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### State v. Castaneda Respondent's Brief Dckt. 45279

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45279
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR-2016-2269
	)	
RAYMOND CARL CASTANEDA,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Castaneda failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with five years fixed, and suspending his driver's license for five years, upon his guilty plea to felony DUI (prior felony DUI within 15 years), with a persistent violator enhancement?

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

Castaneda pled guilty to felony DUI (prior felony DUI within 15 years), with a persistent violator enhancement, and the district court imposed a unified sentence of 10 years, with five years fixed, and retained jurisdiction. (R., pp.98-99.) The district court also suspended

Castaneda's driving privileges for five years. (R., pp.98-99.) Following the period of retained jurisdiction, the district court suspended Castaneda's sentence and placed him on supervised probation. (Aug., pp.12-14.) Castaneda filed a notice of appeal timely from the judgment of conviction. (R., pp.101-05.)

Castaneda asserts his underlying sentence and five-year driver's license suspension are excessive in light of his alcohol abuse, family support, acceptance of responsibility, and purported remorse and motivation to remain sober. (Appellant's brief, pp.3-5.) The record supports the sentence imposed and the five-year driver's license suspension.

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 penalty for felony DUI (prior felony DUI within 15 years), with a persistent violator enhancement, is not less than five years, up life in prison, with a driver’s license suspension of not less than one year, up to five years. I.C. §§ 18-8005(6), -8005(9), 19-2514. The district court imposed a unified sentence of 10 years, with five years fixed, with a five-year driver’s license suspension, which falls well within the statutory guidelines. (R., pp.98-99.) Furthermore, Castaneda’s underlying sentence and driver’s license suspension are reasonable in light of the seriousness of the offense, Castaneda’s continued criminal offending, the danger he presents to the community, and his failure to rehabilitate or be deterred.

Castaneda has an “extensive criminal history beginning as a juvenile.” (PSI, pp.5-11, 20.<sup>1</sup>) He began illegally consuming alcohol at age 13 and using marijuana at age 14. (PSI, pp.17, 48.) He subsequently incurred juvenile adjudications for habitual truancy, three counts of burglary, three counts of grand theft, and three counts of petit theft; convictions for failure to purchase/invalid driver’s license, providing false information to an officer, reckless driving, leaving the scene of an accident involving damage, two convictions for possession of tobacco by a minor, three convictions for minor in possession of alcohol, three convictions for DWP, three prior convictions for DUI, two convictions for unlawful possession of a firearm; and multiple

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Castaneda Conf. Exhibit #45279.pdf.”

probation violations. (PSI, pp.5-12.) Castaneda spent approximately five years in prison, during which time he incurred DOR's for being discovered in possession of "approximately 3 cans of tobacco, individually wrapped" during an "unclothed body search," "arranging for tobacco drops to be made and brought onto the SICI compound," and "drinking [alcohol] and driving during his work search." (PSI, p.12; 6/19/17 Tr., p.7, Ls.3-4.)

Castaneda failed to rehabilitate or be deterred by prior legal sanctions and treatment opportunities. Despite spending time on felony probation and eventually topping out his time in prison for his last felony DUI, Castaneda maintained his belief that "it is okay to drink and drive as long as he does not hurt anyone." (APSI, p.2 (Augmentation); PSI, pp.12-13; 6/19/17 Tr., p.7, Ls.1-6.) In the instant offense, he consumed "approximately 12 Coronas" (PSI, p.3) and "rac[ed] a Mustang ... through Canyon County in Caldwell" (6/19/17 Tr., p.5, Ls.16-21). When an officer "'pulled [Castaneda] over for speeding and swerving'" into the oncoming lane of traffic, Castaneda "advised that he kn[ew] that he [was] too drunk to be driving." (PSI, pp.3, 5, 44.) Castaneda subsequently failed field sobriety testing and breath tests yielded results of .174/.168 BAC – more than twice the legal limit. (PSI, p.44.) Although he told the presentence investigator that alcohol is the "problem area or factor in his life that has contributed most to his legal problems," Castaneda continued to drink while this case was pending, admitting during his May 2017 presentence interview that he had consumed alcohol just a few weeks earlier. (PSI, pp.17-18, 20.) Notably, Castaneda did not participate in any substance abuse treatment or self-help groups prior to sentencing, despite the fact that he committed the instant offense in February 2016 and therefore had over 16 months in which to do so. (PSI, p.49.) The presentence investigator determined that Castaneda presents a moderate risk to reoffend and concluded,

“Based upon his documented criminal record and continued use of alcohol [Castaneda] does not appear to be an appropriate candidate for community supervision at this time.” (PSI, pp.19-20.)

At sentencing, the state recommended a rider and an overall unified sentence 17 years, with five years fixed, arguing, “The defendant's blow was twice the legal limit. He was seen -- admitted racing the car earlier. He clearly hasn't learned his lesson from his prior DUI and his prior federal case to never drink and drive again, so we think that's important.” (6/19/17 Tr., p.5, L.23 – p.6, L.7.) The district court considered all of the relevant information and imposed a reasonable sentence of only 10 years, with five years fixed, suspended Castaneda’s driving privileges for five years, and granted him the opportunity to participate in the retained jurisdiction program. (R., pp.98-99.) Castaneda’s sentence and driver’s license suspension are appropriate in light of the perilous nature of the offense, Castaneda’s ongoing alcohol abuse and criminal offending, his repeated decisions to endanger the community by driving while intoxicated, his failure to rehabilitate or be deterred, and the danger he presents to society. Given any reasonable view of the facts, Castaneda has failed to establish an abuse of discretion.

#### Conclusion

The state respectfully requests this Court to affirm Castaneda’s conviction and sentence.

DATED this 23rd day of February, 2018.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of February, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

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