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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46040
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-2017-53351
	)	
TROY MATTHEW DAVENPORT,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Davenport failed to establish that the district court abused its discretion by declining to place him on probation upon imposing a unified sentence of seven years, with two years fixed, for possession of methamphetamine?

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

Davenport pled guilty to possession of methamphetamine, and the district court imposed a unified sentence of seven years, with two years fixed. (R., pp.22-23, 44-47.) Davenport filed a notice of appeal timely from the judgment of conviction. (R., pp.51-53.)

Davenport asserts that the district court abused its discretion by declining to place him on probation upon imposing his sentence in light of his substance abuse issues and desire for treatment, family support, ability to work, and his “business success.” (Appellant’s brief, pp.3-6.) Davenport has failed to establish an abuse of discretion.

Sentencing decisions are reviewed for an abuse of discretion. State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)). 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. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016) (citations omitted). 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; Moore, 131 Idaho at 825, 965 P.2d at 185 (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 State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

A trial court's decision regarding whether imprisonment or probation is appropriate is within its discretion. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citations omitted); I.C. § 19-2601(4). The goal of probation is to foster the probationer's rehabilitation while protecting public safety. State v. Cheatham, 159 Idaho 856, \_\_\_, 367 P.3d 251, 253 (Ct. App. 2016) (citations omitted). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. Id. (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)).

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with two years fixed, which falls within the statutory guidelines. (R., pp.44-47.) Furthermore, Davenport is not a suitable candidate for probation as demonstrated by his past failures to abide by community supervision, and his failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions.

Davenport has a lengthy criminal history, beginning with his first arrest at age 15 and a 1989 juvenile “convict[ion]” for “Deadly Threat” in the state of California. (PSI, p.41.<sup>1</sup>) As an adult, Davenport has amassed 19 misdemeanor convictions for negligent driving, unlawful entry, contempt of court, inattentive driving, failure to carry a license on person, driving without privileges, DUI, two counts of domestic assault (amended from battery and domestic battery), two counts of a no contact order violation, three counts of disturbing the peace (one amended from trespass and one amended from injury to a child), and five counts of possession of paraphernalia. (PSI, pp.36-41.) Davenport also has three prior felony convictions for possession of a controlled substance. (PSI, pp.39-42; 4/10/18 Tr., p.8, Ls.8-14, p.10, Ls.8-10.)

Davenport has been afforded multiple opportunities for rehabilitation, including in drug court, on probation, and in retained jurisdiction programs, but he has failed to be rehabilitated or deterred despite these opportunities. (PSI, pp.40-42.) In fact, Davenport was on probation for a 2015 felony controlled substance conviction when he committed the offense in this case. (PSI, p.2.) While Davenport did run his own business, and had support from family and friends, he nonetheless continued his criminal conduct by using controlled substances. (PSI, pp.1-2.)

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Davenport 46040 psi.pdf.”

Officers found him passed out in his vehicle at a gas station on Christmas; Davenport had drug paraphernalia and controlled substances, including methamphetamine and what Davenport claimed were bath salts, in his car. (PSI, pp.1-2.)

At sentencing, the district court articulated its reasons for imposing Davenport's sentence and for declining to place him on probation. (4/10/18 Tr., p.26, L.17 – p.32, L.22.) The district court explained:

Sir, I understand you are not a bad person. I do not think you are a bad person. I completely agree you are an addict, but the difference between you and another addict is another addict will reach out for help. Instead, you go all in and just spiral downward. You forget everything that you've learned in two drug courts. You don't reach out and create a support system that you can call, that you can ask for help. You don't immediately seek any treatment. You just go all in and continue using.

Your counsel argues you are not a danger to society. You are not out there committing crimes to support your drug habit. You are not out there dealing to support your drug habit. I agree that is all true. But when you are found behind the wheel of a car, passed out, you are driving when you are high which puts me in danger, puts innocent third parties in danger. And so you are a danger to the society even though you are an addict.

(4/10/18 Tr., p.27, Ls.2-22.) The state submits that Davenport 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 Davenport's conviction and sentence.

