

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  
E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45929
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-2017-9348
	)	
LANCE DEAN WARR,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Warr failed to establish that the district court abused its discretion by imposing a unified sentence of life, with 15 years fixed, upon his guilty plea to robbery?

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

Warr pled guilty to robbery, and the district court imposed a unified sentence of life, with 15 years fixed. (R., pp.105-08.) Warr filed a notice of appeal timely from the judgment of conviction. (R., pp.112-14.)

Warr asserts his sentence is excessive in light of his difficult childhood, mental health issues, and purported remorse. (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 penalty for robbery is not less than five years, up to life in prison. I.C. § 18-6503. The district court imposed a unified sentence of life, with 15 years fixed, which falls within the statutory guidelines. (R., pp.105-08.) Warr contends that his sentence is excessive in light of his difficult childhood, mental health issues, and purported remorse. (Appellant's brief, pp.3-6.) However, these factors are outweighed by the extreme danger Warr presents to the community and his failure to be deterred despite prior rehabilitation attempts and incarceration.

Before he committed the instant offense, Warr's criminal record included 11 juvenile adjudications, 26 misdemeanor convictions, and two felony convictions for theft by receiving and robbery. (PSI, pp.5-12.<sup>1</sup>) Warr had numerous chances to be successful on probation and parole, and had also been incarcerated three times. (PSI, pp.13-14.) In this case, Warr, who had been on parole for 48 days, stole several items from a Fred Meyer store, including a machete. (PSI, pp.3-4.) When a store employee attempted to confront him, Warr stated, "I don't need any help and if you know what's good for you, you'll leave me the fuck alone and go about you're fucking business." (PSI, p.3.) Warr then walked to the nearby TCBY, forced patrons to the ground, threatened them with the machete, and stole personal property from two of the patrons and a school donation box from the store. (PSI, p.3.) Warr was later located but fled from police officers and, while fleeing, damaged a fence and then a roof when he threw the machete onto it. (PSI, p.3.)

Warr's criminal thinking and conduct demonstrates the extreme danger he presents to the community. Furthermore, Warr has failed to rehabilitate or be deterred despite prior incarceration and successful completion of Breaking Barriers, Relapse Prevention, Anger

---

<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file, "Warr 45929 psi.pdf."

Management, Cognitive Behavioral Therapy, Moral Recognition Therapy, and Literacy Core.

(PSI, p.14.) The presentence investigator determined that Warr presents a high risk to reoffend

(PSI, p.24), and stated:

Mr. Warr's criminal history is quite extensive for his age and indicates a persistent pattern of criminal behavior and lack of regard for the safety of himself or others. These behaviors did not appear to be redirected with the help of community supervision or prison. Since 2007, Mr. Warr has been sentenced to serve 17 years in prison for his convictions of Theft by Receiving or Possessing Stolen Property and Robbery. Each time he has been released on parole he relapses almost immediately....

Based on the defendant's history, coupled with his ongoing criminal behavior, it appears as though the defendant does not internalize the severity of his actions and lacks the intrinsic motivation to change. He also clearly has a serious addiction issue. Without him incorporating consistent mental health treatment, it is questionable if he will be successful long-term. Given the information provided and Mr. Warr's repeated non-compliance on community supervision, he may benefit from serving a period of penal incarceration to address his current attitudes and provide him with additional foundation of sobriety.

(PSI, pp.25-26).

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Warr's sentence, including Warr's violent criminal history, failure to rehabilitate, and the risk he poses to the community. (3/2/18 Tr., p.47, L.4 – p.52, L.8.) The state submits that Warr 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 Warr's conviction and sentence.

DATED this 9th day of October, 2018.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of October, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JASON C. PINTLER  
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

45

1 me one day. So I reviewed the psychological evaluation  
2 and I'm trying to fix the problems caused -- that caused  
3 the crimes. My drug addiction, the last time I used was  
4 March 18<sup>th</sup>, 2017. Since I've been incarcerated, I've  
5 had no dirty UA, no drug DORs, and I've even started  
6 it's called SBISA. And even though the drugs are there  
7 and everything like that, I've still tried to maintain  
8 my sobriety through AA, through classes, and keeping my  
9 head right.

10 The violent part, I haven't acted violent in  
11 any way or gotten any trouble for getting in a fight or  
12 being aggressive or anything like that, so I'm trying to  
13 work on that.

