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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46039
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-17-45765
)	
JACE ALLAN DAVIS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Davis failed to establish that the district court abused its discretion by imposing a unified sentence of six and one-half years, with one and one-half years fixed, upon his guilty plea to possession of methamphetamine?

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

Davis was on felony supervision for possession of a controlled substance, and had outstanding warrants for his arrest for violating his probation and for a new charge of felony forgery, when officers attempted to stop him for riding a bicycle at night without a bike light.

(PSI, pp.1-2, 179-81.¹) Davis ignored the patrol vehicle's lights and siren and refused to comply with the officers' verbal instructions and announcements over the "PA to stop the bike"; he instead "began to ride faster" and entered a trailer park, where he got off of his bicycle and fled on foot. (PSI, p.179.) Officers found Davis "laying behind trailer #15"; an "uncapped syringe" was found on the ground next to Davis, a second syringe was found next to his bicycle, and he was wearing a backpack containing "a scale with white residue on it." (PSI, pp.179-80.) Davis "initially refused to identify himself but later identified himself verbally" and stated that he "ran from the police because he knew he had active warrants for his arrest." (PSI, p.180.) When officers asked Davis whether "he had any illegal substances on his person," Davis "replied, 'No'"; however, when deputies subsequently searched Davis during the booking process, they found a plastic bag containing methamphetamine in his pocket. (PSI, pp.180-81.)

The state charged Davis with possession of methamphetamine, introduction of major contraband into a correctional facility, resisting and/or obstructing officers, and possession of drug paraphernalia. (R., pp.17-18.) Pursuant to a plea agreement, Davis pled guilty to possession of methamphetamine and the state dismissed the remaining charges, agreed to not file a persistent violator enhancement, and also agreed to recommend a unified sentence of seven years, with two years fixed. (R., pp.27-31.) The district court imposed a unified sentence of six and one-half years, with one and one-half years fixed. (R., pp.35-39.) Davis filed a notice of appeal timely from the judgment of conviction. (R., pp.44-46.)

¹ PSI page numbers correspond with the page numbers of the electronic file "Davis 46039 Confidential Docs.pdf."

Davis asserts his sentence is excessive in light of his acceptance of responsibility, mental health issues, and willingness to participate in substance abuse treatment. (Appellant’s brief, pp.3-4.) 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 possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of six and one-half years, with one and one-half years fixed, which falls well within the statutory guidelines. (R., pp.35-39.) On appeal, Davis contends his sentence is excessive because he was previously diagnosed with mental health issues, accepted responsibility for his actions, and is willing to participate in substance abuse treatment. (Appellant's brief, pp.3-4.) However, Davis reported no current mental health symptoms or problems during his most recent mental health assessment, and the evaluator did not diagnose him with any current mental health issues or needs. (PSI, pp.17-18.) Furthermore, Davis' acceptance of responsibility for committing the instant offense is questionable, as he attempted to portray himself as a victim and blamed others, both for the instant offense and for his continued substance abuse. (PSI, pp.2-3.) In his description of the instant offense, Davis wrote:

I was "pulled over" for reasons I know not, I felt that where I was not in violation of ANY laws that I should not have to fall victim to harassment from our so called law enforcement. So I ran. ... Once caught, I was harassed, abused, and searched against my will and so called rights. Being a drug addict, I had "Illegal" street drugs on me. I was once again arrested and tossed into the abyss, punished for being insanely sick! Placed & left to rot in a place where drugs & criminal activity call the shots, and run freely! Thanks Idaho!

