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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45219
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2017-4714
)	
RUSTIN WILLIAM BANGHAM,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Bangham failed to establish that the district court abused its discretion, either by imposing a unified sentence of 10 years, with five years fixed, upon his guilty plea to felony domestic violence, or by denying his Rule 35 motion for a reduction of sentence?

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

Bangham pled guilty to felony domestic violence and the district court imposed a unified sentence of 10 years, with five years fixed. (R., pp.68-71.) Bangham filed a notice of appeal timely from the judgment of conviction. (R., pp.65-67.) He also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.72, 95-97.)

Bangham asserts that the district court abused its discretion by imposing an excessive sentence in light of his substance abuse, desire for treatment, life circumstances, mental illness, and purported acceptance of responsibility. (Appellant’s brief, pp.4-11.) Bangham 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 felony domestic violence 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.68-71.) Bangham's sentence is not excessive in light of his violent criminal history and failure to be deterred.

Bangham's criminal record demonstrates his disregard for the law and the well-being of others. Bangham has a decades-long criminal record that includes at least six prior felony convictions, and two misdemeanor convictions. (PSI, pp.6-9.) Some of Bangham's prior felony convictions include burglary, kidnapping, robbery, and assault with a firearm on a police officer. (PSI, pp.7-9.) Bangham's misdemeanor convictions were for threatening a crime with intent to terrorize and domestic battery. (PSI, pp.8-9.) Bangham has also been charged with numerous additional offenses, including theft, assault, criminal mischief, burglary, take vehicle without owner's consent, battery by prisoner, attempt to prevent victim report, aggravated battery, attempted strangulation, and multiple counts of domestic violence. (PSI, pp.6-9.) Bangham's violent tendencies towards those he knows, and even complete strangers, make him a danger to the community. Bangham asserts that his mental health issues have contributed to his criminal behavior, but he claimed no "need to be on medication" for his mental health issues "while in the community." (PSI, p.18.) Also, the domestic violence evaluator reported that Bangham tried to condone and minimize his behavior, did not express remorse, scored high on all testing instruments, and "appear[ed] to be moderately ready for treatment. However, minimization and lack of follow through in the past do not support that he will complete treatment." (PSI, pp.63-67.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Bangham's sentence. (6/12/17 Tr., p.39, L.2

– p.43, L.15.) The state submits that Bangham 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.)

Bangham next asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence because he submitted additional letters of support and his own letter asserting his need for treatment. (Appellant’s brief, pp.11-12.) 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, Bangham 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. Bangham has failed to satisfy his burden.

The fact that Bangham had support of friends and family, and desired treatment was before the district court at the time of sentencing and, as such, it was not new information that entitled Bangham to a reduction of sentence. (PSI, pp.18-19, 71-75.) Furthermore, these letters do not outweigh the seriousness of the offense, the danger Bangham presents to the community, and his failure to be deterred. In its order denying Bangham’s Rule 35 motion, the district court stated:

This Court applauds Defendant’s recognition of his need for programming and his desire for self-improvement. Further, this Court appreciates that Defendant is viewed by others as a kind hearted individual. However, this is not new or additional information which renders the sentence imposed excessive.

(R., p.96.) Bangham has not shown that he was entitled to a reduction of sentence simply because he has support and desires treatment. Given any reasonable view of the facts, Bangham

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 Bangham's conviction and sentence and the district court's order denying Bangham's Rule 35 motion for a reduction of sentence.

DATED this 5th day of February, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of February, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

LARA E. 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

APPENDIX A

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1 some point in time in the future to have that family
2 that he wants that he never got to have, but he needs to
3 have the skills in order to make that happen.
4 So I ask for the court to consider the
5 Rider program. Thank you.
6 THE COURT: Thank you. Mr. Bangham to you wish
7 to address the court?
8 THE DEFENDANT: I do, your Honor.
9 I would like to apologize. I would like
10 to apologize to the court and I would like to apologize
11 to Ms. Paul. She didn't deserve the things that
12 happened. I was very much in love with Ms. Paul and my
13 family. She's a strong woman, a tough woman, and I
14 liked that about her. She's in-your-face kind of woman,
15 and I liked that about her. But what I don't like is I
16 don't know how to deal with it. As my attorney said,
17 there's no excuse.
18 But I did spend more than 20 years in some
19 pretty rough places in California, and I didn't know how
20 to deal with my anger. I'm a good man. I work hard. I
21 tried to save my family and I didn't know how. And I
22 truly do apologize to Ms. Paul and the kids. I tried to
23 be a loving father and a good man, and I just can't
24 figure it out.
25 I'm in here on medication and it seems to

