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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45981
Plaintiff-Respondent,)	
)	Cassia County Case No.
v.)	CR-2017-2963
)	
FLORENCIO MARTINEZ AGUINAGA)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Aguinaga failed to establish that the district court abused its discretion by imposing a unified sentence of eight years, with two years fixed, upon his guilty plea to felony DUI?

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

Aguinaga pled guilty to felony DUI and the district court imposed a unified sentence of eight years, with two years fixed. (R., pp.108-10.) Aguinaga filed a notice of appeal timely from the judgment of conviction. (R., pp.116-18.)

Aguinaga asserts his sentence is excessive in light of his behavior prior to sentencing, employment, support of family and friends, and “commitment to his sobriety.” (Appellant’s brief, pp.2-5.) 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 felony DUI is 10 years. I.C. §§ 18-8005(6), -8005(9). The district court imposed a unified sentence of eight years, with two years fixed, which falls well within the statutory guidelines. (R., pp.108-10.) Furthermore, Aguinaga's sentence is appropriate in light of his disregard for the law and repeated decisions to endanger others by driving while intoxicated.

Aguinaga's conviction in this case marks his third felony DUI conviction and his sixth DUI conviction overall. (PSI, pp.8-14.¹) His criminal history is otherwise extensive and includes 15 juvenile adjudications (one of which was for rape) (PSI, pp.5-7) and 23 misdemeanor convictions, including disturbing the peace, possession of a controlled substance, resist/obstruct officers, battery, violation of a no contact order, open container, malicious injury to property, failure to purchase driver's license, failure to maintain liability insurance, two counts of alcoholic beverage – posses/consume/purchase by a minor, and nine counts of driving without privileges (PSI, pp.7-14). Aguinaga also has numerous prior misdemeanor charges, including reckless driving, open container, failure to purchase a driver's license, four counts of driving without privileges, and four counts of DUI. (PSI, pp.7-14.) Aguinaga has repeatedly demonstrated his disregard for the law and the safety of others by driving while intoxicated, and has failed to be deterred despite prior treatment opportunities and legal sanctions, including having served a prison term, having been afforded multiple opportunities on probation and parole, and having participated in three "riders." (PSI, pp.15-16; see also 4/3/18 Tr., p.15, Ls.6-14.)

¹ PSI page numbers correspond with the page numbers of the electronic file "Pre-Sentence Investigation Report.pdf."

In this case, Aguinaga once again chose to drive while intoxicated with a BAC of .193. (PSI, pp.3-4.) A police officer observed Aguinaga pass two vehicles in the center of the roadway, accelerate from 55 to 65 mph when the posted speed limit was 45 mph, fail to maintain his lane, and fail to use his turn signal. (PSI, p.3.) When the officer approached Aguinaga's vehicle, he detected a strong odor of alcohol, and after a driver's license check revealed that Aguinaga was suspended for a DUI and no proof of insurance, he was arrested and transported to the Mini-Cassia Criminal Justice Center. (PSI, p.4.) When the officer asked if Aguinaga would submit to the standardized field sobriety tests, Aguinaga replied, "No. Fuck you. He was uncooperative and rude," and when asked if he would blow into the breathalyzer, Aguinaga flipped off the officer and said, "Blow through this." (PSI, p.4.) Aguinaga "continued to be disrespectful and would not submit to testing or follow instructions." (PSI, p.4.) Aguinaga asserts that his behavior prior to sentencing and his commitment to his sobriety warrant a lesser sentence (Appellant's brief, pp.4-5); however, Aguinaga's criminal history, poor behavior, and failure to maintain his sobriety despite multiple treatment opportunities and incarceration demonstrate that the district court did not abuse its sentencing discretion.

At sentencing, the district court articulated the correct legal standards applicable to its decision and addressed the seriousness of the offense, Aguinaga's repeated decisions to endanger the community by driving while intoxicated, and his failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions. (4/3/18 Tr., p.14, L.16 – p.18, L.9.) The state submits that Aguinaga 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 Aguinaga's conviction and sentence.

DATED this 6th day of September, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of September, 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:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 work with and things I get to do.
2 So that's my only -- I've been able to get,
3 spend more time with my family, my loved ones, since
4 then. I'm not hung over all day Saturday. I'm not
5 calling in to work Monday mornings or going in half a
6 day because, you know, of stuff like that.
7 I think, you know, there's a lot to take
8 advantage of on a rider. I feel the Court on that.
9 I also feel there's a good DUI program. That's
10 something that just doesn't spawn up without any good
11 results from it, and that's something I would really
12 like to be considered for.
13 And, you know, if anything, it's like
14 Mr. Schneider was saying; later, there's always that
15 sentence later on if I don't meet the criteria. And
16 to get into DUI court, not just anybody, oh, okay,
17 let's throw that guy in there, can make it into that
18 court.
19 You've got to have an LSI level, you've got
20 to -- I mean, I might have to fund myself. I don't
21 know where I sit in that area, so it's going to take
22 a lot of commitment and dedication on my part and
23 foot work. You can't just say, hey, this guy, let's
24 give it to him, and then a year later I complete it.
25 You know, that's going to take a lot of work, and I'm

