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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45663
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-17-3105
)	
DARRELL A. DEMOTTE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Demotte failed to establish that the district court abused its discretion by imposing a unified sentence of seven years, with two years fixed, upon the jury's verdict finding him guilty of felony DUI?

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

A jury found Demotte guilty of felony DUI (two or more prior DUI convictions within 10 years) and resisting/obstructing officers, and the district court imposed a unified sentence of seven years, with two years fixed, for felony DUI, and a concurrent 365-day jail sentence for

resisting/obstructing officers. (R., pp.143-47.) Demotte filed a notice of appeal timely from the judgment of conviction. (R., pp.148-50.)

Demotte asserts his sentence is excessive in light of his health issues, remorse for resisting/obstructing officers, and because he helps others and cares for his elderly adoptive mother. (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 felony DUI (two or more prior DUI convictions within 10 years) is 10 years. I.C. § 18-8005(6). The district court imposed a unified sentence of seven years, with two years fixed, which falls well within the statutory guidelines. (R., pp.143-47.) On appeal, Demotte contends that his sentence is excessive because he has health issues, he helps others, and he cares for his elderly adoptive mother. (Appellant’s brief, pp.4-5.) However, all of these factors have reportedly been present for “many years,” and Demotte has nevertheless continued to commit crimes that endanger the community. (PSI, pp.10, 12-17, 19, 23, 111, 113, 408-09, 411-12.¹)

Demotte reported that he “moved from Oregon to Idaho” to live with his adoptive mother after he was diagnosed with cancer in “around 2006,” and that he “has pretty much always lived with [her] since.” (PSI, pp.13-14.) He began committing DUI offenses shortly after he moved in with his adoptive mother and has committed three separate DUI offenses since 2007, despite his ongoing health issues and his adoptive mother’s need for a “caregiver.” (PSI, pp.8-10, 14-17, 19, 23, 27, 111.) In fact, he listed “[s]tress over [his] health” and stress due to his adoptive mother’s health as the only factors that *contributed* to his “legal problems.” (PSI, p.19.) That these factors persist does not show that Demotte’s sentence is excessive; to the contrary, Demotte has demonstrated that his health problems and his desire to be his adoptive mother’s caregiver do not deter him from continuing to commit crimes that may result in his incarceration.

¹ PSI page numbers correspond with the page numbers of the electronic file “Demotte 45663 psi.pdf.”

Furthermore, Demotte's ability to successfully rehabilitate is highly doubtful, particularly given his report that these ongoing factors are "contributory to his legal problems" and his refusal to accept responsibility for committing the instant felony DUI offense. (PSI, pp.17, 19, 23-24.) His ability to rehabilitate is further impeded by the fact that, although he continued to consume alcohol after his doctors warned him that he "shouldn't be drinking on the meds that [he] was on" (12/8/17 Tr., p.19, Ls.17-19) and after his adoptive mother "took him to all of his meetings and treatment" (PSI, p.12) for his past DUI convictions, he did not acknowledge that he has an alcohol abuse problem and he told both the presentence investigator and the substance abuse evaluator that he "did not feel that alcohol treatment is necessary at this time" (PSI, pp.17, 24).

At sentencing, the state addressed the serious nature of the offense, Demotte's extensive criminal history, his extreme dishonesty and manipulative behavior, his lack of amenability to community supervision, his refusal to accept responsibility for his crimes, and the danger he presents to the public. (12/8/17 Tr., p.7, L.9 – p.14, L.16.) The state submits that Demotte 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 Demotte's conviction and sentence.

DATED this 30th day of November, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of November, 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.

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

APPENDIX A

1 MR. VOGT: And just for what it's worth,
2 I don't object to that, your Honor.

3 THE COURT: Thank you. I assumed he was
4 still in the building, and I wanted to get that
5 settled. So thank you.

6 I apologize for the interruption.
7 Mr. Vogt, you're back on.

8 MR. VOGT: Thank you, your Honor.

9 As I was saying, I'm asking the Court to
10 impose a two plus eight for ten, to impose a fine
11 of \$2,500 and court costs, to suspend
12 Mr. DeMotte's driver's license for five years
13 absolutely. I'm also asking the Court to order
14 \$1,000 in public defender reimbursement.