14 The depression thing, I'm on med management  
15 and I've picked up some hobbies: Working out, drawing,  
16 music, those things help me restore myself and it deters  
17 me from using drugs and falling back into my old way.

18 As far as relationships, I have a girlfriend  
19 that we've got closer since I've been here, since I've  
20 been incarcerated and with her son [REDACTED] and my son  
21 [REDACTED]. We also have good talks often and it's a really  
22 good thing for us.

23 To continue the progress, I'm asking for a  
24 sentence to go to a work center or work camp so that way  
25 I may have a stable life when I get out, pay for a

46

1 psychological treatment, and give me time to recognize  
2 my triggers as far as anger, even more with the drugs,  
3 and the psychotic issues.

4 I know my crimes have come from lack of  
5 effort on my part, but it's very hard to get life going  
6 fresh out of prison. To have a job -- to have no job,  
7 no money, no support, I resort back to dealing drugs and  
8 violence to try it make a living. All my crimes come  
9 from drug use. It makes me feel like what I'm doing is  
10 okay. In all reality it's not.

11 I'm just trying to be honest with you guys, I  
12 don't want crime and prison to be the rest of my life.  
13 I want to be a productive member of society and a dad to  
14 my son and someone he can look up to. Again, this is  
15 why I'm asking for a sentence that allows me to go to a  
16 work center or a camp. I do deserve to be punished. I  
17 also want to do all this so that it never happens again.  
18 I now have a support system, and a work center would  
19 allow me to build a strong foundation when I get out,  
20 and it would help me pay my restitution, my treatment,  
21 and that I would continue to keep taking when I get out.

22 I know to ask for forgiveness right now is  
23 too much to ask for what I did, but I want you all to  
24 know how sorry I am for this horrible thing I did.  
25 There isn't a day that goes by I don't think of all that

47

1 pain that I caused all of you guys. None of you deserve  
2 that and I'm truly sorry.

3 THE COURT: Thank you.

4 Mr. Warr, on your plea of guilty, I do find  
5 you guilty. In an exercise of my discretion in  
6 sentencing, I've considered the Toohill factors,  
7 including the nature of the offense and the character of  
8 the offender, as well as the information in mitigation  
9 and aggravation.

10 In determining an appropriate sentence, I do  
11 so mindful of the objectives of, first and foremost,  
12 protecting society as well as achieving deterrence, the  
13 potential for rehabilitation, as well as the need for  
14 punishment or retribution.

15 I've reviewed and carefully examined the  
16 pre-sentence investigation, the psychological  
17 evaluation, I've considered the arguments and  
18 recommendations of counsel, I've considered the victim  
19 impact statements and I've considered the statement the  
20 defendant has made today.

21 I agree that it is sad, frankly, that  
22 Mr. Warr had an unfair and undeservedly difficult  
23 upbringing. No one should be treated the way that you  
24 were treated and, you know, it's unfortunately not  
25 surprising that you developed drug problems and some

48

1 issues, some mental health issues as a result. But it  
2 does not -- it may explain, but it does not excuse your  
3 criminal behavior as an adult. You're responsible for  
4 that behavior.

5 When I view your record, I am concerned about  
6 the danger that you present to the community. I see --  
7 you have spent most of your life incarcerated one way or  
8 the other. This is your second robbery felony  
9 conviction. The first one was equally as frightening as  
10 this one, in which you put a gun at the head of a store  
11 clerk and demanded money. And when police came to  
12 arrest you, you got into a standoff with them resulting  
13 in, my understanding is, brandished a gun at them and  
14 resulted in you getting shot. Somebody else could have  
15 been killed, frankly. I never lose, and we should never  
16 lose sight, of the toll that takes on the officer who  
17 was to pull that trigger. That is something they carry  
18 with them as well.

19 I look and see in the PSI materials that in  
20 2006 when you were arrested for having a stolen car,  
21 they also -- and that was before the 2008 robbery -- you  
22 had a handwritten note on your possession that  
23 essentially was a robbery note, and so it is apparent  
24 that you had that on your mind as well before that.  
25 You were out of prison approximately 45

49

1 days-ish when you committed this crime. If you are  
2 having difficulties, the answer is to go talk to your PO  
3 to figure out a way to get your medications, it is not  
4 to self-medicate, particularly given your history of  
5 violence when you take drugs.

