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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45822
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2017-4234
)	
BRYAN JOHN CURTTRIGHT,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Curttright failed to establish that the district court abused its discretion by imposing an underlying unified sentence of eight years, with four years fixed, upon his guilty plea to attempted strangulation?

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

Curtright pled guilty to attempted strangulation, and the district court imposed a unified sentence of eight years, with four years fixed, and retained jurisdiction. (R., pp.100-03.)

Curtright filed a notice of appeal timely from the judgment of conviction. (R., pp.106-09.)

Curtright asserts his underlying sentence is excessive in light of the fact that he “acknowledged his guilt and apologized to the court.” (Appellant’s brief, pp.2-4.) 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 attempted strangulation is 15 years. I.C. § 18-923. The district court imposed a unified sentence of eight years, with four years fixed, which falls well within the statutory guidelines. (R., pp.100-03.) Furthermore, Curtright's sentence is appropriate in light of the seriousness of the offense, Curtright's ongoing criminal behavior, and the danger he presents to the community.

Curtright has a criminal history that began in 1989, when he was convicted of "misconduct offense" in Missouri. (PSI, p.6.¹) Curtright has continued his criminal behavior, and has 10 misdemeanor convictions that include stealing, forgery, trespass, alcoholic beverages in public park, two counts of DWI, two counts of a no contact order violation, and two counts of battery that were amended from attempted strangulation. (PSI, pp.6-8.) Curtright's record also includes multiple dismissed charges, as well as two felony charges for forgery for which no dispositions were found. (PSI, pp.6-9.) In this case, Curtright approached his ex-girlfriend from behind, pushed her into her house, threw her on the ground, and attempted to strangle her. (PSI, p.5.) Although Curtright admitted his guilt when he pled guilty to attempted strangulation, he later denied culpability, reporting to the presentence investigator that he did not strangle the victim, but had only grabbed her by the shoulders. (PSI, pp.5-6; 9/18/17 Tr., p.10, Ls.12-20.) Curtright's subsequent acknowledgement of guilt and apology to the district court at the sentencing hearing do not outweigh the seriousness of the offense or the danger he presents to the community, as evidenced by his ongoing—and escalating—criminal conduct.

The district court applied the correct legal standards, considered all of the relevant information, and imposed a reasonable sentence. (See 1/16/18 Tr., p.16, L.25 – p.18, L.6.)

¹ PSI page numbers correspond with the page numbers of the electronic file "CONFIDENTIAL CERTIFICATE OF EXHIBITS CURTTRIGHT 45822.pdf"

Curtright's sentence is appropriate in light of his criminal offending, the danger he presents to the community, and his failure to be deterred despite prior legal sanctions. Given any reasonable view of the facts, Curtright has failed to establish an abuse of discretion.

Conclusion

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

DATED this 28th day of November, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th 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
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/s/ Lori A. Fleming
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