DATED this 17th 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 17th 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:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

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

# APPENDIX A

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10:30AM 1 in my business I try to conduct myself with the  
 10:30AM 2 utmost integrity. I am not out there stealing  
 10:30AM 3 things from people, trying to swindle anybody or  
 10:30AM 4 anything like that. So I think if it was just a  
 10:30AM 5 question of moral fortitude I would be fine. My  
 10:30AM 6 parents did a great job of teaching me good morals  
 10:30AM 7 growing up as a kid.  
 10:30AM 8 As Mr. Smith said, I made some  
 10:30AM 9 decisions in life basically out of fear. I was  
 10:30AM 10 scared to move forward and commit to a marriage.  
 10:30AM 11 Got cold feet, kind of pushed it away for a  
 10:30AM 12 moment. Holidays were coming, I got to feeling  
 10:31AM 13 sorry for myself, lonely. Got on Facebook which,  
 10:31AM 14 by the way, I think is run by the devil, but  
 10:31AM 15 that's neither here nor there. And got in contact  
 10:31AM 16 with some people that were old acquaintances. Put  
 10:31AM 17 myself in some bad situations and made some  
 10:31AM 18 horrible situations and got high.  
 10:31AM 19 And I am the kind of addict to where I  
 10:31AM 20 am not going to get high and my PO may or may not  
 10:31AM 21 catch me. Because I'm the kind of addict that  
 10:31AM 22 when I get high, that's it, I am high. I am high  
 10:31AM 23 from then until it ends like this. I am not a  
 10:31AM 24 sometimes user. I am the kind of addict that it  
 10:31AM 25 is all or nothing. So it's not -- this is the

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10:33AM 1 retribution.  
 10:33AM 2 Sir, I understand you are not a bad  
 10:33AM 3 person. I do not think you are a bad person. I  
 10:33AM 4 completely agree you are an addict, but the  
 10:33AM 5 difference between you and another addict is  
 10:33AM 6 another addict will reach out for help. Instead,  
 10:33AM 7 you go all in and just spiral downward. You  
 10:33AM 8 forget everything that you've learned in two drug  
 10:33AM 9 courts. You don't reach out and create a support  
 10:33AM 10 system that you can call, that you can ask for  
 10:33AM 11 help. You don't immediately seek any treatment.  
 10:33AM 12 You just go all in and continue using.  
 10:33AM 13 Your counsel argues you are not a  
 10:33AM 14 danger to society. You are not out there  
 10:33AM 15 committing crimes to support your drug habit. You  
 10:33AM 16 are not out there dealing to support your drug  
 10:34AM 17 habit. I agree that is all true. But when you  
 10:34AM 18 are found behind the wheel of a car, passed out,  
 10:34AM 19 you are driving when you are high which puts me in  
 10:34AM 20 danger, puts innocent third parties in danger.  
 10:34AM 21 And so you are a danger to the society even though  
 10:34AM 22 you are an addict.  
 10:34AM 23 So I get that there is all the  
 10:34AM 24 positives of you running your construction  
 10:34AM 25 business, the letters that say you take pride in

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10:31AM 1 only way it ever ends for me when I get high,  
 10:31AM 2 unfortunately.  
 10:31AM 3 I hope you give me an opportunity to  
 10:31AM 4 continue to get out there in society and be  
 10:31AM 5 somewhat of a productive member of society. This  
 10:32AM 6 last time I was out I lived in a three-bedroom  
 10:32AM 7 house, I paid \$900 a month rent every month. I  
 10:32AM 8 paid \$550 back child support trying to pay what I  
 10:32AM 9 owed in arrears. I paid my taxes, I paid my  
 10:32AM 10 insurances for my business, I paid insurances for  
 10:32AM 11 my vehicles, I paid my car payments, I did all the  
 10:32AM 12 stuff that normal people do. I was making a real  
 10:32AM 13 crack at an honest life and then my addiction got  
 10:32AM 14 the better of me.  
 10:32AM 15 So I hope I can return back to continue  
 10:32AM 16 making progress. That's all I've got. Thank you.  
 10:32AM 17 THE COURT: Thank you. Based on your  
 10:32AM 18 probation violation admissions as well as your  
 10:32AM 19 guilty plea in the new possession of a controlled  
 10:32AM 20 substance case and in an exercise of my discretion  
 10:32AM 21 in sentencing, I've considered the Toohill  
 10:32AM 22 factors, the nature of the offence, the character  
 10:32AM 23 of the offender, any mitigating or aggravating  
 10:32AM 24 factors, fulfilling the objectives of protecting  
 10:33AM 25 society, achieving deterrence, rehabilitation or

