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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 45315
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2016-6216
	)	
DEREK JON SANDERS,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Sanders failed to establish the district court abused its discretion by imposing concurrent, unified sentences of five years, with three years fixed, and 12 years, with four years fixed, upon the jury’s verdict finding him guilty of criminal possession of a financial transaction card and grand theft, with the persistent violator enhancement?

Sanders Has Failed To Establish The District Court Abused Its Sentencing Discretion

A jury found Sanders guilty of criminal possession of a financial transaction card and grand theft, with the persistent violator enhancement, and the district court imposed concurrent, unified sentences of five years, with three years fixed for criminal possession of a financial

transaction card, and 12 years, with four years fixed, for grand theft. (R., pp.314-18.) Sanders filed a timely notice of appeal. (R., pp.321-25.)

Sanders asserts his sentences are excessive in light of his substance abuse issues, family support, the fact that these were not crimes of violence, and his claim that “there is simply no indication that Mr. Sanders provided such a risk to the public that he needs to be incarcerated for a term of 12 years, with four years fixed.” (Revised Appellant’s brief, pp.3-5.) The record supports the sentences 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 possession of a financial transaction card is five years; the maximum prison sentence for grand theft is 14 years; and the persistent violator enhancement can extend the maximum sentence on each count to life imprisonment. I.C. §§ 18- 3128(3), - 2408(2)(a), 19-2514. The district court imposed concurrent, unified sentences of five years, with three years fixed, for possession of a financial transaction card, and 12 years, with four years fixed, for grand theft, both of which fall well within the statutory guidelines. (R., pp.314-18.)

Sanders has a long criminal history that includes eight juvenile adjudications, one misdemeanor conviction, six prior felony convictions, and dozens of misdemeanor and felony charges. (PSI, pp.8-15.<sup>1</sup>) The two current convictions are Sanders’ seventh and eighth felony convictions, and he also had a felony possession of a controlled substance charge pending at the time of sentencing. (PSI, pp.13-15.) Sanders was on parole when he committed the offenses of which he was convicted in this case, and his parole officer recommended that his original sentence be reinstated. (PSI, p.15.) Sanders reported that “he has completed ‘every program the prison has to offer,’” including Therapeutic Community, Relapse Prevention, Cognitive Self Change and Breaking Barriers, but Sanders has failed to rehabilitate despite numerous opportunities. (PSI, p.21.) In addition to serving time in prison, Sanders has also been placed on probation, in the retained jurisdiction program, and on parole, but none of these legal sanctions has deterred Sanders’ criminal thinking and behavior. (PSI, p.25.)

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “CONFIDENTIAL CERTIFICATE OF EXHIBITS SANDERS 45315.pdf.”

Sanders asserts that, because his crimes were not violent and the victim was compensated for her loss through her credit union, his aggregate sentence of 12 years, with four years fixed, is not reasonable. (Revised Appellant's brief, p.4.) However, while his crimes were not violent and the victim was compensated by her credit union for the total amount charged on her debit card, \$1,237.49, the victim's time and effort spent reporting the theft and the credit union's compensation of all monies debited from her account were losses for both parties involved. (PSI, pp.5, 7.) Furthermore, even though his crimes were not violent, they demonstrate an unrelenting pattern of criminal thinking and a willingness to victimize others for his own benefit, as he has prior felony convictions for robbery, grand theft, theft by receiving, and forgery. (PSI, pp.9-11.) Sanders presents a danger to the community in light of his continued criminal offending and his failure to rehabilitate or be deterred.

At sentencing, the district court addressed Sanders' ongoing criminal conduct and the danger he presents to the community. (7/17/17 Tr., p.332, L.14 – p.335, L.11.) The district court also set forth its reasons for imposing Sanders' sentences and stated:

I do think you need correctional treatment. This has been a pretty continuous criminal behavior over the years, and you just – you can't and haven't been very well supervised in the community. I think also looking at these two charges, a lesser sentence would depreciate the seriousness of the crime that you committed here. Granted, it's not a crime of violence, but you really put people and their security at risk when you chose to do these sorts of things to other people's property.

(7/17/17 Tr., p.333, Ls.5–15.) The state submits Sanders 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 Sanders's convictions and sentences.

