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### State v. Denman Appellant's Brief Dckt. 45523

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45523
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY NO. CR42-16-12259
v.	)	
	)	
ROY ANDREW DENMAN,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Roy Denman pled guilty to possession of a controlled substance, the district court sentenced him to seven years, with two years fixed, and retained jurisdiction. Mindful of the appeal waiver, Mr. Denman appeals. He asserts the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

The State charged Mr. Denman with one count of possession of a controlled substance, methamphetamine and/or amphetamine, in violation of I.C. § 37-2732(c)(1). (R., pp.83–84.) Pursuant to a plea agreement with the State, Mr. Denman pled guilty as charged. (R., pp.154–55,

Tr., p.69, L.11–p.70, L.14.) The State agreed to recommend a sentence of six years, with four years fixed, and retained jurisdiction. (Tr., p.66, Ls.21–25; R., p.155.) Mr. Denman waived his right to appeal the district court’s sentencing decision, unless the district court exceeded the State’s fixed time recommendation or declined to retain jurisdiction. (Tr., p.67, Ls.11–20; R., p.155.)

At sentencing, Mr. Denman requested probation. (Tr., p.74, L.24–p.75, L.3, p.79, Ls.17–19.) The State made a recommendation consistent with the plea agreement. (Tr., p.80, Ls.15–19, p.83, Ls.6–11.) The district court sentenced Mr. Denman to seven years, with two years fixed, and retained jurisdiction. (Tr., p.88, Ls.19–22, p.89, Ls.8–9.)

Mr. Denman timely appealed from the district court’s judgment of conviction. (R., pp.180–84, 189–91.)

### ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of seven years, with two years fixed, upon Mr. Denman, following his guilty plea to possession of a controlled substance?

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Seven Years, With Two Years Fixed, Upon Mr. Denman, Following His Guilty Plea To Possession Of A Controlled Substance

“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. Denman’s sentence does not exceed the statutory maximum. *See* I.C. § 37-2732(c)(1) (seven year maximum). Accordingly, to show that the

sentence imposed was unreasonable, Mr. Denman “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). Similarly, “[t]he choice of probation, among available sentencing alternatives, is committed to the sound discretion of the trial court . . . .” *State v. Landreth*, 118 Idaho 613, 615 (Ct. App. 1990).

Here, the district court did not exceed the State’s recommended fixed term of imprisonment, and the district court retained jurisdiction. (Tr., p.88, Ls.19–22, p.89, Ls.8–9.) As such, Mr. Denman has waived his right to appeal his sentence. (R., p.155.) Mindful of the appeal waiver, Mr. Denman nonetheless asserts the district court abused its discretion by imposing an excessive sentence under any reasonable view of the facts. For example, Mr. Denman’s poor health supports a lesser sentence. Mr. Denman, who was fifty-four years old at sentencing, was born with aortic stenosis and has had three open-heart surgeries. (Presentence Investigation

Report (“PSI”),<sup>1</sup> pp.18–19; Tr., p.74, L.20, p.75, Ls.4–14.) He currently has a stainless steel heart valve. (PSI, p.19.) Additionally, Mr. Denman struggles with substance abuse issues, which is also a mitigating factor. (PSI, pp.20–21.) Despite these issues, Mr. Denman remained sober for nine months during the pendency of this case. (Tr., p.76, L.19–p.77, L.7.) He also obtained employment as a local truck driver hauling potatoes. (PSI, pp.17–18; Tr., p.78, L.24–p.79, L.5.) This work would be year-round, not seasonal. (Tr., p.80, Ls.1–5.) Finally, Mr. Denman was committed to leading a sober and productive life with his family. (PSI, p.22; Tr., p.85, L.18–p.86, L.1.) In light of these mitigating factors, but mindful of the appeal wavier, Mr. Denman contends the district court abused its discretion at sentencing and should have sentenced him to a lesser term of imprisonment or placed him on probation.

#### CONCLUSION

Mr. Denman respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he respectfully requests that this Court vacate his judgment of conviction and remand his case to the district court for a new sentencing hearing.

DATED this 23<sup>rd</sup> day of February, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

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<sup>1</sup> Citations to the PSI refer to the sixty-three page electronic document with the confidential exhibits.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23<sup>rd</sup> 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:

ROY ANDREW DENMAN  
INMATE #49457  
CAPP  
15505 S PLEASANT VALLEY ROAD  
KUNA ID 83634

JON J SHINDURLING  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCS/eas