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1 jail, I don't want to be on probation, I can't wait
2 to get this over with.
3 Where I sit today, I have a true desire, a
4 genuine desire to stay clean and sober. That's where
5 I sit today. It's not about not wanting to go to
6 jail. It's not about -- you know, it's about wanting
7 to stay clean and keep it that way for my family, for
8 society, for my job, for everyone involved in my
9 life. And that's all I have to say.
10 If the Court will take mercy upon me in
11 imposing any jail time or whatever, as far as I trust
12 the Court for whatever they're going to do, as far as
13 any like treatment I'm going to be directed towards,
14 so I trust any of that and I'll certainly take full
15 advantage of any of that that I'm offered.
16 THE COURT: Okay. Thank you. I appreciate
17 the comments. The Court considers all the comments
18 and presentation by the parties.
19 So you have keyed on, keyed in on my primary
20 goal in factoring a sentence, which is protection of
21 society, and then I look at your rehabilitation,
22 retribution or punishment and deterrence, both
23 specific to you in general and to the public; how do
24 I get people to stop drinking and driving.
25 The Court has considered the factors in

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1 prepared to put in that effort. I'm prepared to
2 whatever -- you know, my employer is willing to work
3 with me, you know.
4 It's too bad that it affects my family
5 because my family, they -- I need to be around for
6 them also as well. My youngest, he's 17. My oldest
7 daughter, she's already got a family of her own, but,
8 you know, so it's going to take commitment and
9 sacrifice from anyone who is involved in my life.
10 You know, right now, I like the way
11 everything is going for me because I'm not so much of
12 a danger to society right now. And I know that your
13 job, you took an oath to protect society and give
14 down punishments or sentences on everyone.
15 So what I like about right now is that I'm
16 there for my family, I'm there for my employer, I'm
17 not a danger to society. I have my health back, you
18 know. I'm not sitting there damaging my liver. I'm
19 not sitting there shortening my life span again
20 today.
21 I speak for today. I can't speak for
22 tomorrow. I can't speak for ten years from now.
23 But, you know, deep down I think that if, you know,
24 where I sit right now, today, it's not that I want to
25 be out of jail, it's not that I don't want to go to

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1 Idaho Code 19-2521 to determine whether probation or
2 some form of incarceration is appropriate. And in
3 making that determination, I look at your character,
4 the nature of the underlying offense, and your prior
5 record.
6 And your prior record is awful. It's your
7 third felony DUI. It's terrible. You've done three
8 prior riders, done a prison term, been on parole
9 twice, got off parole for 16 months before you
10 committed the next offense. And you were pulled over
11 while, I think the description was driving
12 recklessly, swerving, not signaling. So that is a
13 danger, not only to yourself, but everybody that
14 comes into contact with you on the road.
15 Your LSI is moderate, and I find that that
16 generally happens with alcoholics with DUIs because
17 you generally can hold a job and your families are
18 generally stable, so those LSIs are lower, but it
19 still tells me you're a moderate risk to re-offend.
20 I don't think you're going to commit another
21 crime, other than the DUIs, which is your weak spot.
22 Everybody in this room knows that. You have done
23 well on your pre-sentence release, but I'm not always
24 convinced that's the best judgment as to how somebody
25 is going to do. It's really your past actions.

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1 And you're only 39, still young, still so
 2 young to be here with a third felony DUI. I
 3 recognize what the parties have recommended. I'm
 4 also aware that the PSI recommends incarceration.
 5 You've got a lengthy juvenile record, and
 6 you've been caught, arrested five times for DUI, but
 7 who knows when you drank. I'm aware that there's
 8 options for DUI court. I'm aware of all of the
 9 options.
 10 I think right now there's an undue risk that
 11 you'll commit another DUI if you're put on probation.
 12 And I really cannot highlight this enough. I think a
 13 lesser sentence, being on probation, would depreciate
 14 the seriousness of the offense.
 15 You're a multiple offender. Your conduct
 16 absolutely threatened harm. And other than pointing
 17 a gun at somebody, I'm not sure how else you could
 18 threaten more harm to the community that we all live
 19 in. And I don't know how to deter people from
 20 drinking and driving.
 21 There's not been any judge that's been
 22 successful in the state or the nation to some point.
 23 So there's really, the only options are incarceration
 24 or a rider. And you've done three prior riders. And
 25 I recognize the program has changed, but I'm just not

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1 inclined to do that.
 2 I just don't think I would be doing my job
 3 if I put you on probation or a rider at this point.
 4 So for driving under the influence, and in an
 5 exercise of my discretion, I'll impose the following
 6 sentence: court costs, public defender reimbursement
 7 of \$250, no restitution, and a unified sentence of
 8 eight years -- two years fixed and six years
 9 indeterminate.
 10 I'm going to impose the sentence. You're
 11 going to go to prison for two years. And to be
 12 honest, I think it's light. I think a five-five-ten
 13 is probably appropriate. But I'm going to impose it.
 14 Credit for time served of four days.
 15 You've got -- I'm going to do an absolute
 16 driver's license suspension of five years, following
 17 which there will be a two-year period you're required
 18 to drive any motor vehicle equipped with a
 19 functioning ignition interlock system.
 20 The PSI will be returned; any and all bonds
 21 are here by exonerated. You have 42 days to appeal
 22 my decision, 42 days from the file stamp. The Court
 23 will appoint you a lawyer if you want to appeal that.
 24 And I do recognize that you're making some
 25 positive steps, and I appreciate that. And that's

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1 partly why you're not getting a three, four, or
 2 five-year fixed sentence, but I just, I don't know
 3 how else to face the citizens of Cassia County and
 4 put someone back on probation who's been caught five
 5 times driving under the influence.
 6 So that's what we're going to do. I wish
 7 you the best there, and I'll remand your custody to
 8 the sheriff to be transported to the Department of
 9 Corrections.
 10 (Whereupon, the proceedings concluded.)
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