6 And it's not just these robberies, you have a  
7 number of other violent charges that you've collected  
8 over the years, many of them in the form granted of  
9 misdemeanor, numerous charges of carried concealed  
10 weapons, and while much blame for this crime is placed  
11 upon your use of substances, it's not a coincidence that  
12 when on those substances you do what you've done in the  
13 past, which is to demand things from people using  
14 weapons, fear and intimidation, robbery.

15 You seem, as you sit before me, as you have  
16 throughout this case, like a nice gentleman, frankly,  
17 and, you know, Ms. Jones tells us of sort of the Jekyll  
18 and Hyde concept, that there is a nice person who  
19 resides within you, and I believe that, frankly. That's  
20 not the person I'm worried about. It's the other person  
21 who when he's out does not do what he needs to do in  
22 terms of controlling his mental health, in terms of  
23 staying sober and who becomes that violent person who  
24 puts other people in jeopardy.

25 I can only imagine the fear and the horror

50

1 that these victims went through in this case. And there  
2 was -- and I wrote it down because it struck me --  
3 Ms. Jones was talking about the fact that you know  
4 there's probably a fear by the state and the court  
5 effectively that you might inflict permanent damage on a  
6 victim in the future.

7 You have already done that, and while it may  
8 not be physical damage at this point, you have inflicted  
9 damage to these victims and their sense of peace and  
10 their sense of safety. What they went through is  
11 terribly frightening and clearly has had significant  
12 impact, as we've learned today.

13 My problem is I'm not convinced that when you  
14 are paroled that you are going to stay sober and that  
15 you're going to stay on your medications, and therefore  
16 I believe that in the foreseeable future you present a  
17 significant risk to the community. It may be as you're  
18 older and have had the correct medications for a longer  
19 period of time and you've grown tired of the life that  
20 you live outside the prison walls the times that you've  
21 had that, that you will strive harder to stay sober and  
22 maintain your mental health, and I'm hopeful of that,  
23 and frankly that's the reason I'm not giving a fixed  
24 life sentence. But I do think you present a significant  
25 risk in the near future, and so I'm going to sentence

51

1 you to the custody of the Idaho State Board of  
2 Corrections under the Unified Sentencing Laws of the  
3 State of Idaho for an aggregate term of your natural  
4 life. I'm going to order that the first 15 years of  
5 that be fixed. I believe that that is appropriate in  
6 light of the fact in this is your second robbery felony  
7 conviction, the violence and fear used and the weapons  
8 used in this crime, having not apparently learned from  
9 the prior crime, and the danger you presents to the  
10 community.

11 I'm hopeful after a significant period of  
12 time and aging that the Department of Correction can  
13 make a determination at that point whether you are safe  
14 to parole out. I hope they do that cautiously though  
15 because we've been down that road before and it has not  
16 gone the way that I think they had hoped.

17 I know this is a long sentence. It was  
18 mentioned not throwing your life away or giving up on  
19 you, I'm not doing that. I recognize it is a long  
20 sentence. I do think you need to be supervised for the  
21 rest of your life, and I do recognize this is a long  
22 period of time, a decade and a half, before you're  
23 eligible for parole. But that doesn't mean you don't  
24 have decades after that to live this life and how you  
25 choose to prepare yourself for those decades, how you

52

1 choose to earn those decades after that in terms of  
2 whether you do get that chance at parole or not is up to  
3 you and how you deal with this. So you can not see a  
4 future and act accordingly or you can see a future and  
5 plan for if and try to prepare yourself to be a safe and  
6 respectable member of the community who does not instill  
7 fear in others and who stays sober, and I hope you do  
8 that.

9 I'm going order you provide a DNA sample and  
10 right thumbprint impression and comply with the DNA  
11 Database Act. I'll order that you pay court costs and  
12 restitution in the amount of \$3,452.15.

13 You have the right to appeal. If you cannot  
14 afford an attorney, you can request to have one  
15 appointed at public expense. Any appeal must be filed  
16 within 42 days the date of this order or the entry of  
17 the written order of judgment of conviction and order  
18 imposing that sentence.

19 (Proceedings concluded.)  
20 --o0o--  
21  
22  
23  
24  
25