(PSI, p.2 (capitalization original).) Later, in his comments to the court, Davis wrote, "Shame on the court for raping individuals with maximum sentences and harsh punishments, for being an addict. ... Now HELP ME!!!" (PSI, p.3.) However, Davis has previously been afforded an abundance of "help" for his substance abuse issues – via drug and alcohol classes, intensive outpatient treatment, outpatient treatment at Ascent, outpatient treatment at the Walker Center, the Ada County Jail Substance Abuse Treatment program, the Rising Sun sober living facility, drug court, and the retained jurisdiction program; he has nevertheless continued to use illegal

drugs and commit crimes. (Tr., p.18, Ls.21-23; PSI, pp.3-4, 7, 29, 34, 52-53, 60, 110-12, 128; R., p.30.) Most recently, he completed a rider in a prior felony drug case in June 2017, was released on probation (PSI, pp.2, 28), and – although he had a verified residence at the Rising Sun sober living facility and Aftercare treatment was available to him (PSI, pp.3, 34) – Davis “did not try or apply [him]self. [He] went to places [he] knew better than to go” (PSI, p.3), he socialized exclusively with people who used drugs and/or were involved in illegal activity (PSI, p.14), and he “didn’t do Aftercare. [He] didn’t even show up” (Tr., p.25, Ls.2-3). Within three months of his release into the community, Davis was charged with the new crime of felony forgery. (PSI, p.2.) He was wanted on warrants for the forgery and for violating his probation when, approximately two months later, he committed the instant offense. (PSI, pp.1, 180-81.)

At sentencing, the state addressed Davis’ abysmal history of criminal conduct and refusal to abide by the terms of community supervision, his continuing criminal thinking, and his failure to rehabilitate or be deterred. (Tr., p.17, L.9 – p.20, L.4 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Davis’ sentence. (Tr., p.25, L.18 – p.30, L.20 (Appendix B).) The state submits that Davis has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Davis' conviction and sentence.

DATED this 24th 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 24th 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:

