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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45633
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2015-7204
	)	
MICHAEL CHARLES BAKER,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Baker failed to establish that the district court abused its discretion, either by imposing a unified sentence of 10 years, with three years fixed, upon his guilty plea to battery with intent to commit a serious felony, or by relinquishing jurisdiction?

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

Baker pled guilty to battery with intent to commit a serious felony, and the district court imposed a unified sentence of 10 years, with three years fixed, and retained jurisdiction. (R., pp.163-66.) Following the period of retained jurisdiction, the district court relinquished

jurisdiction and executed Baker's underlying sentence. (R., pp.167-68.) Baker filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.169-72.)

Baker asserts his sentence is excessive in light of his low risk to reoffend and amenability to treatment. (Appellant's brief, pp.2-4.) 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 battery with intent to commit a serious felony is 20 years. I.C. § 18-912. The district court imposed a unified sentence of 10 years, with three years fixed, which falls well within the statutory guidelines. (R., pp.163-66.) Furthermore, Baker's sentence is appropriate based on his criminal record and his failure to accept responsibility for his own actions.

Baker's criminal history includes juvenile adjudications for assault, malicious injury to property, disturbing the peace, and battery. (PSI, pp.6-7.<sup>1</sup>) Baker's adult criminal history includes misdemeanor convictions for failure to purchase a driver's license, game tags, use of other license/permit, providing false information to an officer, minor in possession/consumption of alcohol, minor in possession of alcohol, battery (amended from domestic violence), use of telephone to harass, intimidate, or threaten, two counts of disturbing the peace, and six counts of violation of a no contact order. (PSI, pp.7-10.) Baker also has multiple probation violations. (PSI, pp.7-9.)

In this case, 24-year-old Baker had a sexual relationship with a 16-year-old girl. (PSI, p.5.) The relationship continued until the girl was 17 and became pregnant with Baker's child. (PSI, p.5.) Rather than take accountability for the wrongfulness of his conduct, Baker attempted to shift the blame to the victim, stating that she told him she was 19 and that he wished he "would have known and not [been] lied to." (PSI, pp.5-6.)

Baker asserts that he is amenable to treatment; however, the psychosexual evaluator stated:

His account of events in regard to the current charge are [sic] problematic in that despite suspecting the victim was underage, he did nothing to address this issue and blames her for the offensive behavior itself as he believes this would

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<sup>1</sup> Citations to the page numbers of the PSI correspond with the page numbers of the electronic file "CONFIDENTIAL CERTIFICATE OF EXHIBITS BAKER 45633.pdf."

have never happened if she hadn't lied about her age. This makes it difficult for him to accept responsibility for his own actions as he views himself as the victim in this case.

(PSI, p.39.) Indeed, the psychosexual evaluator concluded that, while Baker's assessed risk level is at the "moderate end of the low risk range," that assessment "may be inaccurate" in light of the fact that Baker failed the sexual history polygraph and had an "invalid PPG response profile," and that if both issues were addressed "his risk level may increase, but it will not decrease." (PSI, p.38.) The evaluator also noted that while "Baker feels he needs treatment, ... it is not clear what he feels he needs treatment for"; "he does not feel that he needs sex offender treatment as his offense only occurred because the victim lied about her age per his report." (PSI, p.38.) Baker's sentence is appropriate in light of the seriousness of the offense, his deceptions in the psychosexual evaluation, and his failure to accept responsibility for his actions and belief that he does not need sex offender treatment.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Baker's sentence. (Tr., p.21, L.18 – p.25, L.24.) The state submits that Baker 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.)

Baker next asserts that the district court abused its discretion by following the APSI's recommendation to relinquish jurisdiction in light of the progress he claims he made on his rider and the fact that, if placed on probation, he may have been a candidate for placement in a specialized sex offender treatment program. (Appellant's brief, p.4.) Baker has failed to establish an abuse of discretion.

