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ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|------------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 45818 |
| Plaintiff-Respondent, |) | |
| |) | TWIN FALLS COUNTY NO. CR42-17-6118 |
| v. |) | |
| |) | |
| KEVIN RYAN DURAN, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Kevin Ryan Duran appeals from his judgment of conviction for aggravated assault with a deadly weapon enhancement. Mr. Duran pleaded guilty and the district court imposed a unified sentence of twenty years, with ten years fixed. Mr. Duran appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On June 18, 2017, a deputy with the Twin Falls Sheriff's Officer was dispatched to a residence in response to a threat report; while en route he learned that Mr. Duran was at the residence with a gun. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) Mr. Duran left the residence before the deputy arrived. (PSI, p.3.)

Upon arriving at the resident, Amber Perreira, Mr. Duran's ex-girlfriend, reported that Mr. Duran had made death threats toward her new boyfriend and had been continuously making threats toward her and others, including her boyfriend's children. (PSI, p.3.) She reported that on the day in question, Mr. Duran arrived at the house and fired three shots at a vehicle in the driveway and tried to enter the residence. (PSI, p.4.) After hearing the shots, other adults in the house moved the children to the basement. (PSI, p.4.)

Mr. Duran explained that on the day before the incident in question, which was the day before Father's Day, he drove over to his ex-wife's residence to see if his kids wanted to spend the night at his house. (PSI, p.7.) One of his children went to stay with him; the next day he called his ex-wife to see if she would bring the other children to see him. (PSI, p.7.) When she arrived without the other children, it upset him. (PSI, p.7.) Mr. Duran had some beers and began to get very upset when his ex-wife left. (PSI, p.7.) He was also getting very emotional because he felt that her new boyfriend was trying to invade the family. (PSI, p.7.) He also stated that the new boyfriend had previously threatened him. (PSI, p.7.)

While on the phone with his ex-wife Mr. Duran heard her boyfriend say that he could not have the kids, which sent his anger to a "boiling point." (PSI, p.8.) He then went to his ex-wife's residence to get his kids and confront her boyfriend. (PSI, p.8.) Looking back on the incident, he stated, "I feel that I could have handled it a lot different." (PSI, p.8.) He

emphasized that his actions were directed toward the new boyfriend and that he did not fire the weapon at the house because he knew his kids were inside. (PSI, p.9.)

Mr. Duran was charged with four counts of aggravated assault with a deadly weapon enhancement, one count of unlawful possession of a firearm, and one count of malicious injury to property. (R., p.54.) He eventually pleaded guilty to one count of aggravated assault with a deadly weapon enhancement and the State dismissed the remaining charges. (R., pp.87; 89.) The district court imposed a unified sentence of twenty years, with ten years determinate. (R., p.136.) Mr. Duran appealed. (R., p.145.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of twenty years, with ten years fixed, upon Mr. Duran following his plea of guilty to aggravated assault with a deadly weapon enhancement?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Twenty Years, With Ten Years Fixed, Upon Mr. Duran Following Plea Of Guilty To Aggravated Assault With A Deadly Weapon Enhancement

“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. Duran’s sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Duran “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).

Mr. Duran addressed the court at the sentencing hearing. He stated,

I first would like to apologize to the victims. I had no intention to harm anybody. I’m sorry I instilled fear into them.

I’m not here to bash on them. That’s not what I’m going to do at all. I’m not innocent by no means. I did what I did. I did shoot a car, leaving the house out of anger. I never shot towards anybody. I knew nobody was in the car. Out of anger I texted horrible things and let the anger get the best of me.

All I was trying to do was get by kids. When another man says you can’t see your kids, I’m sure another man would get mad. I had been intoxicated, was drinking, that day. Like I said, Your Honor, I let the anger get the best of me and I just apologize to the court.

(Sent. Tr., p.26, L.14 – p.27, L.2.)

Counsel for Mr. Duran requested that the court retain jurisdiction so that Mr. Duran could address his alcohol problem. (Sent. Tr. p.21, Ls.1-7.) Counsel noted that while Mr. Duran had a criminal record, he had not received the treatment for issues that he needed. (Sent. Tr., p.22, Ls.6-19.) Mr. Duran recognized his alcohol problem, and counsel believed that the entire incident would not have occurred but for Mr. Duran using alcohol. (Sent. Tr., p.20, Ls.18-25.)

Mr. Duran apologized for his actions and accepted responsibility for letting his anger get the better of him. He recognized his substance abuse issues and sought treatment through the retained jurisdiction program. He emphasized that he was not trying to harm anyone and only fired shots where he knew nobody would be present. Considering this information, Mr. Duran submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Duran respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 4th day of October, 2018.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas