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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. GREGORY CONAN WILLIAMS, Defendant-Appellant.	)	NO. 45749 Ada County Case No. CR01-2017-12505 RESPONDENT'S BRIEF

Issue

Has Williams failed to establish that the district court abused its discretion, either by imposing a unified sentence of five years, with three years fixed, upon the jury's verdict finding him guilty of stalking in the first degree, or by relinquishing jurisdiction?

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

A jury found Williams guilty of stalking in the first degree, and the district court imposed a unified sentence of five years, with three years fixed, and retained jurisdiction. (R., pp.210-11, 234-37.) Williams filed a notice of appeal timely from the judgment of conviction. (R., pp.238-40.) Following a period of retained jurisdiction, the district court relinquished jurisdiction and

executed Williams' underlying sentence. (Order Relinquishing Jurisdiction and Commitment (Aug., pp.24-26).)

Williams asserts his sentence is excessive in light of his status as a first-time felon, family support, and "work ethic." (Appellant's brief, pp.4-6.) 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 sentence for stalking in the first degree is five years. I.C. § 18-7905. The district court imposed a unified sentence of five years, with three years fixed, which falls within the statutory guidelines. (R., pp.234-37.) Furthermore, Williams' sentence is appropriate in light of the seriousness of the offense and his failure to accept full responsibility for his actions.

Although this is Williams' first felony conviction, his prior criminal history demonstrates his violent behavior and failure to abide by the law. Williams' criminal record includes misdemeanor convictions for inattentive driving (amended from reckless driving), driver's license violation, two counts of malicious injury to property, and two counts of harassment. (PSI, pp.3-5.[1]) Williams's record also includes several dismissed charges, including assault in the fourth degree-domestic violence, strangulation, menacing, second degree animal abuse, battery, malicious injury to property, possession of marijuana, and two counts of failure to provide insurance. (PSI, pp.4-5.) At the time of sentencing, Williams was also facing a pending misdemeanor telephone harassment charge. (PSI, p.5.)

In this case, Williams stalked the victim and, in the process, violated an active no contact order by following the victim to a concert, sitting within one foot of her, walking past her several times, and "staring at [her] with a 'creepy' smile on his face." (PSI, pp.2, 20.) In the three days leading up to that conduct, the victim had called the police several times because Williams was "disrupting [her] freedom of day to day activities," including by showing up at her place of employment, making the victim feel "very uncomfortable." (PSI, pp.2, 20.) Williams, however,

[1] PSI page numbers correspond with the page numbers of the electronic file "Williams 45749 psi.pdf"

denied that he did anything wrong. He told the presentence investigator, "I was charged with stalking because I cooperated with police twice which generated two police reports, then the victim came to my roommates concert and called the cops on me for being there," and "I'm not sure how replying to her constant contact was criminal." (PSI, p.3.) He made similar statements in his Domestic Violence and Stalking Assessment and also blamed the victim, stating, "She lies, she tells hundreds of lies," and "I am in jail based on lies." (PSI, pp.460-61.) Williams' family support and work ethic do not outweigh the seriousness of the offense or his failure to accept full responsibility for his actions.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Williams' sentence including the seriousness of the offense, Williams' failure to take full responsibility for his actions, and the need for the victim and the community to be protected. (12/18/17 Tr., p.892, L.1 – p.896, L.12.) The state submits that Williams 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.)

Williams next asserts that the district court abused its discretion by relinquishing jurisdiction, claiming his "performance while on his rider indicated he had high potential for rehabilitation and suitability for probation." (Appellant's brief, pp.7-10.) Williams has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Hansen, 154 Idaho 882, 889, 303 P.3d 241,

248 (Ct. App. 2013) (citing State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205–06, 786 P.2d 594, 596–97 (Ct.App.1990)). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013); Hansen, 154 Idaho at 889, 303 P.3d at 248 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)). "While a recommendation from corrections officials who supervised the defendant [during the period of retained jurisdiction] may influence a court's decision, it is purely advisory and is in no way binding upon the court." State v. Hurst, 151 Idaho 430, 438, 258 P.3d 950, 958 (Ct. App. 2011) (citing State v. Merwin, 131 Idaho 642, 648, 962 P.2d 1026, 1032 (1998); State v. Landreth, 118 Idaho 613, 615, 798 P.2d 458, 460 (Ct.App.1990)). Likewise, an offender's "[g]ood performance while on retained jurisdiction, though commendable, does not alone establish an abuse of discretion in the district judge's decision not to grant probation." Hurst, 151 Idaho at 438, 258 P.3d at 958 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

The district court's decision to relinquish jurisdiction was appropriate in light of the seriousness of the offense and Williams' failure to follow institutional rules. The state acknowledges that Williams completed his programming during the period of retained jurisdiction and that NICI staff recommended the court consider placing him on probation. (PSI, pp.483-94.) However, Williams received 10 warnings while on his rider program, and staff, while acknowledging that the warnings were for "minor rule violations," noted that it was "somewhat concerning that he would receive multiple warnings for the same behavior." (PSI, p.485.) Moreover, while NICI staff reported Williams "met the minimum levels of competency

in the group," they also noted that Williams "struggle[d] to identify risky situations and how they put him at risk for negative thinking and behavior." (PSI, p.485.)