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013) (citing State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205–06, 786 P.2d 594, 596–97 (Ct.App.1990)). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013); Hansen, 154 Idaho at 889, 303 P.3d at 248 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

The district court’s decision to relinquish jurisdiction was appropriate in light of Baker’s poor behavior throughout his period of retained jurisdiction. At the time of sentencing, the district court instructed Baker to “do a good job up there,” “[d]o everything you can to learn as much as you can and take this seriously.” (Tr., p.25, Ls.16-21.) Baker did not take the opportunity he had been given to participate in the retained jurisdiction program and demonstrate himself a viable candidate for probation seriously. Before being removed from the retained jurisdiction program, Baker amassed two verbal warnings, six written warnings, four incident reports, one Class C DOR for unauthorized transfer of property, and one Class A DOR for putting three laxative pills into another inmate’s cup of coffee. (PSI, p.107.) Staff at NICI recommended relinquishment, stating:

This recommendation is based on the following: Mr. Baker is being recommended for relinquish jurisdiction because he received a Class A DOR for putting a harmful substance into another inmate’s coffee that was meant for consumption. Mr. Baker denied that he participated in this behavior. The

investigating officer believed that there was enough evidence to support the DOR. Mr. Baker is a very impulsive individual that lacks self-discipline and control as seen in his disciplinary interventions. He has expressed very disturbing ideas concerning what he views as funny. He was talked to during group concerning his enjoyment of giving pain or discomfort to others.

(PSI, p.109.) Baker clearly demonstrated that he was neither a suitable candidate for the rider program—due to his poor attitude and on-going criminal thinking—nor a viable candidate for community supervision, in light of his violations of rules and expectations of the rider program.

(PSI, p.107.) Given any reasonable view of the facts, Baker has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

#### Conclusion

The state respectfully requests this Court to affirm Baker's conviction and sentence and the district court's order relinquishing jurisdiction.

DATED this 27th day of August, 2018.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of August, 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:

JUSTIN M. CURTIS  
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



1 THE COURT: Thank you, Mr. Reynolds.  
 2 I appreciate your comments.  
 3 Mr. Baker, is there anything you would  
 4 like to say?  
 5 THE DEFENDANT: No, sir.  
 6 THE COURT: All right. Okay. Mr. Reynolds  
 7 said it all for you?  
 8 THE DEFENDANT: (Nods head.)  
 9 THE COURT: All right. Thank you.  
 10 All right. So, Mr. Reynolds, is there  
 11 any legal reason why I shouldn't impose sentence  
 12 at this time?  
 13 MR. REYNOLDS: No, Your Honor.  
 14 THE COURT: Mr. Baker, is there any  
 15 legal reason I shouldn't impose sentence at this  
 16 time?  
 17 THE DEFENDANT: No, sir.  
 18 THE COURT: Okay. Remember, Mr. Baker,  
 19 you have forty-two days in which to appeal any  
 20 sentence the Court imposes here; okay?  
 21 So I have to consider the presentence  
 22 investigation report, the psychosexual evaluation,  
 23 I have to look at the facts and circumstances of  
 24 this case and your prior criminal record; okay?  
 25 I looked at all of those things. I

1 I understand that you didn't, but even  
 2 in the psychosexual evaluation there were some red  
 3 flags. There were some bells that went off that  
 4 gave you some indication that, well, maybe this  
 5 relationship -- I'm dealing with a minor, even  
 6 though she would claim she is an adult. I think  
 7 there is enough there that you should have  
 8 known.  
 9 And then you have got these new charges  
 10 that get filed after this one gets filed. So  
 11 those are some concerns I have with regard to you  
 12 being successful on probation.  
 13 And then determining whether or not you  
 14 would be better in correctional treatment, meaning  
 15 a Retained Jurisdiction Program, again, the  
 16 polygraph, failure in the plethysmograph responses  
 17 leads me to believe that perhaps maybe there is  
 18 some need for further evaluations here. Dr. Lazota's  
 19 concerns with regard to the maladaptive personality  
 20 characteristics that have to be addressed, and I  
 21 think the reason behind that is because it leads you  
 22 to the types of behaviors that you involved yourself  
 23 with that are criminal.  
 24 I'm at an impasse as to whether or not  
 25 you're a low risk or not. I don't know. I would

