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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45446
Plaintiff-Respondent,)	
)	BANNOCK COUNTY NO. CR 2016-12522
v.)	
)	
BRANDON JEFFREY ALLAN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Brandon Jeffrey Allan appeals from his judgment of conviction for trafficking in methamphetamine and possession of a controlled substance with the intent to deliver. Mr. Allan pleaded guilty and the district court imposed concurrent unified sentences of eight years, with four years fixed. Mindful of the fact that he received the sentences he requested, Mr. Allan now appeals. He asserts that the district court abused its discretion by imposing excessive sentences.

Statement of the Facts & Course of Proceedings

On September 3, 2016, Bannock County Deputies conducted a traffic stop of Mr. Allan's vehicle. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) A drug dog alerted to the vehicle and officers found a bag with over 400 grams of methamphetamine. (PSI, p.3.) Officers also found suspected paraphernalia and money. (PSI, p.3.) During a subsequent search of Mr. Allan's residence, officers also found methamphetamine and paraphernalia. (PSI, p.3.)

Mr. Allan was charged with two counts of trafficking in methamphetamine; one count for possessing more than 400 grams and one count for possessing more than 200 grams. (R., p.67.) Mr. Allan subsequently pleaded guilty to one charge of trafficking in methamphetamine by possessing more than 28 grams but less than 200 grams, and one count of possession of methamphetamine with the intent to deliver. (R., pp.137, 145.) The parties agreed that the State would dismiss a persistent violator enhancement and that the sentence would be eight years, with four years fixed. (R., pp.137-38.)

The district court imposed concurrent unified sentences of eight years, with four years fixed. (R., p.173.) Mr. Allan appealed. (R., p.187.) Mindful that the district court following the plea agreement and imposed the agreed-upon sentence, Mr. Allan submits that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed concurrent unified sentences of eight years, with four years fixed, upon Mr. Allan following his plea of guilty to trafficking in methamphetamine and possession of a controlled substance with the intent to deliver?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Concurrent Unified Sentences Of Eight Years, With Four Years Fixed, Upon Mr. Allan Following His Plea Of Guilty To Trafficking In Methamphetamine And Possession Of A Controlled Substance With The Intent To Deliver

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Chance’s sentence does not exceed the statutory maximum. See I.C. § 18-8311. Accordingly, to show that the sentence imposed was unreasonable, Mr. Allan “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

At the sentencing hearing, counsel for Mr. Allan requested that the district court honor the binding plea agreement; the district court confirmed the agreement: “[j]ust so we’re clear, the binding Rule 11 is to reduce it to possession with intent, dismiss the persistent violator, and I

was sentencing the four plus four.” (Sent. Tr., p.11, Ls.3-6.) Counsel for Mr. Allan agreed that this was the sentence that was agreed upon. (Sent. Tr., p.11, Ls.3-7.)

The doctrine of invited error applies to estop a party from asserting an error when his or her own conduct induces the commission of the error. *State v. Atkinson*, 124 Idaho 816, 819 (Ct. App. 1993). One may not complain of errors one has consented to or acquiesced in. *State v. Caudill*, 109 Idaho 222, 226 (1985); *State v. Lee*, 131 Idaho 600, 605 (Ct. App. 1998). In short, invited errors are not reversible. *State v. Gittins*, 129 Idaho 54, 58, 921 P.2d 754, 758 (Ct. App. 1996). This doctrine applies to sentencing decisions as well as rulings made during trial. *State v. Griffith*, 110 Idaho 613, 614 (Ct. App. 1986). Therefore, mindful of the doctrine of invited error, Mr. Allan submits that the district court abused its discretion by imposing excessive sentences.

CONCLUSION

Mr. Allan respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 16th day of February, 2018.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of February, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas