

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

12-13-2018

State v. Cadwallader Respondent's Brief Dckt. 45948

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Cadwallader Respondent's Brief Dckt. 45948" (2018). *Not Reported*. 5083.
https://digitalcommons.law.uidaho.edu/not_reported/5083

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45948
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2017-47504
)	
JEFFREY ALLEN CADWALLADER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Cadwallader failed to establish that the district court abused its discretion by imposing a unified sentence of 14 years, with two years fixed, upon his guilty plea to grand theft?

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

Pursuant to a plea agreement, Cadwallader pled guilty to grand theft and the district court imposed a unified sentence of 14 years, with two years fixed. (R., pp.53-56.) Cadwallader filed a notice of appeal timely from the judgment of conviction. (R., pp.57-59.)

Cadwallader asserts his sentence is excessive in light of his substance abuse issues and desire for treatment, difficult childhood, remorse, and acceptance of responsibility. (Appellant's brief, pp.2-5.) 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 grand theft is 14 years. I.C. § 18-2408(2)(a). The district court imposed a unified sentence of 14 years, with two years fixed, which falls within the statutory guidelines. (R., pp.53-56.) Furthermore, Cadwallader's sentence is reasonable in light of his ongoing criminal offending, his failure to rehabilitate or be deterred, and the risk he presents to the community.

Cadwallader has an extensive criminal history that began when he was just 10 years old and was arrested for burglary. (PSI, pp.5-19.¹) Cadwallader has a long history of disregarding the law, with a total of 63 documented arrests, multiple misdemeanor and felony convictions, multiple probation and parole violations, and prior terms of incarceration. (PSI, pp.5-19.) Cadwallader admitted that he did not do well on juvenile probation and that he violated his probation by absconding and producing positive urinalysis tests. (PSI, p.19.) As an adult, Cadwallader continued to perform abysmally while on probation and parole, and reported that, since 1998, he has been incarcerated for a total of 16 years. (PSI, pp.7-19.) Additionally, Cadwallader continued his criminal behavior while incarcerated by incurring multiple disciplinary sanctions. (PSI, p.19.)

In this case, Cadwallader and his wife led officers on a high speed chase through Meridian. (PSI, pp.3-4.) During the chase, Cadwallader's wife, who was the driver, traveled in excess of 80 miles per hour, attempted to collide with one of the officer's vehicles, and swerved her vehicle towards an officer who was attempting to deploy spike strips. (PSI, pp.3-4.) Officers successfully performed a PIT maneuver to stop the vehicle and, upon searching Cadwallader, found a check and a fake identification card with the name of Kevin White. (PSI, p.4.)

¹ PSI page numbers correspond with the page numbers of the electronic file "Cadwallader 45948 psi.pdf."

Cadwallader asserts that he has substance abuse issues and desires treatment. (Appellant's brief, p.4.) However, Cadwallader has previously participated in an intensive outpatient treatment program, but has obviously failed to be rehabilitated or deterred from continued criminal offending. (PSI, p.25.) Cadwallader's difficult childhood, remorse, and acceptance of responsibility do not outweigh the seriousness of the offense or Cadwallader's continued criminal thinking.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Cadwallader's sentence. (3/2/18 Tr., p.13, L.19 – p.15, L.25.) Cadwallader's sentence is appropriate in light of his ongoing criminal offending, his failure to be deterred by prior legal sanctions, and his failure to rehabilitate within the community. The state submits that Cadwallader 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 Cadwallader's conviction and sentence.

DATED this 13th day of December, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of December, 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

