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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45793
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2016-13955
	)	
CRAIG ANDREW SORENSON,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Sorenson failed to establish that the district court abused its discretion, either by imposing a unified sentence of 15 years, with five years fixed, upon the jury’s verdict finding him guilty of attempted strangulation, or by denying his Rule 35 motion for a reduction of sentence?

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

In October 2016, Sorenson went to his estranged wife’s house after midnight and “began pounding on the doors and windows of her home and yelling” her name (“Andi”). (R., p.18.)  
Andi “did not want [Sorenson] to wake up [their 20-month-old daughter], so she stepped out

onto the front porch to speak with him.” (R., pp.18-19.) When she asked Sorenson to leave, he refused, “told her to stop acting like a ‘bitch,’” grabbed her wrists, and “tried to kiss her.” (R., p.19.) Andi pushed him away, and he “responded by yelling at her, calling her names, and rushing towards her, grabbing her by the neck and pushing her backwards against the metal hand rail on the front porch”; he then “pushed her over backwards into a tree in the flower bed.” (R., p.19.) Andi “fought back and stood up, but he pushed her over again ... this happened approximately four times” before Sorenson “grabbed the hood on her sweatshirt and her hair” and “pulled her by the hair and hood” into the residence, “through the living room[,] and into the kitchen,” where he “‘slammed’ her into the stove and grabbed her by the throat again.” (R., p.19.)

Andi “had been screaming for help, but the louder she screamed, the harder he would squeeze on her neck,” so she “tried to calm down to prevent him from squeezing harder on her neck,” while he “continued to scream profanities at her.” (R., p.19.) Sorenson subsequently “dragged her into the living room, holding onto her throat and one of her arms, pushed her down onto the couch,” sat “on top of her chest,” and refused to “get off of her.” (R., p.19.) At one point, Andi was able to retrieve her phone and attempted to call for help; however, Sorenson “grabbed her wrist that she was holding the phone in and began squeezing and shaking her hand until he made her ‘throw it backwards.’” (R., p.19.) He then began “twisting her hoodie around her throat, causing it to constrict her airway.” (R., p.19.) Andi “thought she was going to ‘die,’” so she “began telling him what he wanted to hear”; they subsequently “talked for approximately 45 minutes about their relationship and reconciling.” (R., p.19.)

Andi was finally able to escape when Sorenson “went outside to smoke” – while he was in the backyard, she grabbed their infant daughter, “ran out the front door,” and kept running

until she was “exhausted.” (R., p.20.) An officer who was on patrol in the area drove past Andi, but “made a U-turn ... to perform a welfare check” upon noticing that she and her daughter were underdressed for the cold weather. (R., p.18.) Andi saw the patrol vehicle and “began waving [the officer] down.” (R., pp.18, 20.) When Andi approached the patrol vehicle, the officer immediately noted that “[she] and the toddler both had blue colored skin and appeared to be shivering.” (R., p.18.) Andi told the officer that “her ex-husband had attempted to kill her” and that she “was repeatedly pushed over the top of a metal hand rail on her front porch. She said her ribs on the right side of her body were extremely sore and she thought they may be broken.” (R., p.18.) The officer transported Andi and her daughter to the hospital, where Andi described the incident in further detail, reporting that Sorenson “had tried to strangle her four to five times” and she was “having difficulty breathing, change in voice, and difficulty swallowing.” (R., pp.18, 20.) The officer documented Andi’s visible injuries, which included “bruising on her upper arms,” “a purple-red mark on the left side of her neck,” “scrapes, scratches, and bruising behind both of her ears,” “broken blood vessels under the skin just above her right clavicle,” “liner [sic] bruises and abrasions on her back and ribcage consistent with her report of being held over the metal hand rail on her porch,” “scrapes to her knee and pinky toe, and a chipped toenail on her big toe.” (R., p.20.)

Upon leaving the hospital, Andi requested “a civil stand-by while she returned to [her residence]” and “gave [officers] a key to the house so that [they] could clear the residence to make sure that [Sorenson] was not still in the house, lying in wait.” (R., p.21.) Sorenson had locked all of the doors and turned off all of the lights in Andi’s home, and he did not respond to officers’ instructions “that anyone inside verbally identify themselves.” (R., p.21.) While conducting the “security sweep,” officers found Sorenson “in the bathroom with the lights off,”

“with Andi’s journal.” (R., p.21.) Sorenson initially refused to obey the officers’ directions that he exit the bathroom and “get down on his knees” – he did not comply until officers had drawn their “Taser[s]” and “told him to get down onto the ground or he would be tased.” (R., p.21.)

