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LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45730
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-17-24403
)	
CHRISTOPHER E. ABBOTT,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Abbott failed to establish that the district court abused its discretion by imposing a unified sentence of 15 years, with seven years fixed, upon his guilty plea to aggravated DUI?

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

On April 14, 2017, Abbott “went to the methadone clinic, and then started drinking

alcohol at noon.” (PSI, p.4.¹) After drinking “heavily” “all day” and using heroin intravenously, Abbott drove to a gas station with his friend, Laurel, and “purchased some beers.” (Tr., p.18, Ls.7-9; PSI, pp.4, 15, 67.) As they were leaving the gas station, Abbott “drove too fast out of the parking lot, and in front of [an] oncoming truck.” (PSI, p.68.) The driver of the truck, Timothy, “applied his brakes in attempt to avoid a collision,” but “didn’t even have a chance to stop in time” and crashed into Abbott’s vehicle. (PSI, pp.57, 76.) The force of the collision “caused Abbott to be ejected out of his vehicle onto the roadway,” resulted in injury to both vehicles’ occupants, and “[b]oth vehicles sustained severe damage from the impact.” (PSI, pp.57, 78; Tr., p.25, Ls.8-10.)

When officers responded to the scene of the crash, they found a used syringe on the driver’s seat of Abbott’s vehicle, a “pill bottle” that contained Methadone pills and a baggie of heroin “lying on the ground directly below the driver’s door,” a spoon “consistent with illegal drug use” on the ground “where [Abbott] was lying,” and an open can of malt liquor on the floorboard of Abbott’s vehicle. (PSI, pp.63-64.) Abbott was transported to the hospital, where a blood draw was administered; test results revealed he had a BAC of .161. (PSI, pp.66, 69.)

The state charged Abbott with aggravated DUI and possession of heroin. (R., pp.33-34.) Pursuant to a plea agreement, Abbott pled guilty to aggravated DUI and the state dismissed the remaining charge. (R., pp.37, 50-51.) The district court imposed a unified sentence of 15 years, with seven years fixed. (R., pp.56-59.) Abbott filed a notice of appeal timely from the judgment of conviction. (R., pp.62-64.)

¹ PSI page numbers correspond with the page numbers of the electronic file “Abbott 45730 psi.pdf.”

Abbott asserts his sentence is excessive in light of his health issues, desire for substance abuse treatment, acceptance of responsibility, and purported remorse. (Appellant's brief, pp.4-6.) The record supports the sentence imposed.

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 aggravated DUI is 15 years. I.C. § 18-8006. The district court imposed a unified sentence of 15 years, with seven years fixed, which falls well within the statutory guidelines. (R., pp.56-59.) Furthermore, Abbott's sentence is reasonable in light of the seriousness of the offense, the harm done to the victims, Abbott's ongoing criminal offending, the danger he presents to society, and his failure to rehabilitate or be deterred.

Abbott has a lengthy criminal history that includes convictions for possession of a hypodermic needle, petit theft, grand theft – tamper with vehicle, felony possession of narcotics, two convictions for felony possession of a controlled substance, two convictions for possession of drug paraphernalia, two convictions for DWP, three convictions for failure to provide insurance, three convictions for “under the influence controlled substance,” three convictions for providing false information/identification to a peace officer, and at least three convictions for robbery. (PSI, pp.5-9.) His record also contains several parole violations and multiple charges for which the disposition was not reported/provided, including two charges for “under the influence controlled substance,” two charges for transporting or selling a narcotic/controlled substance, and five counts of robbery. (PSI, pp.5-7.) At one point, Abbott was sentenced to “25 years to life” in prison for his third felony possession of a controlled substance conviction in the State of California (at the time, he had at least six prior felony convictions); he was incarcerated from 1998 until 2005, when his sentence was overturned “due to a change in the law.” (PSI, pp.6-8, 10.) Unfortunately, this did not have a lasting deterrent effect on Abbott, as he subsequently moved to Idaho and continued to commit crimes, racking up 10 misdemeanor convictions in less than two years before he committed the instant offense. (PSI, pp.8-9.)