DATED this 17th day of July, 2018.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of July, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

ANDREA W. REYNOLDS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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

## APPENDIX A

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1 prison, if he goes to prison -- and they fully expect  
2 him to do so -- that they're hoping you'll retain  
3 jurisdiction, Judge, but they fully expect that's  
4 probably what will happen, he will be committed  
5 to recovery and staying off illegal drugs.  
6           Judge, he is asking -- well, he is not  
7 asking, I'm asking -- for three fixed, four  
8 indeterminate, to run concurrent with  
9 his other charge.  
10           THE COURT: He has got the possession  
11 of financial transaction card and the Grand  
12 Theft charge. He has got two --  
13           MR. ELDRIDGE: I know. I'm asking --  
14           THE COURT: So you're asking for  
15 both three plus four?  
16           MR. ELDRIDGE: Yeah. And ask you  
17 to run those concurrent, and also with his  
18 other charges or other charges. He is not a  
19 problem, Judge. He has criminal thinking.  
20 He has been in the system a lot. Yes, he  
21 does. He is not disrespectful about it.  
22 In fact, interestingly enough, even though he  
23 has some pretty interesting attacks on why his  
24 lawyers failed him, that's all on the chatter  
25 from the brain trust that he is surrounded by.

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1 again. I totally disassociated myself with  
2 my old friends. I made a lot of progress as  
3 far as, like, my mentality. Like, it's not --  
4 I wasn't supposed to be like this. Like, this  
5 wasn't supposed to happen to me.  
6           Unfortunately, for me, I did make some  
7 poor choices while I was out there, and in no  
8 way did I ever say that I didn't do anything  
9 wrong. I'm just telling the truth when I tell  
10 you I did not steal any credit card or use it  
11 knowing it was stolen. That's what I'm telling  
12 you. I -- I do struggle with substance  
13 abuse.  
14           THE COURT: I know. That's what you  
15 told the jury. They didn't believe you.  
16           THE DEFENDANT: I know.  
17           THE COURT: I don't either.  
18           THE DEFENDANT: All right.  
19           THE COURT: But that's okay. I mean, I  
20 can do that. You have your belief what you  
21 think happened, and I have my belief of what  
22 the evidence showed.  
23           THE DEFENDANT: Right.  
24           THE COURT: That's just the way it is.  
25           THE DEFENDANT: And that's it, Your Honor.

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1 He very much respects the prosecutor. He believes  
2 if I would have filed that additional discovery  
3 request on this, motioned it up for a motion  
4 to compel, that the prosecution would have  
5 turned that over, because that's kind of  
6 the way the system is. You don't turn it  
7 over until they force you to.  
8           I know that's not true. You know  
9 that's not true. The prosecution was very  
10 pleased to know that he thought they did a  
11 good job and were honorable men, but he has some  
12 misunderstanding of what is going on, and it's  
13 not disrespectful.  
14           Good young man. I don't think he is  
15 somebody we throw away and warehouse, Judge.  
16 With his family and his attitude -- his attitude is  
17 he wants to get off drugs, and he will not be here.  
18 I think he can be a short-timer rather than a  
19 long-timer. Thank you, Judge.  
20           THE COURT: All right. Thank you.  
21           Mr. Sanders, is there anything else  
22 you would like to tell me?  
23           THE DEFENDANT: Yes. When I got out  
24 of prison, I got out with the mentality that  
25 drugs were not going to be an issue for me ever

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1 I'm going to come out of this a better person.  
2           THE COURT: Okay. All right. Well,  
3 thank you, sir. I appreciate your comments.  
4           But for the earlier comments, Mr. Eldredge,  
5 any legal reason I shouldn't impose sentence at  
6 this time?  
7           MR. ELDRIDGE: There is not, Judge.  
8           THE COURT: Okay. And, Mr. Sanders,  
9 that goes for you, too. But for your other  
10 concerns that you voiced earlier, is there any  
11 other legal reason why I shouldn't impose  
12 sentence?  
13           THE DEFENDANT: No, sir.  
14           THE COURT: All right. I believe  
15 sentence could be imposed here based on what I have  
16 in front of me, and so, remember, sir, you have  
17 forty-two days in which to appeal any decision  
18 the Court makes here; okay?  
19           I think there is an undue risk that  
20 you would commit another crime if you were  
21 placed on probation in this particular case.  
22 You were on parole when you committed this  
23 crime. You just simply are having a  
24 difficult time abstaining from the use of drugs,  
25 and with that goes your criminal thinking.