The state charged Sorenson with attempted strangulation. (R., pp.65-66.) The case proceeded to trial and a jury found Sorenson guilty. (R., p.440.) The district court imposed a unified sentence of 15 years, with five years fixed. (R., pp.468-71.) Sorenson filed a notice of appeal timely from the judgment of conviction. (R., pp.479-83.) He also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.491-93, 496-97.)

Sorenson asserts his sentence is excessive in light of his purported acceptance of responsibility and remorse, acknowledgement that he has self-esteem issues, and because he “had been practicing cycle abuse ending over the course of the past year.” (Appellant’s brief, pp.3-5.) 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 attempted strangulation is 15 years. I.C. § 18-923. The district court imposed a unified sentence of 15 years, with five years fixed, which falls well within the statutory guidelines. (R., pp.468-71.) Furthermore, Sorenson’s sentence is appropriate in light of the serious nature of the offense, the harm done to the victim, and Sorenson’s history of violent behavior, refusal to accept full responsibility, lack of sincere remorse, and high risk to reoffend.

Sorenson’s criminal history consists solely of crimes in which he victimized and/or endangered others. (PSI, pp.20-22.<sup>1</sup>) In September 2013, he was charged with domestic battery in the presence of a child after he battered his then-wife, Amy, while their son was present. (PSI, pp.8, 20.) Amy reported that, during her marriage to Sorenson, “she went through similar (to the instant offense) instances of domestic battery and attempted strangulation.” (PSI, pp.8, 19 (parenthetical notation added).) Amy stated that, in one incident, Sorenson “pinned [her] to the

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “CONFIDENTIAL CERTIFICATE OF EXHIBITS SORENSON 45793.pdf.”

sofa and spat on her”; in a separate incident, he “backed [her] against the patio wall and he was close enough that she was unable to move to either side,” “screamed at [her] and called her numerous different names including ‘slut,’” “slapped [her] two times across the face,” and – after she went inside and locked the doors – he “kicked the door while he was still yelling and screaming,” damaging the door frame. (PSI, p.8.)

In November 2013, Sorenson was granted a withheld judgment for a DUI and was placed on probation, from which he was “discharged unsatisfied” approximately one year later. (PSI, p.21.) He was charged with injury to a child in July 2014, disturbing the peace in March 2015, and battery and disturbing the peace in August 2015; however, these charges were later dismissed. (PSI, pp.21-22.) Sorenson was convicted of animal abuse and mistreatment in April 2016, and was on probation for that offense when he committed the instant offense approximately six months later. (PSI, p.22.) The victim of the instant offense, Andi, reported that she “was married to Craig Sorenson for two years” and “suffered physical abuse at the hands of Craig Sorenson for the majority of their time together (every other day), which is why they separated.” (PSI, p.20 (parenthetical notation original).) She advised that she and Sorenson had been separated for approximately nine months when he showed up at her house and attempted to strangle her in the instant offense. (R., p.18.)

Despite his criminal history, Sorenson reported that he does not believe he has problems with – or needs any treatment for – anger, domestic violence, mental health, or substance abuse issues. (PSI, p.5.) With respect to his ex-wife, Amy, he stated that ““she isn’t a victim,”” despite the fact that he was convicted for the incident in which he hit Amy several times in the face, leaving “a pronounced red mark on her right cheek” that was apparent to the responding officers. (PSI, pp.8, 20-21.) When asked about the instant offense against his estranged wife, Andi,

Sorenson stated that he “did not commit a crime” and admitted only that he sent her “some nasty text messages.” (PSI, pp.5, 20.) He later acknowledged that he had been involved in “a scuffle” with Andi, but blamed her for the incident entirely, claiming that she “threatened” him with a knife and then “turned it to herself,” and that the “bruising” and “ligature marks” she sustained were merely the result of his attempts to disarm her. (Tr., p.372, L.5 – p.374, L.4.)

