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### State v. Bosma Respondent's Brief Dckt. 45354

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45354
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR-2017-2737
	)	
MARTIN J. BOSMA, JR.,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Bosma failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with six years fixed, upon his guilty plea to felony domestic battery with traumatic injury?

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

Bosma pled guilty to felony domestic battery with traumatic injury, and the district court imposed a unified sentence of 10 years, with six years fixed. (R., pp.58-59.) Bosma filed a notice of appeal timely from the judgment of conviction. (R., pp.60-63.)

Bosma asserts that the district court abused its discretion by imposing a unified sentence of 10 years, with six years fixed, in light of his acceptance of responsibility, apology to his wife and children, alcohol abuse issues, and history of steady employment. (Appellant’s brief, pp.2-4.) Bosma 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 battery is 10 years. I.C. § 18-918(2)(b). The district court imposed a unified sentence of 10 years, with six years fixed, which falls within the statutory guidelines. (R., pp.58-59.) On appeal, Bosma argues that his sentence is excessive because he accepted responsibility, apologized to his wife and children, has alcohol abuse issues, and is employable. (Appellant's brief, pp.2-4.) Contrary to his assertions, however, Bosma has not taken responsibility, and has instead minimized his actions and tried to place blame on the victim. (PSI, pp.5, 8, 15.) Bosma reported after the attack that "she [the victim] wasn't even crying, she had a dry face, but then the cops came and she started crying, with both kids on her sides, if you were there, you would see she should get an Oscar." (PSI, p.5.) Bosma's apology to his family at sentencing does not outweigh his actions against them. The victim reported that, during the attack, Bosma pushed her while she was holding the children and spat on both her and the children. (PSI, p.3.) She also reported that, a week prior to the charged incident, Bosma tried to strangle her in bed while their daughter was in bed with them, and that Bosma told their daughter to "say goodbye to your mom." (PSI, pp.3, 4.) The victim was scratched and bruised on her thigh, and was also bruised on her chest and on the top of her feet. (PSI, p.4.) Bosma admitted that alcohol abuse contributed to both his previous felony conviction for lewd conduct with a minor under 16 and his current offense, but he neither prior incarceration nor treatment opportunities have deterred his from continuing to drink to intoxication. (PSI, pp.6, 12, 70.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also addressed its reasons for imposing Bosma's sentence. (7/31/17 Tr., p.33, L.24 – p.35, L.17.) The state submits that Bosma has failed to establish an abuse of discretion, 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.)

Conclusion

The state respectfully requests this Court to affirm Bosma's conviction and sentence.

DATED this 5th 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 5th day of April, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS  
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

## APPENDIX A

**State of Idaho vs. Martin Jacob Bosma Jr., Case Nos. CR2017-02737, Docket No. 45354**

1 So in this program I'll be hooked back up with --  
 2 with my Christian brothers and believers, get back in my  
 3 contact with God, which I've already started. Be with VA,  
 4 other-minded individuals, and also been in contact with quite a  
 5 few times Mr. Bode with the Veterans Administration and also  
 6 the representative for veterans court.  
 7 Mind you, because of my past crime I'm not eligible  
 8 for veterans court. But being a disabled veteran with a  
 9 service-related disability and having an honorable discharge, I  
 10 do have many other VA resources available to me. And, again,  
 11 that's more support. And the power of VA is very powerful.  
 12 And the power of change, my will. Look what I did  
 13 last time. Over 12 years of sobriety. 17-plus years still.  
 14 Again, I don't mean to go over again.  
 15 But look what I've done last time. And I'm in a  
 16 better place now, I think, even though this has been the worst  
 17 time of my life, in a better place, and I'm ready again.  
 18 And, again, I sit as a human being. Look at me as  
 19 a human. I made my mistake. But don't discard me.  
 20 THE COURT: Okay. Thank you.  
 21 THE DEFENDANT: Don't just throw me away.  
 22 THE COURT: Okay. Thank you.  
 23 THE DEFENDANT: Thank you.  
 24 THE COURT: Well, I have considered the factors set out  
 25 by our Idaho Supreme Court as to help me determine what