Abbott seriously endangered the community in committing the instant offense. He chose to drive after going to the methadone clinic, then consuming alcohol “all day” and injecting

heroin. (PSI, pp.4, 15.) His claim that he “had been sober from 1997 to 2017” and only relapsed “on the day of the instant offense” is highly doubtful given that he has been convicted of possession of drug paraphernalia several times since he moved to Idaho. (PSI, pp.8-9.) Abbott’s actions in driving while under the influence of drugs and alcohol and causing the car crash in the instant offense caused great harm – he sustained a serious head injury; his passenger suffered “facial lacerations and a dislocated hip,” which required “hip surgery” and a several-month stay at a rehabilitation facility; and the other driver suffered abrasions “from the airbag deployment” and a permanent injury to his right kneecap. (PSI, pp.57-58, 69, 78; Tr., p.25, Ls.8-10.) Additionally, Abbott caused significant property damage, as “[b]oth vehicles sustained severe damage from the impact” – the other driver reported, “It destroyed my truck, totaled my truck; cost me about \$11,000 to replace my vehicle.” (PSI, p.57; Tr., p.25, Ls.12-13.)

At sentencing, the state addressed the seriousness of the offense, the harm done to the victims, Abbott’s 31-year history of criminal offending, his continued poor conduct while incarcerated, the ongoing danger he presents to society, and his failure to rehabilitate or be deterred. (Tr., p.27, L.3 – p.31, L.2 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Abbott’s sentence. (Tr., p.35, L.13 – p.40, L.1 (Appendix B).) The state submits that Abbott has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

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

DATED this 22nd day of June, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of June, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

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

APPENDIX A

25

1 disabled person, living on a fixed income. Fortunately,
 2 I have a good union pension, so. But --
 3 THE COURT: Is that as a result of this crime
 4 or before?
 5 MR. GARRETT: No, sir. It just kind of added
 6 to it a little bit.
 7 THE COURT: All right. Go ahead, sir.
 8 MR. GARRETT: As a physical result of it, I
 9 have a new chip off of my kneecap on my right knee, which
 10 is a replaced knee. So, I'll live with that for the rest
 11 of my life. I really didn't incur any huge medical bills
 12 from it. It destroyed my truck, totaled my truck; cost
 13 me about \$11,000 to replace my vehicle.
 14 I live fairly far up in the woods, so not
 15 having my vehicle for an amount of time until I could get
 16 enough money to buy another one impacted my freedom and
 17 my movement greatly.
 18 It also impacted my visit with my
 19 granddaughters this summer because, again, my financial
 20 hit that I had to take to replace my truck made it such
 21 that I wasn't able to do the things that I would have
 22 liked to have done with my granddaughters this summer.
 23 From what I can ascertain, Mr. Abbott,
 24 throughout his life, has not made any effort to change
 25 his behavior with concerns to consideration for other

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1 people's personal safety, or their freedom, or their
 2 property. And I don't think that that's right. And I
 3 would personally view Mr. Abbott's presence in the
 4 society, with myself, and my daughter, and my
 5 grandchildren, as a grave threat of bodily harm, not only
 6 to us, but to the rest of society. And I would ask the
 7 Court to consider that when you consider sentencing this
 8 person.
 9 He doesn't have the right to take from people
 10 the way he's done. He almost killed me. If God hadn't
 11 had his hand on my shoulder, and I hadn't had my seatbelt
 12 on, it could have been that way. And I don't think he
 13 has the right to do that to anybody else.
 14 THE COURT: Mr. Garrett, thank you.
 15 MR. GARRETT: Thank you, Your Honor.
 16 THE COURT: I'm glad you were wearing your
 17 seatbelt.
 18 MR. GARRETT: Yeah, I was too. Getting hit
 19 in the face with an air bag isn't fun.
 20 THE COURT: All right. Thank you, sir.
 21 Mr. McDevitt, additional evidence?
 22 MR. McDEVITT: No, Your Honor.
 23 THE COURT: Mr. Lorello, evidence from the
 24 defense?
 25 MR. LORELLO: No, Your Honor.