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1 Just haven't done much with that. And I think  
2 you have been incarcerated. There has been  
3 treatment. And there has just not been that change  
4 in behavior. You just haven't got that yet.  
5 I do think you need correctional  
6 treatment. This has been a pretty continuous  
7 criminal behavior over the years, and you just --  
8 you can't and haven't been very well supervised  
9 in the community. I think also looking at these  
10 two charges, a lesser sentence would depreciate  
11 the seriousness of the crime that you committed  
12 here. Granted, it's not a crime of violence,  
13 but you really put people and their security  
14 at risk when you chose to do these sorts  
15 of things to other people's property.  
16 I think imprisonment is necessary  
17 and will provide the appropriate punishment  
18 and deterrence and protection of society. And  
19 as Ms. Graham pointed out, you are a multiple  
20 offender.  
21 So with regard to these two charges,  
22 the possession of the -- Criminal Possession  
23 of a Financial Transaction Card, I'm going to  
24 impose a three-year fixed, two-year indeterminate  
25 sentence. Give you credit for time served, and

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1 impose \$1,000 fine, plus court costs, and  
2 \$1,000 reimbursement to the county for partial  
3 cost of your attorney, and restitution in the  
4 amount of \$1,321.73.  
5 With regard to the Grand Theft charge,  
6 I'm going to impose a concurrent four-year  
7 fixed, eight-year indeterminate sentence, and  
8 give you credit for time served there. Impose a  
9 fine of \$1,000, plus court costs, and as I said,  
10 those two charges will be run concurrently.  
11 I'm simply going to leave the  
12 concurrent sentence. This sentence will run  
13 concurrent with your parole violation; okay?  
14 Whatever is left on that, this sentence will run  
15 the same time as that one; okay? And I'm not unaware  
16 that this is a Persistent Violator. I did  
17 comply with the requirement that your sentence  
18 was at least five years; okay? Doesn't have  
19 to be five fixed or five indeterminate. It's  
20 just simply five years.  
21 The request for a ten-year fixed,  
22 five-year indeterminate sentence was  
23 not something that I felt was appropriate in  
24 this case, and had I not had the Persistent  
25 Violator charge proven at trial, I still would

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1 have imposed the sentence that I just did  
2 right here.  
3 I still think that this sentence,  
4 even ignoring the Persistent Violator, is  
5 appropriate under the circumstances based  
6 on your prior history and your lack of being  
7 able to be supervised in the community, the  
8 sentence is well within -- the sentence that I  
9 would have imposed regardless of the  
10 Persistent Violator allegation or conviction;  
11 okay? So just so you know that. All right?  
12 So, remember, you have forty-two days  
13 in which to appeal the decision the Court has  
14 made here; okay?  
15 I'm going to remand you back to  
16 the custody of the Sheriff, to serve that  
17 sentence, and so, Mr. Eldredge and Ms. Graham,  
18 I think the only thing I can do with this  
19 2016-1271 case is set it for trial. So I'm going  
20 to put it on the calendar.  
21 MR. ELDREDGE: Judge, it might be  
22 resolved. I'll talk to Mr. Sanders this week,  
23 and we'll see.  
24 THE COURT: Well, let's set it for  
25 that September 12th date, with a pretrial

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1 conference on August 28th, and then you let me know  
2 where we're at with that; okay?  
3 MR. ELDREDGE: I'll talk to him, Judge.  
4 THE COURT: So September 12th and  
5 August 20th.  
6 MR. ELDREDGE: Judge, again, my client  
7 wants me to ask you for the transcript of this  
8 trial. I have explained to him when he files  
9 the appeal, he'll get all of that.  
10 THE DEFENDANT: Yeah.  
11 MR. ELDREDGE: And post conviction  
12 relief, we'll get a copy of that as well.  
13 THE DEFENDANT: Okay.  
14 MR. ELDREDGE: But he wants me to ask  
15 you to order it now.  
16 THE COURT: Sure. I'm not going to  
17 order it right now, Mr. Sanders. You go  
18 ahead and file your appeal and that way you'll  
19 get it then.  
20 MR. ELDREDGE: If he files his appeal --  
21 THE COURT: Thank you. Good luck to  
22 you, sir. Thank you, Mr. Eldredge. I'll go  
23 ahead and excuse you.  
24 MR. ELDREDGE: Very well.  
25 (CONCLUSION OF PROCEEDINGS HELD 7/17/2017.)