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1 help. Out there I don't take it, and I don't understand
2 why. I know I need treatment, I know I need help. I'm
3 a good man, I'm an educated man, I'm a smart man, I'm
4 determined. I tried to be completely honest in my PSI,
5 probably somewhat to my detriment. I tried to follow
6 the rules of my probation when I was out there. It does
7 say I missed four testings, but it's when I had my
8 surgery and I was in touch with them.
9 But I do ask the court, I put my -- you
10 did tell me that you weren't bound to the deal, so I put
11 myself at your mercy. I can do prison time. You know,
12 I need help, it's hard to get it. People don't
13 understand when you go through what I went through, not
14 for any sympathy, but reality, it was a rough place.
15 And I came out here and they were just like "here," and
16 I didn't know what to do. I thought I did. And
17 sometimes I didn't back down and I should have backed
18 down. I'm the man and I should have backed down.
19 And I apologize to my mom, who is here,
20 for putting her through what I've been through and put
21 her through. I apologize and I thank you for your time,
22 and I ask you for your help. I'll do whatever you
23 require of me. If I have to go to prison, I'll do it.
24 The Rider I'll do it 110 percent. Whatever you ask of
25 me, I will do, I just ask for that opportunity. I do

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1 pretty good under structure. I thank you for your time.
2 THE COURT: All right. Thank you.
3 Mr. Bangham, on your plea of guilty I find
4 you guilty. In an exercise of my discretion in
5 sentencing, I have considered the Toohill factors,
6 including the nature of the offense and the character of
7 the offender, as well as the information in mitigation
8 and in aggravation. In determining an appropriate
9 sentence, I do so mindful of the objectives of
10 protecting society, first and foremost; also achieving
11 deterrence, specific and general; the need and potential
12 for rehabilitation, as well as the need for retribution
13 or punishment.
14 I have considered and reviewed the PSI
15 materials, including the domestic violence evaluation.
16 I've considered the arguments and recommendations of
17 counsel. I've considered the statement of the victim
18 today. I've considered the defendant's statement today,
19 as well.
20 This is -- this case is a tragic one.
21 There are no winners in this case, there are only people
22 whose lives have been impacted in a hurtful way. I'm
23 cognizant of the fact the defendant's upbringing was --
24 difficult would be an understatement, it was terrible.
25 He, at least if the information in the PSI is true,

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1 suffered significant abuse growing up and that is
2 unfortunate and it is sad.
3 I think Ms. Jones' analogy to the dog who
4 is beaten and becomes aggressive is probably apt.
5 However, at the end of the day it may be there is some
6 mitigation value to it, it does not, however, excuse or
7 justify the behavior. I grapple with and have a hard
8 time understanding -- I understand the clinical reasons
9 people commit domestic violence against people they
10 love. I understand the academics of it and the
11 psychological part of it. I don't understand it,
12 though, from just a real-life human perspective how
13 somebody can love somebody and yet treat them in a way
14 that is not just emotionally abusive or controlling or
15 belittling, but is physical torture, frankly. Those two
16 things are just so incongruent that it's difficult to
17 understand from just a sort of intellectual basis.
18 The case that was dismissed is troubling,
19 frankly, the information being that the defendant was
20 pulling the victim by the hair and others intervened. I
21 understand why they intervened, if that's the case.
22 Again, it's the dismissed case but it is aggravating
23 information that this occurred and that this fight
24 occurred and the problem being what precipitate it.
25 This event for which the defendant did

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1 plead guilty is also troubling. This victim is
2 strangled in her own closet and made to fear for her
3 life, and I hope that she recovers from the trauma
4 inflicted on her. I'm fearful she will always carry
5 part of that with her, but I'm hopeful that she can
6 recover and hopeful that she can trust again somebody in
7 a relationship. I'm hopeful she finds somebody who will
8 treat her with the dignity and respect as a human being
9 that she deserves.

