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State v. Luna Respondent's Brief Dckt. 46038

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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. 46038
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2018-6670
)	
GIOVANNI LUNA,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Luna failed to establish that the district court abused its discretion by imposing a unified sentence of 15 years, with five years fixed, upon his guilty plea to aggravated battery?

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

Luna pled guilty to aggravated battery and the district court imposed a unified sentence of 15 years, with five years fixed. (R., pp.59-62.) Luna filed a notice of appeal timely from the judgment of conviction. (R., pp.64-66.)

Luna asserts his sentence is excessive in light of his difficult childhood, mental health issues, support of his mother, purported remorse, and acceptance of responsibility. (Appellant's brief, pp.3-6.) 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 prison sentence for aggravated battery is 15 years. I.C. § 18-908. The district court imposed a unified sentence of 15 years, with five years fixed, which falls within the statutory guidelines. (R., pp.59-62.) On appeal, Luna contends that his sentence is excessive in light of his difficult childhood, mental health issues, support of his mother, purported remorse, and his acceptance of responsibility. (Appellant's brief, pp.4-6.) However, these factors do not outweigh the seriousness of the offense, his continued disregard for the law, and his inability to show remorse for his violent actions.

Though Luna is young, he has already amassed an extensive criminal history that includes five juvenile adjudications, 12 misdemeanor convictions, and six felony convictions. (PSI, pp.3, 9-14.¹) As noted by the presentence investigator, Luna's criminal history is comprised primarily of "alcohol and drug related offenses, disorderly conduct, and assault and battery." (PSI, p.14.) And Luna committed the aggravated battery of which he was convicted in this case while incarcerated in a maximum security prison. (PSI, pp.111-112, 129-31.) According to the incident reports, Luna and other inmates, including the victim, were playing cards when Luna punched the victim "2-3 times," continued to punch him "9-10 more times while [the victim] was on the ground," and then kicked him "four times with significant force." (PSI, p.129.) The victim, who was unconscious after the first two or three punches, sustained significant injuries to his face, including severe nose and facial fractures, septum fractures and displacement, and a left eye socket fracture. (PSI, pp.112, 129, 154.) When officers asked Luna about the incident, he stated that the victim refused to show him the score sheet from the card game they were playing, and he "felt disrespected and he couldn't be disrespected." (PSI,

¹ PSI page numbers correspond with the page numbers of the electronic file "Luna 46038 psi.pdf"

p.112.) Luna also stated that he punched the victim until he thought his hand was broken and admitted he “would have killed [the victim] if he had a weapon.” (PSI, p.131.) Additionally, far from showing remorse for his actions, officers reported that, in recorded phone calls, Luna “seemed boastful” and “seemed to exaggerate the details.” (PSI, pp.394-395.) Indeed, Luna stated in phone calls that, “this fool was fucking flopping like a fish, fucking retarded, there was a fucking huge mess of blood everywhere”; he also “chuckled and said he was ‘fucked.’” (PSI, p.394.) Luna exaggerated the attack by claiming “the other inmate’s nose was ripped off,” and “they had to surgically remove the other offender’s teeth from [his] hand.” (PSI, p.394.) Luna made additional remarks in his phone calls regarding his poor performance while incarcerated, and his disrespectful comments to jail staff. (PSI, p.395.)

Luna was diagnosed with PTSD and was prescribed medication while in jail in 2015; however, he only took the medications for about one month before he stopped taking them because he “did not like the way they made him feel.” (PSI, pp.20-21.) Luna’s difficult childhood and support from his mother do not outweigh the seriousness of the offense or his failure to abide by institutional rules.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Luna’s sentences. (5/1/18 Tr., p.32, L.12 – p.35, L.25.) The state submits that Luna 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 Luna's convictions and sentences.

DATED this 23rd day of January, 2019.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of January, 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:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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

APPENDIX A

30

1 start reforming himself.
2 He's a young man who -- I think he
3 doesn't want to be institutionalized, and he wants
4 to tell the Court that he's going to try to do
5 better in the future.
6 I don't think he's proud of what
7 happened here. He knows he overreacted in a tense
8 situation in the penitentiary, and this is not
9 appropriate. So he expects some punishment. He
10 would ask the Court to consider maybe a lesser
11 fixed and a lesser indeterminate. Obviously, if
12 he keeps going with the plans that he has, great.
13 He will be able to impress the parole board. Then
14 if not, then the State's purposes of deterrence
15 will still be there.
16 Thank you.
17 THE COURT: Thank you. Before I hear from
18 the defendant, is there any reason, legal or
19 otherwise, I should not pronounce judgment today?
20 MR. NAUGLE: None known to the State.
21 MR. ROLFSEN: No, Your Honor.
22 THE COURT: Mr. Luna, you're entitled to
23 address the Court before I pronounce sentence.
24 You don't have to; it's voluntary on your part.
25 THE DEFENDANT: May I stand up?