15 Mr. DeMotte has an extensive criminal
16 history starting with a burglary in 1981, felony
17 joyriding in 1984, along with assault on law
18 enforcement in 1984. He was sent to prison in
19 that case. Arson in 1998, also sent to prison.
20 Forged security in '99. It was a federal offense
21 that he was sent to prison for. And then we have
22 our instant offense here.

23 He's also pending a burglary and an abuse
24 of a vulnerable adult here in the Fourth District.
25 And as the Court recalls, that was the basis for

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1 the State's request to revoke defendant's bond
2 some weeks ago. Very concerning factually.

3 He has the misdemeanor predicate DUIs
4 from 2007 and 2012.

5 I won't belabor the facts in this case.
6 The Court sat on the trial. But it occurred on
7 January 31st of 2017. Mr. DeMotte was witnessed
8 driving up to the Jackson's. He was extremely
9 intoxicated --

10 THE COURT: Thank you, Mr. Vogt. I own
11 the facts very well in that case.

12 MR. VOGT: -- a .197 when the blood draw
13 was actually taken.

14 And it is interesting to note in the
15 medical records that his blood taken somewhat
16 earlier in the evening was a .263.

17 In this case, your Honor, I am
18 recommending a significant amount of public
19 defender reimbursement. And I think it's called
20 for in that the defendant used a substantial
21 amount of public resources to mount, from what the
22 State views, is a ridiculous defense, a defense
23 the jury didn't accept in any way.

24 It is deeply concerning to the State that
25 Mr. DeMotte takes no responsibility for his

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1 actions. And from the State's view, it increases
2 his risk to the community. He doesn't think he's
3 done anything wrong, and therefore he is at a
4 significant risk of repeating those actions. His
5 actions of that night were dangerous. He could
6 barely walk, let alone drive a car. And he could
7 have killed somebody.

8 I have concerns about whether Mr. DeMotte
9 would be able to be monitored in any way in the
10 community, given his level of manipulation. It's
11 my view from reading the PSI and from seeing his
12 actions in court that Mr. DeMotte is a highly
13 manipulative individual. He plays on sympathy for
14 his aged, adopted mother, yet ignores the fact
15 that Ms. Lloyd is very well taken care of. She
16 has daily caregivers. Josh Reilly continues to
17 live at that home. She has other family in the
18 area who check up on her. And I have spent some
19 time reviewing Mr. DeMotte's jail calls. It's
20 concerning that he spends time trying to isolate
21 her as well.

22 He plays on sympathies for his own
23 health. Somehow the installation of a pacemaker
24 is some kind of a license to allow him to be
25 aggressive with law enforcement and to delay his

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1 arrest.

2 As I indicated before, he basically
3 pulled the same type of stunt with law enforcement
4 when they arrested him on this pending burglary
5 and vulnerable adult case. And both times law
6 enforcement were required to take him to the
7 hospital.

8 He also somehow plays on his time in the
9 military. And this is significantly concerning to
10 the State. In his initial engagement with law
11 enforcement, the Court will recall he made a big
12 issue of his career in the military. But as it's
13 indicated in the DD214, he served 98 days in the
14 military. He didn't finish basic training. And
15 that's concerning in a number of ways.

16 He was evaluated while he was in custody
17 for veterans court. I've got the application
18 here, and I can show it to the Court. He
19 indicates his date of service was '79 to '83, and
20 he served in a combat zone in Grenada, and that's
21 demonstrably untrue. He was convicted of burglary
22 in '81. He was convicted of joyriding in '84.
23 And he wasn't even in the military in 1983.

24 And then in a review of his Facebook
25 pages, he shows pictures of himself in July of '16

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1 in a digital camo military outfit. These outfits
2 weren't even produced until the mid 2000s.

3 And maybe even more concerning is in
4 November of '16, he shows himself in a colonel's
5 outfit. And there is no way that in the 98 days
6 that Mr. DeMotte served that he attained the rank
7 of colonel, which requires congressional approval.