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10:34AM 1 your work. But if I am having a house built, I  
 10:34AM 2 don't really want someone who is high out there  
 10:34AM 3 building my house. It kind of decreases my  
 10:34AM 4 confident in the building, in the final product as  
 10:34AM 5 well.  
 10:34AM 6 So I read in the letters that you want  
 10:34AM 7 to stop. Like you said, you would cut off your  
 10:34AM 8 left hand if that is all you had to do to stop  
 10:34AM 9 being an addict. But wanting to stop isn't  
 10:34AM 10 enough. It is simply the failure to use the tools  
 10:35AM 11 you have been given.  
 10:35AM 12 So the question becomes, what tools do  
 10:35AM 13 I give you? What new tools do I have in my bag to  
 10:35AM 14 give you? I have no new tools. I have no new  
 10:35AM 15 rider. I have no third drug court. Okay? You  
 10:35AM 16 have the tools, you just choose to leave them in  
 10:35AM 17 the bag. Okay? You choose not to develop the  
 10:35AM 18 support system outside of sponsors. If you have  
 10:35AM 19 the urge to use and you are depressed, get  
 10:35AM 20 yourself to an NA meeting. You don't make that  
 10:35AM 21 choice.  
 10:35AM 22 And I get that it is a disease and you  
 10:35AM 23 are an addict. But simply giving you more classes  
 10:35AM 24 isn't going to cure how you manage your addiction.  
 10:35AM 25 And so there are times when even addicts need to

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10:35AM 1 go to prison, and this is that time. I don't have  
 10:36AM 2 anything else to ask -- to give you.  
 10:36AM 3 So the Court is going to sentence you  
 10:36AM 4 to two years fixed plus five years indeterminate.  
 10:36AM 5 And you are going to be back out in the community.  
 10:36AM 6 The five years indeterminate, you are going to be  
 10:36AM 7 back in the community and you are going to have to  
 10:36AM 8 make a choice. But you are not a kid. You are in  
 10:36AM 9 your early 40s. You are mature. You are a smart  
 10:36AM 10 businessman. And you've got to figure out what it  
 10:36AM 11 is going to take for you. And I can't answer that  
 10:36AM 12 for you.  
 10:36AM 13 The exact same programming that is  
 10:36AM 14 available on a rider is available while you are in  
 10:36AM 15 custody, so I am not going to place you on another  
 10:36AM 16 rider. That just isn't warranted. I have never  
 10:36AM 17 seen anyone even get drug court twice. So the  
 10:36AM 18 fact that you went to another county and got drug  
 10:36AM 19 court is commendable and that you graduate, but if  
 10:36AM 20 you need more structure, then set up that  
 10:36AM 21 structure in your life. Get yourself to an NA  
 10:37AM 22 meeting three times a week.  
 10:37AM 23 You can figure this out. You are  
 10:37AM 24 intelligent. What is it going to take in your  
 10:37AM 25 life, in the community, to have the structure to