32

1 and have filed applications to see what treatment
2 I can get while in the situation I am at. At no
3 point in time have I bragged or tried to seek
4 acceptance from the situation that occurred, and I
5 am remorseful for it.
6 I just want you guys to understand that
7 I do take responsibility, and I do regret the
8 situation and hope you all can understand where
9 I'm coming from.
10 So thank you for your time.
11 THE COURT: Thank you.
12 Well, I am not sure that we have an
13 eight-month record of behavior that's good
14 behavior since this happened in February, and
15 that's hardly eight months ago.
16 THE DEFENDANT: February?
17 THE COURT: Well, the arrest was February
18 18. But regardless of that --
19 THE DEFENDANT: No. The altercation was in
20 September. When the situation occurred, it was in
21 September.
22 THE COURT: Well, regardless of that, the
23 complaint in this case was filed in February.
24 So -- and I guess maybe I misremembered the exact
25 date of the occurrence.

31

1 THE COURT: If you would like to say
2 something, you may say it now.
3 THE DEFENDANT: May I stand up?
4 THE COURT: You may.
5 THE DEFENDANT: All right. I just want to
6 make it known the situation that occurred, at no
7 point in time am I proud of -- or tried to impress
8 anyone. It was a misunderstanding. And the
9 card -- alleged card game had nothing to do with
10 the situation. I am not going to place the blame
11 on nobody but myself in this situation. I
12 overreacted, and I took it upon myself to assault
13 this inmate.
14 I do regret what I have done, and,
15 actually, on file I have an apology letter to the
16 inmate trying to fix the situation as best I can,
17 the little amount much resources I do have. I did
18 apologize, and I do understand that I reacted in
19 an inappropriate manner.
20 I am not a violent person; I just made
21 some -- a horrible decision to act upon this
22 inmate as I did. And I've been doing everything I
23 can to stay out of trouble. I am in AD-SEG
24 currently, and I'm doing my best to change my
25 ways. I've taken it upon myself to enter programs

33

1 But regardless of that, Mr. Luna, I did
2 read the report of all that happened, at least to
3 the extent it could be determined from the
4 incident reports.
5 I also read the report of your phone
6 calls from jail and concerning your behavior in
7 jail. You were bragging to somebody on the phone
8 about this incident. I've got that from the
9 supplemental report. Your phone calls are
10 recorded telling -- and being rude and crude to
11 jail personnel so they would treat you like the
12 felon you deserve because you worked hard to get
13 that status, I think was the way it was
14 characterized, and you're not just some county
15 inmate doing a misdemeanor. None of that is
16 particularly impressive.
17 I don't think you have much remorse,
18 Mr. Luna, except when you contemplate the time
19 you're going to continue to spend in prison.
20 There is no justification for what you did. There
21 is nothing to be proud of sucker-punching someone
22 hard enough to, apparently, if you didn't get him
23 unconscious with the first blow, get him
24 unconscious with the second, and then you continue
25 to beat him until your hand hurt and then kick him

1 in the face and the head.
2 That's no way, in any society that I am
3 aware of, to gain any kind of respect. That's a
4 cowardly act to continue to beat someone when they
5 are unconscious and then brag about it later, tell
6 someone that they had to remove his teeth
7 surgically from your hands, which was -- if that's
8 not an embellishment or exaggeration, I don't know
9 what is.

10 Mr. Luna, this is not the conduct -- I
11 agree wholeheartedly with the comment by
12 Mr. Naugle; that isn't the kind of conduct we can
13 put up with for people in prison. It just isn't.
14 And this notion that somehow you're entitled to
15 some sort of respect for breathing in and out air
16 doesn't cut it with me either. That's not what
17 respect is. Respect comes from living a descent
18 life, behaving yourself, playing by the rules.
19 There was no need for you to beat this person in
20 the fashion that you did.

21 THE DEFENDANT: I understand that.
22 THE COURT: Whether it was a dispute over a
23 card game or because somebody called you a name
24 and you felt the need to stand up for yourself,
25 whatever, it doesn't justify what you did here by

1 any stretch of the imagination. I don't care what
2 code they have in the penitentiary.
3 It is the judgment and sentence of this
4 Court -- and I have considered all of the factors
5 set forth in the case of *State versus Toohill* that
6 tells us what we are to consider in sentencing. I
7 am not going to belabor matters by repeating them
8 all here.

9 I do acknowledge and I read in the
10 presentence report you had difficulties in your
11 childhood; I understand that. You also had some
12 period there where, apparently, you were doing
13 well, playing sports, going to school. And then
14 things went south.

15 But regardless how all that -- what all
16 of that is about, it cannot justify the behavior
17 that I saw here.

18 I sentence you to the custody of the
19 Idaho Department of Correction for a period of 15
20 years because this is a case that deserves the
21 maximum sentence, if there is one, for aggregated
22 battery. And of those 15 years, I've determined
23 that an appropriate period of fixed confinement is
24 five years in recognition of the seriousness of
25 the offense that was committed here.

1 I will impose court costs, no fine in
2 light of the money owed from prior cases and the
3 possibility that there may be some restitution
4 here, even if it's through the civil system rather
5 than the criminal system because there is no
6 restitution requested at this point.

7 You will be required to submit a DNA
8 sample and right thumbprint impression to the
9 Idaho database. By statute your sentence is
10 consecutive.

11 That is the judgment and sentence of
12 this Court. You're entitled to appeal any final
13 judgment of this Court to the Idaho Supreme Court.
14 That appeal must be taken within 42 days of the
15 date of the entry of the judgment.

16 You are entitled to be represented by
17 an attorney on any such appeal. And if you cannot
18 afford one, one will be appointed to represent you
19 at public expense, and your costs on appeal will
20 be paid if you are an indigent person.

21 (End of proceeding.)
22
23
24
25