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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45326
Plaintiff-Respondent,)	
)	Bingham County Case No. CR 2016-
v.)	8830
)	
SKYLER ERIC PULLEY,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Pulley failed to show that the district court abused its sentencing discretion when it imposed concurrent sentences of five years with two years determinate upon his convictions for two counts of criminal possession of a financial transaction card?

ARGUMENT

Pulley Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Sean Cook, whom his father describes as “slow and handicapped,” entrusted Skyler Eric Pulley with his ATM card and PIN. (PSI, p. 3.) Pulley used the card and PIN several times to

withdraw money at a credit union and a casino. (PSI, p. 3.) Pulley admitted he used the money for methamphetamine and gambling. (PSI, p. 4.)

The state charged Pulley with eight counts of criminal use of a financial transaction card. (R., pp. 60-63.) Pursuant to a plea agreement he pled guilty to two counts of criminal use of a financial transaction card and the state dismissed the remaining six counts. (R., pp. 110-11.) The district court imposed concurrent sentences of five years with two years determinate, and retained jurisdiction. (R. pp. 135-37, 156-58.)

Pulley filed a motion for reconsideration of the sentence (R., pp. 148-49), which the district court denied (R., pp. 169-76). The district court also relinquished its retained jurisdiction. (R., pp. 163-67.)

On appeal Pulley argues the district court abused its discretion in the original sentences, denying his motion for reconsideration, and relinquishing jurisdiction. (Appellant's brief, pp. 3-6.) He has failed to show an abuse of discretion, however.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

When considering whether the sentence was an abuse of discretion, “this Court considers: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the legal standards applicable; and (3) whether the trial court reached its decision by an exercise of reason.”

State v. Fisher, 162 Idaho 465, 398 P.3d 839, 842 (2017) (quoting State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011)).

“A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” State v. Burggraf, 160 Idaho 177, 180, 369 P.3d 955, 958 (Ct. App. 2016). “When presenting a Rule 35 motion, the defendant 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.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

C. Pulley Has Shown No Abuse Of The District Court’s Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met his burden, the court considers the entire sentence but, because the decision to release him on parole is

exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive, he must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. 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.” Bailey, 161 Idaho at 895–96, 392 P.3d at 1236–37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

The district court considered Pulley’s juvenile and criminal record, including that the present convictions are Pulley’s second and third felony convictions, respectively, and that some of his prior offenses also involved theft. (Sent. Tr., p. 11, Ls. 1-5; p. 12, Ls. 2-8.) It considered the recommendations of the pre-sentence investigation and the legal standards it was to apply. (Sent. Tr., p. 11, Ls. 6-20.) It also considered Pulley’s age (26), risk to reoffend (moderate), probationary history (prior probation violations), and substance abuse issues and treatment (not successfully treated and relapsed). (Sent. Tr., p. 11, L. 21 – p. 12, L. 1; p. 12, Ls. 9-17.) The record reveals no abuse of discretion.

Pulley argues the district court abused its discretion because (1) he lawfully acquired the financial transaction card and only unlawfully used it; (2) “successfully completed drug court in the past, and should have been provided with another chance at meaningful community-based treatment”; (3) the pre-sentence investigator, prosecutor, and defense counsel all recommended probation; and (4) he “expressed a desire to be a productive member of society and a role model to his children.” (Appellant’s brief, p. 4.) This argument fails because (1) he pled guilty to two

counts of “use of a *fraudulently obtained* card” (R., pp. 10-11 (emphasis added)); (2) his prior treatment and probation were not “successful” in the sense that Pulley did not commit further crimes; (3) the district court specifically considered the recommendations of probation, but they were only recommendations; and (4) of course he did. Pulley has failed to show an abuse of sentencing discretion in the concurrent sentences of five years with two years determinate upon his convictions for two counts of criminal possession of a financial transaction card.

D. Pulley Has Shown No Abuse Of Discretion In The Decision To Relinquish Jurisdiction

Pulley asked to be removed from the retained jurisdiction program. (Special Progress Report.) Based on Pulley’s self-requested removal from the program the district court relinquished jurisdiction. (R., pp. 163-67.) Pulley has failed to show an abuse of discretion by the district court.

E. Pulley Has Shown No Abuse Of Discretion In The Denial Of Is Motion For Reconsideration

Pulley supported his Rule 35 motion with a letter he wrote. (R., pp. 148-51.) Among the claims in the letter, Pulley asserted that the “victim in my case” and the victim’s father were “there for [him] on [his] behalf,” and that the victim’s father had offered him a job. (R., p. 150.) The district court denied the motion. (R., pp. 169-76.) The court determined the original sentence was reasonable, reiterating that it had considered, but ultimately rejected, the recommendations of probation, in part because hits crime involved stealing “from a mentally-handicapped friend a co-worker,” using his ATM card for illegal drugs and gambling “until he could not get any more money off the card.” (R., pp. 171-72.) The court stated it had also considered Pulley’s criminal and juvenile records and his mixed history on probation. (R., p. 172.) The district court found the victim’s forgiveness and the victim’s father’s willingness to give Pulley a job “commendable,” but concluded this “does not show this Court that Pulley can be successful on probation, given

Pulley's past conduct." (R., p. 173.) The district court also considered, but rejected, Pulley's other claims in the letter that he would succeed on probation. (R., pp. 173-74.)

Pulley argues the court abused its discretion because his "offense was not severe enough to warrant the sentence imposed," the "victim and his family appeared to support Mr. Pulley's request for leniency," and he "expected to be placed on probation after pleading guilty." (Appellant's brief, p. 6.) This argument is without merit.

Pulley's attempt to minimize the severity of his crimes should be rejected. He acquired the ATM card and PIN number of a mentally-handicapped friend and drained his bank account to buy methamphetamine and gamble. (R., pp. 171-72 (considering facts of crimes).) In light of his long history of thefts and other criminal acts (PSI, pp. 4-8), Pulley's second and third adult felonies were indeed serious.

Pulley's claim the victim and his father are supportive also fails to show an abuse of discretion. The district court specifically considered this assertion and concluded it did not change its analysis of whether probation would be successful. (R., p. 173.) Pulley does not address the district court's analysis. (Appellant's brief, p. 6.)

Pulley's argument that he "expected" to be placed on probation was rejected because the district court found it had engaged in a complete colloquy and Pulley, who in fact understood the potential consequences of his guilty plea. (R., p. 174.) Pulley ignores the district court's findings.

The district court considered Pulley's submission and determined that the sentences were proper as imposed. Pulley has failed to show an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court and the orders relinquishing jurisdiction and denying Pulley's Rule 35 motion.

DATED this 30th day of May, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of May, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

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