At the disposition hearing, the district court was unimpressed by Williams' failure to follow institutional rules and ultimately concluded Williams was not a suitable candidate for probation, explaining:

> And ten rule infractions on a Rider – that should be perfect – causes me real concern about your ability to follow rules in the community. That's all that this is about. And based on your performance alone on your Rider, I'm relinquishing jurisdiction.
>
> ….
>
> I'm not doing this because I think you're a bad person or to further punish you. I'm simply doing it because I can't put you in the community. I think you have a lot of support in the community, a lot of love here in the courtroom for you. I hope you use that to figure out how to follow rules. Because at the end of this fixed time, you're going to have a parole commission hearing. And, you know, the victim in your case may show up at that parole commission hearing, and she may address the parole commission. And if you can't show them that you can follow rules, they're not going to let you out. And you're going to be in for another two years.
>
> I'm not saying this to lecture you. I hope you don't hear it that way. It's because I want you to figure out how to get yourself out of prison and how to comply with societal rules and regulations.

(6/4/18 Tr., p.34, L.19 – p.35, L.23.) Given any reasonable view of the facts, Williams has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

Conclusion

The state respectfully requests this Court to affirm Williams' conviction and sentence and the district court's order relinquishing jurisdiction.

DATED this 1st day of March, 2019.

__/s/_ Lori A. Fleming_____
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of March, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

__/s/_ Lori A. Fleming_____
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

The reason I pulled out the code book, Mr. Williams, is because one of the things you said at the very end is you hoped probation would be a consideration. And I thought about those exact words because, under law, I'm required to consider probation first. In other words, the law tells me that that's my default.

In order for me to impose a different sentence, I have to find one of these particular things applies in the case. And I'm reading from Idaho Code 19-2521. And it says: "The Court shall deal with a person who has been convicted of a crime without imposing a sentence of imprisonment" -- so that's my default, is no imprisonment -- "unless" -- and here's the unless section -- "having regard to the nature and circumstances of the crime and the history, character, and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because" -- and then there's several factors here. One is that there's undue risk that during a period of a suspended sentence -- in other words, probation -- that you might commit another crime.

Another is that the defendant is in

need of correctional treatment that can be provided most effectively by the defendant's commitment to an institution. Another is that a lesser sentence would depreciate the seriousness of defendant's crime; or imprisonment will provide appropriate punishment and deterrent to the defendant; or imprisonment will provide an appropriate deterrent to other persons in the community; or the defendant is a multiple offender or professional criminal.

The prosecutor said to me, and I wrote this down, "Daysha deserves to be protected, and incarceration is the only thing that will accomplish that."

My problem is the problem that Daysha Hampton highlighted to me in talking to me earlier, and that is that I can only incarcerate you for five years. And at the end of five years, she's not going to be protected and neither is anybody else. And I say that to say that although what you have done may deserve a sentence of prison and although I agree with the reasons that the State is arguing for it, I don't think that I'm best going to protect her by putting you in prison. I'm concerned that that's going to make

you worse.

I'm also concerned about putting you on probation because I don't think you're a good candidate for probation for a lot of reasons. Some of it is your criminal history. Some of it is your refusal to acknowledge the facts of this case. Some of it are the inconsistencies of what you tell people. Some of it are, frankly, what I view as delusional thinking.

I think that your attorney argued that the PSI says that you're a candidate for probation. But I will note that even the PSI says you are a guarded candidate for probation.

I'm sharing with you my thought process. I know that you're a very intelligent person. If I were to put you on probation, I would be concerned for the safety of the community. If I were to put you in prison, I would be concerned that when you get out, the community is less safe because I'm maxed out at five years.

So with that, what I am going to do is impose a sentence of three years fixed, followed by two years indeterminate. I am going to retain jurisdiction. I'm going to send you on a Rider.

When you are done with that Rider, if you have done everything perfectly and taken those lessons to heart, you'll be in a position where you can be placed on probation. If you don't succeed in the Rider program, you'll stay in prison for as long as the department keeps you, but a minimum of three years with credit for the time that you have served.

Now, one of the things I specifically want to talk to you about, because it's something that Ms. Hampton mentioned, is this ankle monitor. One of -- frankly, one of the very reasons why I'm retaining jurisdiction instead of putting you in prison is because I think I will have more ability to work with you, should you be placed on probation, than I would if you were on parole.

In other words, I can put you on an ankle monitor as a condition of probation. But I don't trust parole to do that. Again, I'm just putting all my cards on the table so you can hear all my thinking on this. You certainly don't have to agree with me, but that is the sentence.

I'm imposing court costs, only public defender reimbursement of $250, no fine whatsoever.

There is a five-year no-contact order that I'm going to have you sign. It says that you're to have no contact whatsoever with Daysha Hampton. Please take all of the time you need to read that and ask me any questions you might have about it.

So the credit for time served that I have, as of today's date, is 251 days.

What happens now is completely in your hands, in terms of how you dig in the programming in the Department of Corrections. I'll see you again when you're done with the programs.

MR. BAILEY: Your Honor, I'm going to keep the presentence materials for Mr. Callery.

THE COURT: Thank you very much.

MR. BAILEY: Thank you, Your Honor.

THE COURT: We'll be in recess.

(The proceedings concluded.)

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