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1 THE COURT: Mr. McDevitt, I'll hear the
 2 State's recommendations.
 3 MR. McDEVITT: At 56 years of age, Mr. Abbott
 4 is not likely to change. Over the last 31 years,
 5 Mr. Abbott has gone through life committing crime after
 6 crime, going in and out of prison in California, moving
 7 to Idaho, and committing a variety of misdemeanors here.
 8 With 15 criminal convictions in his past --
 9 6 felonies, 9 misdemeanors -- on April 14, 2017,
 10 Mr. Abbott chose -- after going to his methadone clinic
 11 to take heroin, he chose to drink enough alcohol to have
 12 a blood alcohol concentration level of .16. And more
 13 importantly, he then chose to get behind the wheel of an
 14 automobile and drive.
 15 And he drove into the path of the car driven
 16 by Mr. Garrett. Which, as you've heard, Your Honor, has
 17 impacted Mr. Garrett to a great degree.
 18 It impacted Laurel McKenzie as well, a
 19 passenger of Mr. Abbott's, as well as it impacting
 20 Mr. Abbott himself.
 21 And one of the witnesses, an employee of
 22 Jackson's, Carla Gray, noted in her statement, on Bates
 23 No. 30, the car pulled out in front of the truck is what
 24 I seen. The person in the truck didn't even have a
 25 chance to stop in time.

28

1 In looking at a sentence in this case, again
 2 the State looks at 31 years' history for a variety of
 3 crimes, of use as well as other crimes impacting society,
 4 such as grand theft in '86 in California, robbery, two
 5 different cases in 1991, which he eventually went to
 6 prison.
 7 He comes up -- there are other cases in
 8 California that he does prison time on as well;
 9 controlled substances, possession of hypodermic needles.
 10 He comes to Idaho. We don't see felonies,
 11 but we see, within about a year's time of his move, false
 12 information to police, possession of drug paraphernalia,
 13 no insurance, petit theft, 2016 drug paraphernalia. So,
 14 he continues to use, he continues to steal.
 15 Mr. Abbott does need treatment. He asks
 16 for treatment. He needs treatment that he can't walk
 17 away from. He can't use drugs while attending, like he
 18 was with the methadone clinic.
 19 I know that the PSI recommends a period of
 20 retained jurisdiction, and its numbers were a little odd.
 21 It looked like it -- there were 600 offenders, and then
 22 it mentions all 3 received a rider.
 23 But the State doesn't feel that a retain
 24 jurisdiction is appropriate for Mr. Abbott for several
 25 reasons. One, he's had problems in jail. On

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1 September 14, 2017, he was yelling at another inmate. On
 2 the same day, an officer heard from multiple inmates that
 3 Mr. Abbott has a poor attitude, complains constantly
 4 through the day.

5 Also, there was an issue with whether or not
 6 he actually needed the wheelchair or not. And,
 7 ultimately, there are restraints found in his chair.
 8 That's kind of hard to say that's Mr. Abbott
 9 responsibility or not because he basically abandoned the
 10 wheelchair and other inmates were kind of using it as a
 11 table chair.

12 And, ultimately, he was also found with a
 13 contraband pen, and extra food was confiscated.

14 So, at 56 he still can't follow the very
 15 simple rules in the jail.

16 Also, as Mr. Garrett said, the State also
 17 believes that for protection of society, that with
 18 Mr. Abbott's use going back 31 years, it's likely that
 19 he's going to continue to use out of custody. So, the
 20 State's more concerned with making sure that society is
 21 protected from him for as long as possible, weighing this
 22 case as well as his priors.