8 And so it's not criminal, per se, but it
9 is concerning that he would be so dishonest about
10 it. And I think it will make it more difficult to
11 monitor him in the community.

12 And I think probably most concerning in
13 the level of manipulation is the way he tried to
14 manipulate the witnesses in this case. Josh
15 Reilly testified that Mr. DeMotte talked to him
16 weekly, sometimes multiple times weekly, about the
17 case. It's clear to the State, at least, that he
18 was attempting to feed Mr. Reilly what he was
19 supposed to say.

20 And similarly, Ms. Lloyd was interviewed
21 by my investigators. And during that
22 investigation, Mr. DeMotte was the one who was
23 doing all the talking. And he's feeding lines,
24 basically, to Ms. Lloyd. And that's concerning
25 that he's trying to subvert the justice system

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1 itself. And that level of manipulation and, from
2 the State's view, dishonesty, makes him difficult
3 to monitor in the community.

4 Further to his dishonesty, his
5 explanations regarding his burglary convictions
6 defy common sense, particularly if one looks at
7 the information with which he was charged. He was
8 charged with going into four separate hotel rooms
9 on two different floors. So the idea that his
10 friends told him they were staying in there does
11 not make any sense. His version of the events
12 that happened in the instant case defy common
13 sense, are inconsistent with the evidence
14 presented at trial.

15 He wants to insist that somehow he
16 magically jumped over the center console of his
17 SUV to exit from the driver's side while the real
18 driver climbed over the back seat to retrieve a
19 bag. It doesn't make sense on its face, for one.
20 But second, he's made a very big issue of his need
21 to use a cane to walk, making these acrobatic
22 claims highly unlikely. And third, he was
23 witnessed by a credible witness -- that the jury
24 believed -- driving up into that parking spot.

25 He lies about simple things. He's

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1 claimed that Josh lives at his -- at Ms. Lloyd's
2 home rent free. However, in jail calls and video
3 visits, they all openly discuss the fact that he's
4 paying Ms. Lloyd \$600 a month.

5 He claims in the PSI and elsewhere that
6 he's turned over a new leaf and he's discontinued
7 drinking, yet in jail calls and video visits, he
8 makes jokes about wanting a beer. And in a
9 conversation with his sister, he talks about
10 wishing to hang out with Mary Jane, which is code
11 for marijuana. He asks Josh to remove contraband
12 from his room. At least from my perception the
13 code was for marijuana.

14 Given his history of manipulation and
15 dishonesty, one can't really take for face value,
16 A, the GAIN evaluation. He likely underreports
17 his needs or, really, any of his statements.

18 From the State's view, Mr. DeMotte sits
19 before you as a lifetime criminal who has served
20 multiple times in prison, who can rationalize and
21 excuse any action he takes, and is so blatantly
22 dishonest that he can't be effectively monitored
23 in the community.

24 In this case where he's taken zero
25 responsibility for his action from that night,

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1 from the State's view, the Court is left with
2 little option but to incarcerate Mr. DeMotte.

3 Rehabilitation in this case is futile.
4 He has a lifetime of criminal activity. He has a
5 nearly sociopathic disregard for the truth, and he
6 refuses to accept any responsibility for his
7 actions in this case. All of these things suggest
8 that Mr. DeMotte cannot be rehabilitated.

9 In a case like this where Mr. DeMotte
10 commits one of the most dangerous crimes in our
11 community and takes no responsibility for it, the
12 Court must protect the community from Mr. DeMotte.
13 And what is left to protect him from the community
14 is to place him in prison.

15 So I'm asking the Court to impose the
16 sentences I've outlined. Thank you.

17 THE COURT: Thank you. Ms. Owens?

18 MS. OWENS: Thank you, your Honor.

19 Your Honor, Darrell is 55 years old and
20 comes before this Court to be sentenced on this
21 felony DUI charge. I can tell the Court that his
22 prior DUIs are from 2007 and 2012. In both of
23 those instances he entered guilty pleas, and so he
24 is not someone who is trying to not take
25 responsibility. He is someone who understands the

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