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10:38AM 1 that has absolutely nothing to do with staying  
 10:38AM 2 sober. Just to give back.  
 10:38AM 3 So it is a lifestyle plan you need to  
 10:38AM 4 change. And your parole officer can help you come  
 10:38AM 5 up with this plan. You can reach out to drug  
 10:38AM 6 court after the drug court graduate program and  
 10:38AM 7 see if they can help you come up with a plan. But  
 10:38AM 8 we are done giving you new tools. We simply don't  
 10:38AM 9 have them.  
 10:38AM 10 So take the classes again and really  
 10:38AM 11 focus on what structure can I create in my life to  
 10:38AM 12 be successful. Clearly it is a high level of  
 10:38AM 13 structure you do well. I don't know how many  
 10:38AM 14 times you relapsed while you were in drug court.  
 10:38AM 15 THE DEFENDANT: None.  
 10:38AM 16 THE COURT: There's the answer. You need a  
 10:38AM 17 high level of structure. So you determine what  
 10:38AM 18 structure based on your construction job, which is  
 10:38AM 19 long hours certain times of the year, right? You  
 10:38AM 20 figure out what structure it is going to be. If  
 10:38AM 21 you are getting depressed, see a doctor about  
 10:38AM 22 mental health. Antidepressants, don't  
 10:38AM 23 self-medicate. You are smart enough to make these  
 10:38AM 24 choices.  
 10:38AM 25 I don't really even need to be telling

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10:37AM 1 keep you clean? I can't answer that for you.  
 10:37AM 2 So I am going to sentence you to the  
 10:37AM 3 two years fixed. You have done about 107 days,  
 10:37AM 4 that will give you approximately 18 months to  
 10:37AM 5 complete all these classes: Substance abuse  
 10:37AM 6 treatment, Aftercare, Thinking For Change,  
 10:37AM 7 parenting classes, whatever you want to take. You  
 10:37AM 8 can get those done in the fixed balance that you  
 10:37AM 9 have left to serve.  
 10:37AM 10 And then parole is going to be looking  
 10:37AM 11 at you. You are wearing white. I presume when  
 10:37AM 12 you are in prison you are a model prisoner, right?  
 10:37AM 13 So you are going to be looking at getting back out  
 10:37AM 14 into the community. And this time you need to  
 10:38AM 15 come up with a different plan.  
 10:38AM 16 And you need to have a plan where you  
 10:38AM 17 accept responsibility and you create all the  
 10:38AM 18 structure you can including a support system  
 10:38AM 19 beyond your family. You need a support system of  
 10:38AM 20 recovering addicts. You need a sponsor. You need  
 10:38AM 21 meetings to keep you on track. You need to take  
 10:38AM 22 those prosocial skills you have and figure out a  
 10:38AM 23 way to do prosocial activities while you are  
 10:38AM 24 clean. You need to figure out a way to do  
 10:38AM 25 prosocial activities to give back to the community

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10:39AM 1 you this, but I want you to understand the  
 10:40AM 2 situation I'm in as the Court. Fourth felony.  
 10:40AM 3 You were charged in a fifth one but that was  
 10:40AM 4 overturned. Fourth felony, all possession --  
 10:40AM 5 felony possessions.  
 10:40AM 6 So you've got to figure out how the  
 10:40AM 7 second chapter of this book is different than the  
 10:40AM 8 first half of the book. I can't do that for you.  
 10:40AM 9 So take every class you can while you are in  
 10:40AM 10 prison.  
 10:40AM 11 So on the 2017-case, your sentence is  
 10:40AM 12 two years fixed plus five years indeterminate for  
 10:40AM 13 a total sentence of seven years. That sentence  
 10:40AM 14 will be imposed. You will be given credit for  
 10:40AM 15 107 days. The Court is ordering standard court  
 10:40AM 16 costs, a DNA requirement, and thumbprint  
 10:40AM 17 impression. I am not ordering a fine. I would  
 10:40AM 18 rather you spend money on treatment, aftercare,  
 10:40AM 19 getting your child support caught up. I don't  
 10:41AM 20 want you to say it is all the Court's fault I have  
 10:41AM 21 too many financial burdens. So there is no fine  
 10:41AM 22 on the 2017-case.  
 10:41AM 23 THE DEFENDANT: Your Honor, may I request  
 10:41AM 24 that you put a CW recommendation in there so that  
 10:41AM 25 way I can make some money and generate some money