10 The defendant has spent most of his life
11 incarcerated because of his violent behavior. The event
12 that led to the lengthy prison sentence and lengthy
13 incarceration, the description of it is scary, frankly.
14 That you would not only, as you put it, attempt suicide
15 by cop but it sounds like there was a gun fight with
16 police, sounds like there was somebody who was held
17 hostage in that, I don't know all the facts but the
18 charges including kidnapping the aggravated assault on
19 law enforcement with a deadly weapon. You know,
20 frankly, it's amazing that no one was killed in that.

21 Having spent a good part of your life in
22 prison, one would be hopeful that you would learn from
23 the incarceration and moreover want to work and live in
24 a way that would do everything possible to avoid future
25 incarceration again, if it was, and I suspect it was, as

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1 terrible as it was described to be that incarceration.

2 But the reality is the defendant has, for
3 whatever reason, learned that the way he deals with
4 situations and problems in his life that he can't
5 control is through violence and through attempting to
6 control others and to manipulate them, and the reality
7 is he presents a grave risk to anyone who would be in a
8 relationship with him. He endangered the general public
9 because of that risk to individuals in a relationship
10 because other people came to intervene.

11 I have very little, unfortunately, hope
12 that at this point the defendant is going to learn how
13 to conduct himself differently. I don't dispute that he
14 wants to, I think he genuinely does. I think he
15 genuinely when he's separated from and has time to look
16 back and reflect, I think he is ashamed of his behavior,
17 I think he is regretful of his behavior, and I think he
18 is remorseful of his behavior. But I think he presents
19 a risk that is extreme to anyone in that relationship
20 with him.

21 I think he also is not -- we saw with the
22 incident that led to the lengthy incarceration in
23 California, isn't always necessarily concerned about
24 innocent bystanders either, and I include the police in
25 that who are just responding to calls and doing their

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1 job.

2 I think given this significant felony
3 record, the risk that he poses and the violence that he
4 has inflicted, that a prison sentence is the most
5 reasonable and frankly in my mind the only reasonable
6 option. And so I'm going to sentence the defendant to
7 the custody of the Idaho State Board of Corrections
8 under the the unified sentencing laws of the State of
9 Idaho for an aggregate term of ten years. The court
10 specifies a minimum period of confinement of five years
11 fixed, follow by a subsequent indeterminate period of
12 custody of five years. I'm going to remand him to the
13 sheriff of the county to be delivered to the proper
14 agent of the state Board of Corrections in execution of
15 this sentence.

16 I'm going to order that he provide a DNA
17 sample and right thumbprint impression and comply with
18 the DNA Database Act. I'll orders that he pay court
19 cost. I'm not going to order a fine. I'll leave
20 restitution open for 60 days.

21 You have the right to appeal. If you
22 cannot afford an attorney, you can request to have one
23 appointed at public expense. Any appeal must be filed
24 within 42 days the date of this order or the entry of
25 the written order of judgment of conviction and order

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1 imposing that sentence.

2 I've signed the no-contact or for the
3 10-year period. I hope when you do get out -- and I
4 hope when you're in you do get treatment and help and I
5 hope when you get out you are able to find a peaceful
6 life and are able to learn to do something in response
7 to things other than to use violence.

8 THE DEFENDANT: Thank you, your Honor. I
9 appreciate it. I would ask that when I get out that I
10 get some kind of program instead of being let out.

11 THE COURT: I'm going to order as part of the
12 judgment of conviction that you do the 52 week domestic
13 violence counseling, I think, as part of that judgment
14 and hopefully the parole department will see that you are
15 able to do that.

16 THE DEFENDANT: I do apologize. I do apologize,
17 Lizzy.

18 (Proceedings concluded.)
19 --o0o--
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