23 The State feels, under the criteria set for
 24 the -- in 19 -- Idaho Code 19-2521, that there is an
 25 undue risk he will commit another crime, whether he's put

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1 seeks a sentence of 7 years fixed, with 8 indeterminate,
 2 for a unified sentence of 15 years; that that be imposed.

3 The State notes the mandatory one year
 4 absolute driver's license suspension and requests an
 5 additional four years, under the statute, so that there
 6 are five years of no driving after Mr. Abbott's release.

7 The State asks that you leave restitution
 8 open for 90 days, Your Honor. The State is still working
 9 on finalizing the figure.

10 THE COURT: Mr. McDevitt, thank you.
 11 Mr. Lorello?
 12 MR. LORELLO: Thank you, Judge.

13 To be clear, Christopher understands that his
 14 behavior and his actions are unacceptable. I think he
 15 took accountability in the presentence process. And in
 16 my communications with Chris, as we've gotten to know
 17 each other a little bit, he's never tried to avoid
 18 responsibility for this.

19 Christopher's record is what it is. And I
 20 certainly understand the State's sort of glass is half
 21 empty view of his record too, but it's not all bad. I
 22 mean, cosmically, I think Christopher would much rather
 23 be here for his first felony, rather than his sixth or
 24 his seventh. And so, he can't really ignore or avoid the
 25 trouble that he's been in.

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1 on probation or after a period of retained jurisdiction.

2 The State feels he's in need of correctional
 3 treatment that's provided most effectively by commitment
 4 to an institution. The State understands that can be
 5 done on a rider as well.

6 However, the State thinks that a lesser
 7 sentence will depreciate the seriousness of the
 8 defendant's crimes in this case because it is his seventh
 9 felony. And this is not -- I think that this -- this
 10 aggravated DUI is somewhat different than others because
 11 he comes with it -- with 31 years of use. And it wasn't
 12 just kind of the off chance, accidentally getting drunk,
 13 or getting drunk and just driving and hurting someone.
 14 He knew he had been using drugs for 31 years before that
 15 day.

16 Also, the State feels that the -- that
 17 imprisonment will provide an appropriate deterrent for
 18 other people in the community. I mean, it clearly won't
 19 deter Mr. Abbott because he's been in and out of prison
 20 his whole life. I think if other people see there is a
 21 problem, like the people in this courtroom, that it will
 22 deter them as well.

23 And clearly, under Section F, the defendant
 24 is a multiple offender. This is his seventh felony.
 25 For those reasons, Your Honor, the State

32

1 But it's not been all terrible, and he has
 2 been able to find periods of traction where he seems to
 3 be doing a little bit better.

4 And so, he's a bit older than the typical
 5 defendant that the Court sees with seven felonies. And
 6 so, they've been spread out over his life, and he's --
 7 a phrase that I've heard before is that he appears to
 8 be doing life on the installment plan. And so,
 9 Christopher's going to have to deal with the legacy of
 10 his prior choices and his criminal history.

11 That being said, I don't agree with the
 12 notion that Christopher is a throw away. That he's
 13 unworthy of change and that he's not capable of doing it,
 14 and that his life in the future is a waste because of the
 15 choices that he's made in his past. I don't accept that.

16 Christopher is in poor health. He doesn't
 17 have an excellent quality of life now and probably
 18 doesn't really hope to -- to really improve much in the
 19 future. And so, the period of time that he does have
 20 left, he's got every incentive to change. He has left --
 21 he has less life ahead of him than most, and I think he
 22 understands that. And so, I believe that that could be a
 23 catalyst for change.

24 That being said, Christopher also understands
 25 that there's got to be a measure of punishment for what

APPENDIX B

33

1 happened. And then, he's pretty grateful that nobody got
 2 hurt worse than they did. He's lucky in that regard. It
 3 could have been a much different outcome. Timing is
 4 everything. And in this case, the timing was such that
 5 Christopher, his passenger, and the -- and the victim in
 6 this case weren't seriously hurt, although -- or -- or
 7 killed. I guess seriously hurt's probably an
 8 understatement because I think they were seriously hurt.

