2017) (internal quotations and citations omitted). Barrett was entitled to credit for time served for pre-judgment incarceration "if such

incarceration was for the offense or an included offense for which the judgment was entered." I.C. § 18-309(1). This plain language "applies to all offenses that provide a basis for the defendant's incarceration." State v. Brand, 162 Idaho 189, ___, 395 P.3d 809, 812 (2017). Whether the offense provides a basis for the defendant's incarceration is determined by application of a two-part test:

> first, the defendant must have been incarcerated during the intervening period **from when the arrest warrant was served and the judgment of conviction was entered**; and second, putting aside any alternative reason for the defendant's incarceration, **the relevant offense must be one that provides a basis for the defendant's incarceration**.

Id. at ___, 395 P.3d at 812-13 (bolding added). Barrett's incarceration prior to service of the arrest warrant in this case does not meet this test. Barrett was not incarcerated for the possession with intent to deliver offense until his arrest on the warrant issued in relation to that offense.

Indeed, this case is indistinguishable from "Scenario 1" as laid out in Brand:

> Defendant is already in custody on unrelated charges. He is served with an arrest warrant which requires defendant to post bail. Defendant does not post bail and remains in custody until sentencing. Defendant is entitled to credit from the date of service of the warrant through the date of sentencing.

Id. at ___, 395 P.3d at 813. The district court found that Barrett was arrested on an unrelated parole violation, and the current offense arose out of the discovery of methamphetamine on his person incident to that arrest. (Tr., p. 21, Ls. 3-17.) Barrett was therefore in custody on "unrelated charges," the parole violation. He was not served with the arrest warrant in this case until September 9. (Tr., p. 43, Ls. 14-19.) Barrett was therefore "entitled to credit from the date of service of the

warrant through the date of sentencing," Brand, 162 Idaho at ___, 395 P.3d at 813, which is exactly what he was awarded by the district court (Tr., p. 43, L. 24 – p. 44, L. 2; R., pp. 87-90).

Barrett "asserts that as soon as the Hold Notice Request [Defendant's Exhibit 1] was served, he was also incarcerated for the offense at hand." (Appellant's brief, p. 9.) He cites no law for the proposition that he is entitled to credit for time prior to his arrest or that service of the "Hold Notice Request" constituted a legal arrest. (Appellant's brief, pp. 9-10.) Indeed, as acknowledged by Barrett's own counsel below, the "Hold Notice Request" only provided "notice to him that he's going to be held from that date." (Tr., p. 40, Ls. 12-19.) Putting Barrett and IDOC on notice of the intent to arrest Barrett prior to his release on the other matter did not render his incarceration for his prior conviction also "for the offense" in this case.

The plain language of the statute supports the district court's ruling that Barrett was not entitled to credit for time served prior to his arrest in this case. Barrett has failed to show error.

II.
Barrett Has Failed To Show An Abuse Of Discretion In His Sentence Of 10 Years With Three And One-Half Years Determinate For His Conviction For Possession Of Methamphetamine With Intent To Deliver

A. Introduction

The district court imposed a sentence of 10 years with three and one-half years determinate, concurrent with the prior sentence. (Tr., p. 39, Ls. 19-25.) Barrett argues the district court "failed to give proper weight and consideration to

the mitigating factors that exist in this case." (Appellant's brief, p. 11.) The factors Barrett claims are mitigating and not given "proper weight" are Barrett's "admitted substance abuse problem and desire for treatment" (Appellant's brief, p. 11); his prior diagnosis of depression and possible personality disorders (Appellant's brief, p. 12); the ongoing support of his mother and a friend (Appellant's brief, pp. 12-13); and his expressions of remorse (Appellant's brief, p. 13). Barrett's belief that the evidence should have been weighed differently does not carry his burden of showing an abuse of discretion.

B. Standard Of Review

"We review the length of a sentence under an abuse of discretion standard." State v. Dabney, 159 Idaho 790, ___, 367 P.3d 185, 189 (2016) (quoting State v. Al-Kotrani, 141 Idaho 66, 70, 106 P.3d 392, 396 (2005)).

> When considering whether the district court abused its sentencing discretion, we review the entire sentence, but we presume that the defendant's term of confinement will probably be the fixed portion of the sentence, because whether or not the defendant's incarceration extends beyond the fixed portion of the sentence will be within the sole discretion of the parole board.

State v. Bailey, 161 Idaho 887, ___, 392 P.3d 1228, 1236 (2017).

C. The District Court Did Not Abuse Its Sentencing Discretion

"A sentence is reasonable if at the time of imposition it appears necessary to achieve the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to the given case." State v. Hansen, 156 Idaho 169, 176, 321 P.3d 719, 726 (2014) (internal quotations omitted). "'A sentence need not serve all sentencing goals; one may

be sufficient.'" State v. Struhs, 158 Idaho 262, 268, 346 P.3d 279, 285 (2015) (quoting State v. Sheahan, 139 Idaho 267, 285, 77 P.3d 956, 974 (2003)). "To show an abuse of discretion, the defendant must show that in light of the governing criteria, the sentence was excessive, considering any view of the facts." State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016).

Possession of methamphetamine with intent to deliver is punishable by up to life in prison. I.C. § 37-2732(a)(1)(A). In imposing the sentence of 10 years with three and one-half years determinate the district court specifically considered the applicable legal standard, the sentencing materials, and the arguments presented. (Tr., p. 34, Ls. 5-9.) The district court found, based on Barrett's history of "incarcerations and probation violations and programming" that there was no "significant rehabilitative potential left" and that Barrett was "a danger to the community." (Tr., p. 34, L. 22 – p. 35, L. 4; p. 38, Ls. 3-23.) Although Barrett argues that the district court should have given more weight to his substance abuse, asserted desire for treatment, mental health, the support of his family and a friend, and his expression of remorse (Appellant's brief, pp. 10-13), his argument fails to demonstrate error in the finding or application of the factors of community protection or rehabilitation.

The district court also concluded that fixing more than two and one-half years—the amount of time left on the previously imposed sentence—was required to give the sentence "punitive potential." (Tr., p. 35, Ls. 10-18.) Barrett does not challenge the district court's application of the sentencing goal of retribution.

Barrett has a juvenile record stretching back to 1987 and an adult conviction record that started in 1990, and includes five independent, prior felony convictions. (PSI, pp. 6-16.) His convictions are for crimes of violence, theft, and drugs. (Id.) Barrett had been in prison, on probation or on parole 19 of the previous 25 years. (PSI, pp. 16-17.) He committed the current felony while on parole. (Tr., p. 21, Ls. 3-17.) Even if the matters Barrett claims are mitigating are given all reasonable weight, he has not shown an abuse of discretion.

The district court applied the correct legal standards, considered all the evidence and arguments presented, and imposed a sentence that meets the goals of sentencing, particularly community protection. Barrett's argument that the district court should have weighed the factors differently, and more in his favor, does not show an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court's judgment.

DATED this 3rd day of August, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of August, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ELIZABETH A. ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

__/s/ Kenneth K. Jorgensen_____
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KKJ/dd