The domestic violence evaluator reported that Sorenson “showed no obvious remorse for his behavior” and that he “does not see himself as needing any kind of treatment.” (PSI, p.5.) The evaluator advised that Sorenson “show[ed] enough Psychopathic traits to warrant concern,” and concluded that “Sorenson appears to present a very high risk of reoffending, and a similarly high risk for child abuse, as compared with other individuals who have been arrested for domestic violence (i.e., anyone with one such arrest is at significantly higher risk of offending than others with no prior DV arrest).” (PSI, p.12 (parenthetical notation original).) The presentence investigator likewise determined that Sorenson “is a HIGH risk offender,” “[d]ue to his past violence, current violent crime, and attitude.” (PSI, p.25 (capitalization original).) The presentence investigator recommended imprisonment, stating, “Given Mr. Sorenson’s uncooperative attitude, and the serious nature of this crime, I do not feel he is a viable candidate for probation at this time. He takes no responsibility for his behavior, and is considered a very high risk if left in the community.” (PSI, p.27.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Sorenson’s sentence. (Tr., p.375, L.25 – p.379, L.5.) The state submits that Sorenson 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.)

Sorenson next asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence. (Appellant’s brief, p.5.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Sorenson must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Sorenson has failed to satisfy his burden.

In support of his Rule 35 motion, Sorenson provided a letter in which he stated that he had been participating in programs while in the jail, and a second letter from “Katherine Jones,” his “former landlord,” in which she reiterated her observation of Sorenson’s “progress.” (Appellant’s brief, p.5; PSI, pp.57, 64-65.) This was not “new” information, as Sorenson reported that he was participating in programs, including “Christian Recovery,” and that he believed he was making progress, *before* he was sentenced in this case. (PSI, p.57; Tr., p.371, Ls.18-22.) Furthermore, at the time of sentencing, the district court had a letter from “Martha K. Jones” (who appears to be the same former landlord, as she has the same address and phone number as “Katherine Jones”), in which she wrote about Sorenson’s activities and progress. (PSI, pp.56, 64; Tr., p.369, Ls.14-22.) Sorenson’s participation in programs while incarcerated is – as the district court noted – what is “expected. This is what he needs to do. This is the time that he needs to be away in order to reflect and make some changes in his life, and that was the whole purpose of the imposition of the sentence that [the court] imposed ....” (Tr., p.385, Ls.3-8.) Because Sorenson presented no new evidence in support of his Rule 35 motion, xx failed to demonstrate in the motion that his sentence was excessive. The state submits that by failing to

establish his sentence was excessive as imposed, Sorenson has also failed to establish the district court abused its discretion by denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm Sorenson's conviction and sentence and the district court's order denying Sorenson's Rule 35 motion for a reduction of sentence.

DATED this 26th day of October, 2018.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of October, 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 from outside her house and sent her a video of it,  
2 and she was scared and worried about that. I  
3 didn't know who had shown up.

4 And, regardless of the details,  
5 I made some poor choices that led to my  
6 even being there, and I do regret that. I  
7 regret that we fought and that she was injured  
8 during that.

9 THE COURT: All right. Anything else  
10 you wanted to tell me, sir?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Well, thank you  
13 very much.

14 Mr. Parris, any final comment from  
15 the State?

16 MR. PARRIS: No, Your Honor.

17 Thank you.

18 THE COURT: All right. Mr. Eldredge,  
19 any legal reason I shouldn't impose sentence  
20 then?

21 MR. ELDRIDGE: No, Your Honor.

22 THE COURT: And, Mr. Sorenson, any  
23 legal reason I shouldn't impose sentence?

24 THE DEFENDANT: No, sir.

25 THE COURT: Remember, sir, you have

1 forty-two days in which to appeal any sentence  
2 the Court imposes here.

3 As I have told you previously, I have  
4 looked at and reviewed the presentence investigation  
5 report that has been prepared here. I was present  
6 during the jury trial itself, and so I understand  
7 the facts and circumstances of the case, and I  
8 did look at your prior criminal record and  
9 considered the comments from both the victim,  
10 Mr. Eldredge, Mr. Parris, and yourself.