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1 better.  
 2 You ask that I treat you as a human, and I will.  
 3 But you failed to treat your wife as a human. There's no  
 4 justification for your conduct. There's no reason you can  
 5 provide that excuses your reprehensible actions.  
 6 Your prior felony conviction of lewd conduct with a  
 7 child under age 16 and this crime of domestic battery with  
 8 traumatic injury shows that you have some major problems and  
 9 that you are a danger to women in our community.  
 10 I hope the punishment that you received in your  
 11 prior felony case along with the punishment that you'll get in  
 12 this case shows you that you cannot abuse people behind closed  
 13 doors and hope that that will not be exposed. It will  
 14 eventually be exposed and will be punished by the courts. Your  
 15 abuse is not tolerated by our society.  
 16 I sentence you to ten years with six years fixed,  
 17 four years indeterminate, impose a \$5,000 fine.  
 18 I will extend the no-contact order previously  
 19 issued in this case for all ten years.  
 20 I'll require that you provide a DNA sample and a  
 21 thumbprint impression to the State of Idaho within ten days if  
 22 you have not already done so. And failure to do so within ten  
 23 days is a felony offense.  
 24 I'll require that you pay court costs, and I'll  
 25 leave restitution open, reserve it for 30 days to allow the

35

1 punishment to give you, which includes the protection of  
 2 society, the deterrence of crime, rehabilitation of the  
 3 offender, and punishment. I've also considered the factors set  
 4 out by our legislature in Idaho Code 19-2521 about whether  
 5 probation or imprisonment is appropriate in this case.  
 6 Domestic violence is a major problem in our state.  
 7 Women deserve to be treated with kindness and respect. They  
 8 are entitled to be shown love and affection. Abusing women is  
 9 not and will not be tolerated by this court. You deserve  
 10 significant punishment for what you've done to your wife in  
 11 this case.  
 12 Reviewing a bit in this case shows some tremendous  
 13 abuse. For example, you pushed your wife while she was holding  
 14 your children. You spat on your wife and your children. You  
 15 knocked your wife down and hit her head against a wall. Your  
 16 abuse has caused significant bruising on your wife. You've  
 17 strangled her and told her, quote, "I'm going to die. Do you  
 18 want to die?" End quote. And said, quote, "I could kill you,"  
 19 end quote. You've punched her in the face. Once while in bed  
 20 with your wife and your child, you strangled your wife and told  
 21 your child, "Say good-bye to your mom."  
 22 The fact that some of the abuse that you inflicted  
 23 on your wife occurred in the presence of your child makes your  
 24 conduct even more troubling. You've treated your wife with  
 25 brutality and abuse, and she deserves to be treated so much

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1 victim in this case to request restitution.  
 2 I'll require that you reimburse your public  
 3 defender in the amount of \$350 for the time your public  
 4 defender has spent in this case.  
 5 You have the right to appeal my sentence within 42  
 6 days of judgment filed in this case. You may be represented by  
 7 counsel. If you cannot afford one, one will be hired at public  
 8 expense to represent you.  
 9 I will provide you with a notice to defendant upon  
 10 sentencing, ask that you review it with your attorney, sign it,  
 11 and return it to me.  
 12 After which I'll remand you to the custody of the  
 13 Canyon County Sheriff to be turned over to the Idaho Department  
 14 of Correction.  
 15 (Mr. Gatewood and the defendant conferred.)  
 16 THE COURT: I'll also provide you that extension of the  
 17 no-contact order and ask that you sign it and date it and  
 18 return it to me.  
 19  
 20 (The proceedings concluded at 9:43 a.m.)  
 21  
 22  
 23  
 24  
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