1 considered protection of society, punishment,  
 2 deterrence, and rehabilitation in your case,  
 3 and I considered whether or not you were a viable  
 4 candidate to be placed on probation. And there  
 5 are some things that stood out for me; okay?  
 6 Because I will be honest with you, this was a  
 7 difficult case to say whether or not retaining  
 8 jurisdiction would be more appropriate or placing  
 9 you on probation would be more appropriate, and  
 10 taking into consideration State versus Toohill,  
 11 and those things favor probation was something  
 12 I looked at in making that decision.  
 13 I am concerned with regard to whether  
 14 or not you could be successful on probation, and  
 15 part of it is your impulsivity. You're impulsive and  
 16 you are immature, and would lead you back to your  
 17 criminal thinking. I am also very concerned  
 18 with regard to the psychosexual evaluation where  
 19 we didn't really get an accurate polygraph from  
 20 you. And I'm pretty concerned about that, and  
 21 with the plethysmograph, how you did on that.  
 22 I also worry, you know, we have got a  
 23 letter of apology here, but there are a lot of  
 24 victim statements here and "I didn't know how old  
 25 she was."

1 like to believe that you're a low risk, but the  
 2 information I have here is just not enough to  
 3 convince me that you're at low risk with regard  
 4 to that.  
 5 I think you could be a candidate for  
 6 probation. I really do. But I want some further  
 7 evaluation and treatment with you before I make  
 8 that determination. And I think it would be  
 9 helpful for you to work on some coping and life  
 10 skills to help you become a little more successful,  
 11 so what I'm going to do in this case, I'm going to  
 12 impose a sentence of three years fixed, seven years  
 13 indeterminate, and I'm going to retain jurisdiction,  
 14 okay, for 365 days.  
 15 I'm going to impose a fine of \$500 plus  
 16 court costs, and \$500 reimbursement to the county  
 17 for partial costs of your attorney.  
 18 I'm going to order restitution in the  
 19 amount of \$1,375, per the statute with regard  
 20 to reimbursements to the District Court funds  
 21 for the payment of the psychosexual evaluation  
 22 and the polygraph evaluation.  
 23 What I understand, Mr. Parris, from the  
 24 PSI is that there was no request for restitution  
 25 from the victim; is that correct?

25

1 MR. FARRIS: That's my understanding,  
2 yes.  
3 THE COURT: And then, finally, I'm going  
4 to leave that no-contact order in place until April  
5 17th of 2027; okay?  
6 I retained jurisdiction primarily for  
7 rehabilitative purposes, Mr. Baker. I'm not doing  
8 this to punish you. I just don't have enough  
9 information to be very sure of myself to say, oh,  
10 I'm going to give you a try on probation.  
11 There is just enough questions in my mind that  
12 I think you would benefit from the Retained  
13 Jurisdiction Program, and would give me some  
14 greater insight as to how you will be able to  
15 perform well on probation; okay?  
16 So what I'm really trying to tell you is,  
17 do a good job up there; okay? Do everything you  
18 can to learn as much as you can and take this  
19 seriously so that you can be placed on probation,  
20 because I really don't want to have to impose  
21 the sentence.  
22 I think you would be appropriate to be  
23 placed on probation. I just need a little bit  
24 more information to make that decision; okay?  
25 All right. Any questions, Mr. Reynolds?

26

1 Mr. Parris, anything else from you,  
2 sir?  
3 MR. FARRIS: No. Thank you, Your Honor.  
4 THE COURT: All right. Mr. Baker, I'm  
5 going to remand you back to the custody of the  
6 Sheriff, to be delivered to the authorities  
7 of the Department of Corrections for further  
8 evaluation and treatment; okay?  
9 Good luck to you, sir.  
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14 (CONCLUSION OF PROCEEDINGS HELD 4/17/17.)  
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