11 I have to consider protection of  
12 society, punishment, deterrence, and rehabilitation  
13 in your case. Also have to consider whether or  
14 not you're a viable candidate to be placed on  
15 probation under Idaho Code 19-2521. Looking at  
16 that criteria, beginning with your conduct,  
17 whether or not your conduct caused or  
18 threatened harm, and it certainly did. Whether  
19 or not you contemplated that your conduct would  
20 cause harm. I think it certainly did. It was  
21 a power and control thing with you. I don't  
22 believe that you acted under any strong provocation  
23 in this particular case. I, quite frankly, don't  
24 believe you. This is the first time I have  
25 heard any of this with regard to your comments

1 here today with regard to what happened. I don't  
2 believe there is substantial grounds tending to  
3 excuse or justify your conduct, nor do I believe  
4 the victim in this case induced or facilitated the  
5 commission of that crime.

6 I do acknowledge that you have -- don't  
7 have a significant criminal history though.  
8 I don't know -- I can't believe, based on the  
9 domestic violence evaluation and the presentence  
10 investigation report that I have reviewed, that  
11 your conduct here is something that would unlikely  
12 occur in the future. I think that's quite

13 contrary. I think without further programming and  
14 evaluation, I think it's quite possible that this  
15 conduct would occur again and again, not only  
16 with Ms. Sorenson, but with other people. And I  
17 don't believe your attitude with regard to this  
18 whole particular thing shows me that the  
19 commission of another crime like this in the  
20 future is unlikely. I think, again, it's quite  
21 the opposite.

22 I do think you're an undue risk to  
23 reoffend if I placed you on probation. You  
24 present a very high risk to reoffend, that's based  
25 on the presentence investigation report and the

1 domestic violence evaluation that  
2 was prepared.

3 I have yet to hear you accept any  
4 responsibility for your actions, and I don't  
5 believe I have heard anything where you have  
6 indicated that you need treatment of any sort  
7 with regard to this. Your attorney certainly  
8 believes so, but not you.

9 I do think you're in need of  
10 correctional treatment. I can think of no other  
11 setting that I can place you in for treatment  
12 that would -- that wouldn't put society at  
13 risk.

14 I think a lesser sentence would  
15 depreciate the seriousness of the crime.  
16 You put another person's life at risk, and you  
17 simply disregarded the value of that person's  
18 life.

19 I think imprisonment will provide  
20 appropriate punishment and deterrence. Again,  
21 you refused to accept responsibility or show  
22 any remorse for your crimes. You regret your  
23 actions now, but I'm not sure you really  
24 actually understand what you did. I think your  
25 regret is that you got caught and you're having

1 to face consequences.  
 2           Imprisonment will provide the appropriate  
 3 punishment and deterrence. So the Court is going  
 4 impose a sentence of five years fixed, ten years  
 5 indeterminate.  
 6           I'm going to grant you credit for all  
 7 time served in this case.  
 8           I'm going to require that you reimburse  
 9 Bannock County the sum of \$750 for partial costs  
 10 of your attorney, a fine of \$1,250, and I'll leave  
 11 restitution open for thirty days.  
 12           Sir, if I order restitution, and you object  
 13 to it, you have forty-two days in which to notify  
 14 Mr. Eldredge so he can notify the Court, and I can  
 15 set it for a hearing to determine whether or not  
 16 it is an appropriate amount of restitution.  
 17           I am going to leave the no contact  
 18 order in place that was in place with both regard to  
 19 Mrs. Sorenson and the child, and I'm going to  
 20 leave it in place for the next fifteen years,  
 21 until January 2nd, 2033.  
 22           All right. Again, you have forty-two  
 23 days in which to appeal any sentence the Court  
 24 imposed here.  
 25           Any questions, Mr. Eldredge?

1           MR. ELDREDGE: No, Your Honor.  
 2           THE COURT: Patrick, we have to serve  
 3 the no-contact order.  
 4           Mr. Farris, any questions?  
 5           MR. PARRIS: No. Thank you, Judge.  
 6           THE COURT: All right. Sir, I'm going  
 7 to remand you back to the custody of the Sheriff  
 8 to be delivered to the Department of Corrections  
 9 to serve your sentence.  
 10           Mr. Eldredge, do you have anything  
 11 else?  
 12           MR. ELDREDGE: I do not, Judge.  
 13  
 14           (CONCLUSION OF PROCEEDINGS HELD 1/2/2018.)  
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