9 But rather than ask the Court for specific
 10 numbers, we would just ask the Court to fashion a
 11 sentence which addresses rehabilitation as well. He
 12 understands that there needs to be specific deterrence,
 13 and he understands that there needs to be general
 14 deterrence. He expects to be punished for this.

15 What I would ask the Court to do is fashion a
 16 sentence that gives him some hope, some incentive to
 17 change, some opportunity to engage in treatment. His
 18 felonies were a good deal in the past. He hasn't availed
 19 himself of the modern treatment methods that are
 20 available today that could be successful. I don't think
 21 Christopher is not worthy of the opportunity to try to
 22 change himself.

23 A 7 plus 8, for 15, is essentially a life
 24 sentence for Christopher. I -- I -- I would like to
 25 think that Christopher is -- has -- has more in him than

34

1 that. And so, we would ask the Court to fashion a
 2 sentence in that regard.

3 THE COURT: Mr. Lorello, thank you.

4 Mr. Abbott, before I sentence you, you have
 5 the right to speak with the Court. You're not required
 6 to. Is there anything you would like to say?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Go ahead, sir.

9 THE DEFENDANT: May I stand?

10 THE COURT: Please.

11 THE DEFENDANT: Your Honor, I respectfully
 12 want everybody to know that everybody's treated me well
 13 here. The District Attorney's office; my attorney
 14 Mr. Lorello has done a good job.

15 Although we had a little contact -- excuse
 16 me -- concerning the accident the 14th of April, I
 17 have -- until today, I have nothing -- I hadn't known
 18 anything about Mr. Garrett. Nobody had mentioned him.
 19 I didn't know how he was. I didn't know how -- how --
 20 the difference had -- the impacts had made his life.
 21 I didn't know anything about this.

22 I've been very sorry. I took responsibility
 23 from the beginning. I know that my impacts and my
 24 actions have hurt them and other people. I have to
 25 disagree with his opinion on my criminality and how I've

35

1 been in trouble off and on in my life, that I'm a threat.

2 For the first time my -- in my life, I moved
 3 to Idaho five years ago. I've been off of parole, I was
 4 doing good. Sure, I had a few misdemeanor things. I'm
 5 an addict and an alcoholic, Your Honor. I need
 6 treatment. I've asked for it in the past; no one has
 7 ever offered me help.

8 I'm asking now to the Court, if you can,
 9 please, see fit to give me something where I can get
 10 treatment and help.

11 THE COURT: Mr. Abbott, thank you.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Abbott, on your guilty plea
 14 to this charge of Aggravated Driving Under the Influence
 15 of Alcohol, I'll find that you are guilty. I'll enter a
 16 judgment convicting you of that offense.

17 In sentencing you, Mr. Abbott, I'm required
 18 to balance a number of things. Those include deterring
 19 you from doing this again, deterring others, punishing
 20 you, and rehabilitating you. In balancing all of those
 21 things, my primary obligation is to try to fashion a
 22 sentence that prevents you from doing something like this
 23 again.

24 You know, in your appearances with me, I
 25 believe that you are sincere in your remorse for having

36

1 put Mr. Garrett, and your passenger, and yourself at risk
 2 of significantly [verbatim] bodily harm or death when you
 3 chose to drive under the influence of alcohol. I think
 4 that you are sincere when you say that you are motivated
 5 to change in the future.

6 In kind of counterbalance to those
 7 things, Mr. Abbott, I have -- I cannot ignore, as your
 8 state -- or as your attorney has indicated, the fact that
 9 you've been, you know, a drug user for 30 years. You
 10 continue to struggle with using, you continue to have
 11 problems with alcohol. And you have in the past, as you
 12 in this case did, you put someone in the community at
 13 risk of harm.

14 You've stolen peep -- from people in the
 15 past, you've robbed people in the past. And now you've
 16 darn near killed Mr. Garrett and yourself. And it's all
 17 because you can't or you won't get a handle on your
 18 substance abuse.

