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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45874
Plaintiff-Respondent,)	
)	LATAH COUNTY NO. CR-2017-184
v.)	
)	
JOSEPH LEE FENNER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Joseph Lee Fenner appeals from his judgment of conviction for grant theft. Mr. Fenner was found guilty following a jury trial and the district court imposed a unified sentence of ten years, with two years fixed, and the court retained jurisdiction. Mr. Fenner appeals, and he asserts that the district court abused its discretion by imposing an excessive underlying sentence.

Statement of the Facts & Course of Proceedings

Mr. Fenner was charged with one count of grand theft. (R., p.170.) Specifically, the State alleged that during the period between January and June, 2016, Mr. Fenner took property from Daigle Construction, which employed him during this time period. (R., p.171.) Mr. Fenner proceeded to trial, where he testified that he believed that he was authorized to purchase tools for the company on the company's line of credit, and that he believed that money he used to purchased tools for personal use would simply be deducted from his paycheck. (*See generally*, Tr., pp.673-931.)

Mr. Fenner was found guilty following a trial. (R., p.277.) The district court imposed a unified sentence of ten years, with two years fixed, and the court retained jurisdiction. (R., p.287.) Mr. Fenner appealed. (R., p.292.) Mr. Fenner asserts that the district court abused its discretion by imposing an excessive underlying sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of ten years, with two years fixed, upon Mr. Fenner following his conviction for grand theft?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Ten Years, With Two Years Fixed, Upon Mr. Fenner Following His Conviction For Grand Theft

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Fenner's sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Fenner “must

show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

At the sentencing hearing, counsel for Mr. Fenner informed the court that while Mr. Fenner had some issues during a previous probation, he did finish his probationary term and was making progress. (Tr., p.1132, Ls.2-5.) Further, counsel noted that in this case several witnesses testified that Mr. Fenner was a good work, dependable, and talented. (Tr., p.1132, Ls.19-24.)

Also, counsel noted that Mr. Fenner had a young daughter and being sent to prison would cause a lot of strain on his family because they would have to take care of his daughter, and it would have a big effect on his daughter’s life. (Tr., p.1133, Ls.15-23.) Further, at the time of the sentencing hearing, Mr. Fenner had a promising job prospect at in construction, and being employed would make it easier for him to pay back any restitution. (Tr., p.1134, Ls.1-13.)

At the sentencing hearing, Mr. Fenner addressed the district court, stating,

I accept full responsibility for my actions. Um, I – I made a mistake. I obviously wronged ... Mr. Daigle, and I'm willing to do what needs to be done to make it right, um, I guess, whatever Your Honor sees fit.

I would prefer probation so that I can support my family and pay my restitution, um, and get all my other bills caught up. [L]ike we stated, I've got a possible job. [I]t's not great, but I do have a friend in St. Mary's who is trying to help me find a job up there, too. [S]o I do have a couple possibilities. [T]hey're nothing fancy and nothing extravagant, but it's income. And if I have to go to a fast food joint to pay Mr. Daigle back, I will. I – I wronged him and I want to make it right.

(Tr., p.1149, L.22 – p.1150, L2.) Mr. Fenner also informed the court that he believed probation would be appropriate so that he could support his family and pay the bills, and “try and make this right.” (Tr., p.1136, Ls.2-5.)

Considering that Mr. Fenner accepted responsibility for his actions, apologized to the victim, and was seeking employment so that he could support his family and pay restitution, Mr. Fenner respectfully submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Fenner respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 9th day of January, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JMC/eas