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

APPENDIX A

<p style="text-align: center;">17</p> <p>10:58AM 1 MR. HARMER: There is not.</p> <p>10:58AM 2 THE COURT: Is there restitution being</p> <p>10:58AM 3 sought by the State?</p> <p>10:58AM 4 MR. HARMER: Yes, Your Honor. \$100.</p> <p>10:58AM 5 THE COURT: What is the defense position?</p> <p>10:58AM 6 MR. SMITH: No objection, Your Honor.</p> <p>10:58AM 7 THE COURT: Restitution is stipulated to by</p> <p>10:58AM 8 the defendant and so ordered.</p> <p>10:58AM 9 MR. HARMER: November 13th of last year</p> <p>10:58AM 10 Mr. Davis was on supervision for his two prior PCS</p> <p>10:58AM 11 cases when he is riding his bike around without a</p> <p>10:58AM 12 light at 1:15 a.m. He eluded police for a time</p> <p>10:58AM 13 when they tried to stop him for this violation.</p> <p>10:58AM 14 Ultimately they found him. He ditched</p> <p>10:59AM 15 his bike, took off running. Took a number of</p> <p>10:59AM 16 officers to locate him behind a trailer in --</p> <p>10:59AM 17 looks like a trailer park. He had three active</p> <p>10:59AM 18 warrants at the time. And on his person or around</p> <p>10:59AM 19 him in his backpack were found a scale with</p> <p>10:59AM 20 residue, two syringes and a baggy of meth.</p> <p>10:59AM 21 The defendant's history shows these two</p> <p>10:59AM 22 prior PCS cases. He has done drug court and a</p> <p>10:59AM 23 rider and probation and now prison spread over</p> <p>10:59AM 24 those two cases. He has a pending forgery that is</p> <p>10:59AM 25 set for trial next month. Misdemeanors, he has</p>	<p style="text-align: center;">18</p> <p>10:59AM 1 20-plus misdemeanors, four of them misdemeanor PVs</p> <p>10:59AM 2 and two failure to appear convictions.</p> <p>10:59AM 3 The defendant's version shows that he</p> <p>10:59AM 4 is rather bitter about this arrest. He's</p> <p>10:59AM 5 sarcastic; there is some vitriol involved there.</p> <p>11:00AM 6 When he talks about the drugs that he has, he puts</p> <p>11:00AM 7 quotes around illegal, as if that's still in</p> <p>11:00AM 8 question in his mind, as if he doesn't know if</p> <p>11:00AM 9 this should be illegal or not. He said he is</p> <p>11:00AM 10 being punished for being sick. On Page 3 he says,</p> <p>11:00AM 11 "Shame on the court for raping individuals with</p> <p>11:00AM 12 maximum sentences and harsh punishments for being</p> <p>11:00AM 13 an addict."</p> <p>11:00AM 14 I understand what he is saying, I don't</p> <p>11:00AM 15 think he understands what he is saying. He is</p> <p>11:00AM 16 saying I am sick, I need help, why are you sending</p> <p>11:00AM 17 me to prison?</p> <p>11:00AM 18 But what I read there is I am sick, I</p> <p>11:00AM 19 need treatment, as if he should go to a hospital</p> <p>11:00AM 20 and should be cared for. He had care. He had all</p> <p>11:00AM 21 the tools in the tool box. He had drug court. He</p> <p>11:00AM 22 had a rider. He has done -- he has lived at a</p> <p>11:00AM 23 halfway house. He has done aftercare. Those are</p> <p>11:00AM 24 the things that he threw away and chose meth</p> <p>11:00AM 25 instead.</p>