19 And so, you know, at -- at some point,
 20 Mr. Garrett -- or sorry -- Mr. Abbott, I just have to
 21 look at how much longer is society willing to tolerate
 22 that risk.

23 It's not lost on me that somebody in
 24 California simply sentenced you to serve 25 years to life
 25 at one point. The legislature then changed the law, and

37

1 you were the beneficiary of that change in the law and
2 you were released.

3 You come here, and you've been violating
4 rules. Certainly you haven't been robbing or stealing
5 from anyone, but you're driving when you're not supposed
6 to. And then, you go get drunk, and you drive, and this
7 very serious thing occurs.

8 Certainly, it is -- it is difficult for me to
9 conclude that you are likely to avail yourself of the
10 opportunity to live life differently in the next few
11 years, since you haven't in the last 30. And so, it's
12 difficult for me to fashion a sentence that focuses
13 largely on rehabilitation simply because you haven't
14 bothered to rehabilitate yourself for the last 30 years.

15 You tell me that you want treatment, that no
16 one's given you treatment, but there's treatment
17 available, Mr. Abbott. If you wanted help -- in fact,
18 you were in a treatment program to some extent. You were
19 taking -- you were going to the methadone clinic and you
20 were taking methadone. That is essentially supposed to
21 be a medication assisted treatment regimen. You weren't
22 using it that way, but that's what it's designed for.

23 I don't have much confidence that you're
24 going to avail yourself of those opportunities in the
25 future.

38

1 I certainly appreciate -- you know, like
2 Mr. Lorello indicated, that, you know, with age sometimes
3 comes some wisdom. In many cases, crime is a young
4 person's game. And -- and in looking at things in
5 balance, Mr. Abbott, you've simply reached the point
6 where I'm uncomfortable with you being in society because
7 you continue to refuse to get a handle on your drug
8 addiction, and that causes you to continue to commit
9 serious offenses that place others at significant risk of
10 harm.

11 At the bottom line, my job is to protect the
12 community. When you're unwilling to do that yourself, it
13 falls to me to do that, Mr. Abbott. And, frankly, that's
14 where I am when I read these reports.

15 I have considered those factors in Idaho
16 Code 19-2521; I view them the way the State does. I
17 think the State's recommendation is an appropriate one.
18 Certainly, I understand that you don't have much life
19 left. I'm not -- they are not asking that I simply
20 incarcerate you for 15 years, but I am concerned about the
21 risk that you pose, Mr. Abbott.

22 For that reason, I will sentence you to serve
23 15 years in the State penitentiary. That will consist of
24 7 years fixed; followed by 8 years indeterminate.

25 I will suspend your driving privileges for a

39

1 period of five years absolutely when you are released
2 from custody.

3 I will not impose a fine. I will order you
4 to pay costs and fees for this type of case.

5 I will order that sentence into execution
6 immediately. I will give you credit for the time you
7 have spent in custody to date; that's 99 days towards
8 that sentence.

9 You have the right to appeal from this
10 judgment of conviction and this sentence to the State
11 Board of Correction. That appeal must be filed within
12 42 days of today's date. In that appeal, you have the
13 right to the assistance of an attorney. If you are
14 indigent, the costs of your attorney and the costs of the
15 appeal would be paid for by the State.

16 Do you understand your appeal rights,
17 Mr. Abbott?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Abbott, I don't know you,
20 sir. You're a respectful, seemingly intelligent man.
21 I'm sorry that it has come -- kind of come to this point.
22 For the reasons I've explained, I'm simply -- I think you
23 are dangerous because you continue to be a drug addict
24 and an alcoholic. And I'm simply not comfortable leaving
25 you in the community because of the danger I believe you

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1 present.

2 Good luck to you, sir.

3 MR. McDEVITT: Your Honor, may the State have
4 90 days to finalize a figure?

5 THE COURT: Yes, sir.

6 MR. McDEVITT: Thank you.

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8 (The proceedings concluded at 11:20 a.m.)

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