<p style="text-align: right;">12</p> <p>1 time I was a resident of the Oxford House, which in Oregon 2 is clean and sober living. I was going to college. I was 3 working. And got a phone call. Off parole. First time 4 in my life doing good. I didn't know how to handle it. 5 So I let it spiral out of control. I let my 6 dope addiction and my criminality get the best of me. 7 That by no means is a copout. I am guilty of everything 8 that anyone in this courtroom has to say against me and 9 probably more. I take ownership of my actions, sir. I 10 stand here not understanding what the DA has to say about 11 programs that I have gone to. Yes, I have gone to A.A. 12 inside of prison. I've been in prison eight times, sir, 13 for similar offenses. 14 Programs? No, I've never had. I've never 15 learned how to deal with loss, with growing up in a broken 16 home, being molested. I never grew or knew -- I think at 17 that age I stopped growing because I just pushed it behind 18 me and pushed it into a closet. I just told my wife right 19 after my mom passed away in May that I was molested. That 20 was last, May, sir. 21 So all them years I just let it build up 22 inside of me trying to hide it and being stuck in a 23 vicious cycle. I would like to stand before you and say 24 I've broken that cycle, but I haven't. I don't have the 25 tools to say this is what I need. I don't have the CHRISTINE ANNE OLESEK SRL-1044</p>	<p style="text-align: right;">13</p> <p>1 strength to do it on my own. 2 Do I feel sending me back to prison for my 3 ninth time is a solution? No. No, I don't. Do I feel 4 like it's going to happen? Yes. Am I here to say: Oh, 5 well. No. Because regardless, sir, Mr. Barton, 6 regardless of what you sentence me here today, today I can 7 stand forth and say: Yeah, I'm moving forward and doing 8 something with myself. 9 So whatever you put on my plate, I'm willing 10 to accept and eat. 11 That's all I have for you, sir. I thank you 12 for your time and your patience. 13 THE COURT: Thank you, Mr. Cadwallader. 14 Mr. Vogt, is there any legal cause why 15 sentence should not be imposed? 16 MR. VOGT: No, Your Honor. 17 THE COURT: Ms. Owens? 18 MS. OWENS: No, Your Honor. Thank you. 19 THE COURT: Mr. Cadwallader, I consider four 20 factors in the imposition of sentence; protection of 21 society, the deterrence of crime, your rehabilitation and 22 punishment. The Idaho Supreme Court tells me the most 23 important of those four factors is the protection of 24 society. 25 You have a -- it's not just a long criminal CHRISTINE ANNE OLESEK SRL-1044</p>
<p style="text-align: right;">14</p> <p>1 history, it's one of the more longer ones I've seen. Both 2 in terms of the breadth of crimes, quantity of felonies, 3 quantity of misdemeanors, probation violations. And all 4 at only 37 years old. You've been packing in one right 5 after another. 6 I appreciate your words about you moving 7 forward and with what's on your plate. You can eat it. I 8 bet you can. One of the challenges I think is you're 9 bright and capable. I think you've learned it's too easy 10 a way with crime. It works. The number the prosecutor 11 said was \$90,000 per year; that's a really good income and 12 that's as a multiple felon. I don't know how you make 13 that much money unless you open your own business. It's a 14 hard number to beat here, a profit. You've learned that. 15 It's a hard thing to unlearn. I don't think you learn 16 through a simple job. Your brightness and abilities 17 taught you perhaps the wrong thing. It is the wrong 18 thing. 19 So if you have a punishment here -- I'll 20 just put something for you and it's -- my wisdom is maybe 21 a little bit better than other people because I see more 22 criminals than most people, but I recognize it doesn't 23 always work. So I have some ownership or wisdom. One day 24 when you are free, you will decide what you want to do. 25 It's a kind of choice; you may try to repeat the crimes. CHRISTINE ANNE OLESEK SRL-1044</p>	<p style="text-align: right;">15</p> <p>1 It's easy. You're successful at it. I understand that. 2 If you decide you don't want to, I think a success for you 3 is to open up your own business. You have the abilities, 4 you have the skills and it can be profitable. The right 5 people skills, the right hustle and it can make a lot of 6 money. Could be more if you are lucky, maybe not. But I 7 think -- I worry if you get a simpler job, I think the 8 temptation is too high. You probably already know how 9 good and easy that was and then you will get caught 10 eventually and you will be here before another person and 11 talking about number ten. You will talk about moving 12 forward and just be a couple years older and the State 13 will say the same thing. You already know that because 14 you're here for the ninth. And how it's happened in the 15 past, you were probably with another lawyer and sat in 16 that chair and told other judges about how you would move 17 forward and I appreciate the challenge you have. 18 In some ways it's linked to your abilities. 19 It's a challenge for you. But there will come a day -- I 20 just put out a small nugget of wisdom, maybe you've known 21 it from before, but consider opening your own business. 22 You're abilities to -- get the right feedback from that. 23 The quality of your own work, the quality of your own 24 labors, profitability in some cases. You can prosper and 25 do well. A small nugget. CHRISTINE ANNE OLESEK SRL-1044</p>