<p style="text-align: center;">19</p> <p>11:00AM 1 The punishment that he is getting is</p> <p>11:01AM 2 for making this choice to continue to use illegal</p> <p>11:01AM 3 drugs. The punishment is not because he is</p> <p>11:01AM 4 addicted, the punishment is for the behavior. And</p> <p>11:01AM 5 putting him in prison was a decision made after</p> <p>11:01AM 6 many opportunities were given him. And</p> <p>11:01AM 7 ultimately, his ability to make those choices</p> <p>11:01AM 8 proved itself unreliable.</p> <p>11:01AM 9 And so the judges in these prior cases</p> <p>11:01AM 10 chose to take away his ability to make that choice</p> <p>11:01AM 11 for a time and that is why he's going to prison,</p> <p>11:01AM 12 or that is why he is in prison. He is parole</p> <p>11:01AM 13 eligible in November of 2018 so that is this fall.</p> <p>11:01AM 14 I anticipate counsel will get up and</p> <p>11:01AM 15 say something along the lines of give him half</p> <p>11:01AM 16 year fixed concurrent and let him go straight into</p> <p>11:01AM 17 treatment and let him get out.</p> <p>11:01AM 18 My response to that would be he's --</p> <p>11:02AM 19 you can tell by his comments how upset he is at</p> <p>11:02AM 20 this. He still doesn't agree that these drugs</p> <p>11:02AM 21 should even be illegal. He is not in the right</p> <p>11:02AM 22 frame of mind to be released any time soon. And</p> <p>11:02AM 23 that is why, with this being a third offence and</p> <p>11:02AM 24 given his comments, third offence in a very short</p> <p>11:02AM 25 time, I think it is appropriate to do the two</p>	<p style="text-align: center;">20</p> <p>11:02AM 1 years fixed concurrent, five indeterminate for</p> <p>11:02AM 2 total of seven. That gives him some time to</p> <p>11:02AM 3 change his thinking on that and gives him some</p> <p>11:02AM 4 forced sobriety to help him with his sickness.</p> <p>11:02AM 5 THE COURT: Thank you, Mr. Harmer.</p> <p>11:02AM 6 Mr. Smith.</p> <p>11:02AM 7 MR. SMITH: Thank you, Judge. Judge, I</p> <p>11:02AM 8 think we can all agree that Jace is an addict.</p> <p>11:02AM 9 You look at his prior felony history and it is all</p> <p>11:02AM 10 PCS. And again, I don't think he has any</p> <p>11:03AM 11 confusion over whether methamphetamine is illegal</p> <p>11:03AM 12 or not.</p> <p>11:03AM 13 He's upset, he's in prison. He</p> <p>11:03AM 14 understands that, and he says it in there, he had</p> <p>11:03AM 15 the tools, he had those things, he didn't apply</p> <p>11:03AM 16 himself. And I think he is upset about that, and</p> <p>11:03AM 17 he finds himself back where he didn't want to be.</p> <p>11:03AM 18 He did a rider and looks like in June</p> <p>11:03AM 19 of 2017 is when he got off. And I went through</p> <p>11:03AM 20 that rider and it is a typical rider. You see</p> <p>11:03AM 21 someone who has some problems in the beginning but</p> <p>11:03AM 22 by the end he is pretty engaged in the treatment.</p> <p>11:03AM 23 And there is a lot of positive comments and he</p> <p>11:03AM 24 ultimately received a probation recommendation and</p> <p>11:03AM 25 he gets out. And again, he struggles when he is</p>

