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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 45225
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-2016-6874
)	
ANTHONY THOMAS BALDWIN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Baldwin failed to establish that the district court abused its discretion by declining to reduce his sentence upon revoking probation?

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

Baldwin pled guilty to possession of methamphetamine and the district court imposed a determinate five-year sentence but suspended the sentence and placed Baldwin on probation for a period of three years. (R., pp.134-40, 185-91.) One month later, the state filed a motion to revoke probation alleging that Baldwin had violated the terms of his probation by absconding

supervision and by being discharged from Drug Court for failing to report to Drug Court staff as directed, failing to appear for UA testing as required, failing to attend Drug Court, and using methamphetamine. (R., pp.153-69.) Baldwin admitted the allegations, and the district court revoked his probation, declined his oral request for a sentence reduction, and executed the underlying sentence without modification. (R., pp.181, 193-97; 6/8/17 Tr., p.14, Ls.1-20, p.19, Ls.6-22.) Baldwin timely appealed. (R., pp.203-06.)

Baldwin asserts that the district court abused its discretion by declining to reduce his sentence upon revoking his probation in light of his substance abuse issues, acceptance of responsibility, and family support. (Appellant's brief, pp.3-4.) Baldwin has failed to establish an abuse of discretion.

Upon revoking a defendant's probation, a court may order the original sentence executed or reduce the sentence as authorized by Idaho Criminal Rule 35. State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009) (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); State v. Marks, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989)). A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing whether a sentence is excessive. Hanington, 148 Idaho at 28, 218 P.3d at 7. Those standards require an appellant to "establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment." State v. Stover, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). Those objectives are: "(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing." State v. Wolfe, 99 Idaho 382, 384, 582, P.2d 728, 730 (1978). The reviewing court "will examine the entire record encompassing events before and after the original judgment," *i.e.*, "facts existing when the

sentence was imposed as well as events occurring between the original sentencing and the revocation of probation.” Hanington, 148 Idaho at 29, 218 P.3d at 8.

Baldwin’s sentence is not excessive given his criminal history, his failure to take responsibility, and his poor performance on probation. Baldwin has a prior felony conviction for burglary and 10 misdemeanor convictions for offenses such as driving without privileges, failing to purchase/invalid driver’s license, petit theft, trespass, and using or possessing drug paraphernalia with intent to use. (PSI, pp.4-7.) In the burglary case, Baldwin was sentenced to two years fixed and six years indeterminate and the district court placed him on supervised probation for eight years. (PSI, pp.4-5, 7.) However, Baldwin performed poorly while on probation, as he continued to commit crimes and use drugs. (PSI, p.7.) Baldwin was ordered to serve a period of retained jurisdiction, after which he was reinstated on probation. (PSI, p.7.) Baldwin also squandered his second opportunity for probation, violating the conditions of his release by, *inter alia*, failing to enroll in treatment, failing to submit to drug and alcohol testing, and continuing to use drugs. (PSI, p.8.) He spent approximately a year and a half in prison before being paroled. (PSI, p.8.) Undeterred by prior incarceration and treatment opportunities, Baldwin violated his parole in multiple ways, including by “buying and selling amphetamine salts and hydrocodone, failing to follow all directives of his supervising officer regarding substance abuse evaluation and treatment, and [by] not abstaining completely from the possession, procurement, use, or sale of narcotics or controlled substances.” (PSI, p.8.) Baldwin “was ordered to the CAPP program” in July 2013, was again released to parole supervision in November 2013, and was discharged from parole in April 2014. (PSI, p.8.) He was charged with possessing drug paraphernalia less than a year later (the charge was later dismissed), was convicted of eight misdemeanor crimes (including a new paraphernalia offense) between July

and October 2016, and committed the felony drug offense of which he was convicted in this case in June 2016. (PSI, pp.5-7.)

Baldwin asserts that his sentence is excessive because of his acceptance of responsibility and family support. However, Baldwin failed to take responsibility when he absconded supervision within in a month of being placed on probation, and having family support has not deterred his continued criminal conduct. (R., pp.152, 153-69.)

At the disposition hearing, the district court articulated its reasons for declining to reduce Baldwin's sentence upon revoking his probation. (6/8/17 Tr., p.18, L.10 – p.19, L.25.) The district court stated, "My view is that when this happens in cases like this where you have been told by a judge that this is the consequence of what's going to happen, it's time that you accept that consequence." (6/8/17 Tr., p.19, Ls.1-5.) The state submits that Baldwin has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Baldwin's probation and executing his underlying sentence without reduction.

DATED this 4th day of April, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of April, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JASON C. PINTLER
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 supporting my family, and I ask the Court to give me one
2 more chance at probation, let me transfer up to district
3 four, be around my family for sober support and support
4 I need, and I'll do flawless.

5 Thank you.

6 THE COURT: Thank you, sir.

7 Any reason legal in nature why disposition
8 should not be imposed today?

9 MR. RODRIGUEZ: No, Your Honor.

10 THE COURT: I'm not going to go back through
11 the whole history of this case. I think I went through
12 that at the time of sentencing. Let me simply say that
13 this is not simply a one time possession of drug case.
14 This Court would never impose a five-year fixed sentence
15 for somebody on a first offense possession. I couldn't
16 conceive doing that. There was a reason for doing that,
17 Mr. Baldwin, and the reason is your history, and I can't
18 think that I could have been any more clear to you on
19 January the -- I think 17th, when I sentenced you, this
20 was it. I gave you your shot at probation. You asked
21 me to put you in drug court. I think the State opposed
22 that, I think, because I certainly do believe in trying
23 to rehabilitate drug offenders. Your life has been a
24 revolving door of problem after problem after problem.

25 You're right, you made -- you put yourself in

18

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1 this position. You made the wrong decisions. My view
2 is that when this happens in cases like this where you
3 have been told by a judge that this is the consequence
4 of what's going to happen, it's time that you accept
5 that consequence.

6 I have considered whether I should alter this
7 sentence because it's always difficult when you impose
8 these type of sentences, and then things change. If
9 anything, what I have found is that my inclinations that
10 I had back in January have been proven out by your
11 conduct. You absconded probation. How tough is it to
12 go to drug court? It ain't that tough to at least show
13 up. You continued to use methamphetamine. I understand
14 that probably your family life is difficult right now,
15 I'm glad that things are working out better with your
16 spouse and so forth. None of that affects my decision
17 in this case as to what to do with you.

18 It is the judgment of the Court that these
19 probation violations are willful, that your record
20 justifies imposition of sentence. I will impose this
21 sentence. You're going to do five years fixed, period.

22 I will not alter this sentence. You want to
23 appeal this decision, you have a right to do that. You
24 may do that within 42 days of today. Let Mr. Rodriguez
25 know that.