APPENDIX B

<p style="text-align: center;">25</p> <p>11:08AM 1 here. It is key for me.</p> <p>11:08AM 2 He said I did Aftercare. I didn't do</p> <p>11:08AM 3 Aftercare. I didn't even show up. I didn't try.</p> <p>11:08AM 4 I didn't apply myself. I know I can do better. I</p> <p>11:08AM 5 know where I stand. I come from a great family.</p> <p>11:08AM 6 My education, I got a better education than some.</p> <p>11:08AM 7 That's pretty much the only thing I</p> <p>11:08AM 8 really have to say, the one plus four, leave it to</p> <p>11:08AM 9 the parole board. They are going to determine</p> <p>11:08AM 10 whether I am fit to get out or not.</p> <p>11:09AM 11 I am in this class, it is pretty much</p> <p>11:09AM 12 like another rider. Here it is recommended that I</p> <p>11:09AM 13 have intensive outpatient treatment. Well, I am</p> <p>11:09AM 14 doing intensive inpatient treatment right now. I</p> <p>11:09AM 15 earned my spot I did. I am not trying to run from</p> <p>11:09AM 16 that. Thanks.</p> <p>11:09AM 17 THE COURT: Thank you.</p> <p>11:09AM 18 Sir, based on your plea of guilty to</p> <p>11:09AM 19 possession of a controlled substance, felony, and</p> <p>11:09AM 20 in an exercise of my discretion in sentencing, I</p> <p>11:09AM 21 have considered the Toohill factors, the nature of</p> <p>11:09AM 22 the offence, the character of the offender, any</p> <p>11:09AM 23 mitigating or aggravating factors, fulfilling the</p> <p>11:09AM 24 objectives of protecting society, achieving</p> <p>11:09AM 25 deterrence, rehabilitation or retribution.</p>	<p style="text-align: center;">26</p> <p>11:09AM 1 I had the same impression that the</p> <p>11:09AM 2 prosecutor had. I wrote down "lots of anger."</p> <p>11:10AM 3 Possession of a controlled substance is a crime.</p> <p>11:10AM 4 When I read your version of the events it was like</p> <p>11:10AM 5 you were being mistreated by law enforcement.</p> <p>11:10AM 6 As a member of this community, I think</p> <p>11:10AM 7 drugs, methamphetamine, opiates, are so damaging</p> <p>11:10AM 8 to our society that I am glad law enforcement is</p> <p>11:10AM 9 out looking out for members of society, following</p> <p>11:10AM 10 up on something that they think is a little</p> <p>11:10AM 11 unusual, how a person is acting, if a person</p> <p>11:10AM 12 eludes the officer and following up on that. They</p> <p>11:10AM 13 are doing exactly what I, not as a judge, but as a</p> <p>11:11AM 14 community member, want those law enforcement</p> <p>11:11AM 15 officers to do to keep everyone safe. I don't</p> <p>11:11AM 16 want people who are on drugs trying to break in</p> <p>11:11AM 17 and steal things from -- just to support their</p> <p>11:11AM 18 habit. I realize you weren't doing that in this</p> <p>11:11AM 19 case, but you seem to take great offence at law</p> <p>11:11AM 20 enforcement doing their job to protect society,</p> <p>11:11AM 21 and I disagree with you, respectfully. You are</p> <p>11:11AM 22 entitled to your opinion and I am entitled to</p> <p>11:11AM 23 mine. But I think law enforcement was doing</p> <p>11:11AM 24 exactly what I want law enforcement to do as a</p> <p>11:11AM 25 member of this society.</p>
<p style="text-align: center;">27</p> <p>11:11AM 1 I also agree that the court has tried</p> <p>11:11AM 2 to get you treatment. There is no doubt you are</p> <p>11:11AM 3 an addict, but I am sure you have heard the saying</p> <p>11:11AM 4 "You can lead a horse to water but you can be the</p> <p>11:11AM 5 make him drink." And so the judicial system has</p> <p>11:11AM 6 tried to lead you to this treatment so that you</p> <p>11:12AM 7 can address your addiction. We have tried drug</p> <p>11:12AM 8 court, we have tried the rider program, and</p> <p>11:12AM 9 released you into the community.</p> <p>11:12AM 10 And the response to this treatment that</p> <p>11:12AM 11 has been provided is your choice to not pursue</p> <p>11:12AM 12 treatment. That it is an easier decision just to</p> <p>11:12AM 13 pursue more drugs. And everyone is entitled to</p> <p>11:12AM 14 their free will. So you can make that choice in</p> <p>11:12AM 15 our society, but you cannot turn around and blame</p> <p>11:12AM 16 the court for not giving you any treatment,</p> <p>11:12AM 17 because the record does not simply support that</p> <p>11:12AM 18 allegation. If you fail to take advantage of the</p> <p>11:12AM 19 treatment opportunities presented, that is not</p> <p>11:12AM 20 society's fault.</p> <p>11:12AM 21 So you need to decide during this time</p> <p>11:13AM 22 if you're going to let the anger go and say I</p> <p>11:13AM 23 really don't want to be in prison anymore. I</p> <p>11:13AM 24 really want to have a normal healthy relationship</p> <p>11:13AM 25 with my family and with others. I want to have my</p>	<p style="text-align: center;">28</p> <p>11:13AM 1 freedom back. And I want to stop having these</p> <p>11:13AM 2 drugs control my life. I do not say it lightly.</p> <p>11:13AM 3 Beating an addiction is the hardest thing anyone</p> <p>11:13AM 4 has to do in their life. I know it is not easy,</p> <p>11:13AM 5 but you have to make an effort.</p> <p>11:13AM 6 Because this is your third felony, I am</p> <p>11:13AM 7 not sentencing you because you are an addict. I</p> <p>11:13AM 8 am sentencing you because you continue to break</p> <p>11:13AM 9 laws and you continue to contribute, based on your</p> <p>11:13AM 10 addiction, to creating a demand for drugs in our</p> <p>11:14AM 11 society. In order to deter you and others, I do</p> <p>11:14AM 12 believe that your sentence needs to be significant</p> <p>11:14AM 13 enough to encourage a change in your behavior.</p> <p>11:14AM 14 The Court is going to sentence you to</p> <p>11:14AM 15 one and half years fixed, plus five years</p> <p>11:14AM 16 indeterminate for a total sentence of six and half</p> <p>11:14AM 17 years. I am going to give you credit -- and I am</p> <p>11:14AM 18 going to impose that sentence and run it</p> <p>11:14AM 19 concurrent to all your other cases. I am going to</p> <p>11:14AM 20 give you credit for 157 days of time served on</p> <p>11:14AM 21 this case. I am going to dismiss counts two,</p> <p>11:14AM 22 three and four. I am going to impose standard</p> <p>11:14AM 23 court cost on this felony, and I am going to</p> <p>11:14AM 24 impose a fine of \$1,000 and suspend \$800 of that</p> <p>11:14AM 25 fine.</p>

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