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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO, |) | |
| |) | NO. 46155 |
| Plaintiff-Respondent, |) | |
| |) | Ada County Case No. CR01-2017-27761 |
| v. |) | |
| |) | |
| RACHELL LYNN RUDOLPH, |) | RESPONDENT’S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

Has Rudolph failed to show that the district court abused its sentencing discretion when it sentenced her to seven years with one and one-half years determinate upon her conviction for possession of methamphetamine?

ARGUMENT

Rudolph Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Officers saw Rachell Lynn Rudolph conduct what they believed was a hand-to-hand drug transaction. (PSI, p. 39.) A patrol officer followed her and stopped her for traffic violations. (PSI, pp. 39-40.) A drug dog alerted on the vehicle. (PSI, pp. 40, 45.) A search revealed

methamphetamine and paraphernalia associated with both use and dealing of the controlled substance. (PSI, pp. 40-41, 74.)

The state charged Rudolph with possession of methamphetamine. (R., pp. 54-55.) Rudolph pled guilty pursuant to a plea agreement in which the prosecution agreed to recommend a suspended sentence of seven years with two years determinate and probation. (R., pp. 81, 85; 03/02/18 Tr., p. 6, L. 3 – p. 7, L. 7.) However, prior to her sentencing, Rudolph was charged with committing additional crimes after she was found in possession of “nearly three-quarters of an ounce of methamphetamine,” oxycodone and bath salts, and a gun (which she could not legally possess due to prior felony convictions), which released the prosecution from its recommendation. (06/06/18 Tr., p. 5, L. 11 – p. 6, L. 16.) The district court imposed and executed a sentence of seven years with one and one-half years determinate. (R., p. 100; 06/06/18 Tr., p. 12, L. 20 – p. 13, L. 3.) Rudolph filed a timely appeal. (R., pp. 105-08.)

On appeal Rudolph argues the district court abused its discretion “in light of the mitigating factors, including her traumatic childhood, substance abuse issues, and mental condition” and her “commit[ment] to changing her life.” (Appellant’s brief, pp. 3-6.) Rudolph has failed to show an abuse of discretion.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant’s probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it

is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

When considering whether the sentence was an abuse of discretion, “this Court considers: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the legal standards applicable; and (3) whether the trial court reached its decision by an exercise of reason.”

State v. Fisher, 162 Idaho 465, 398 P.3d 839, 842 (2017) (quoting State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011)).

C. Rudolph Has Shown No Abuse Of The District Court’s Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met his burden, the court considers the entire sentence but, because the decision to release the defendant on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. 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.” Bailey, 161 Idaho at 895–96, 392 P.3d at 1236–37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

The record shows the sentence is reasonable. This is Rudolph’s “third known felony conviction.” (PSI, p. 8.) She has a prior controlled-substance felony conviction from 2009; the

district court granted her probation; the district court revoked probation when she committed a new controlled-substance felony; she served her sentences until released in 2013; she absconded from parole within months; and then she served out her sentences, being released on September 9, 2016. (PSI, p. 8.) She committed the instant offense less than a year later, on July 16, 2017. (PSI, p. 3.) While released pre-sentencing in this case, she was found in possession of “nearly three-quarters of an ounce of methamphetamine,” oxycodone and bath salts, and a gun (which she could not legally possess due to prior felony convictions), which released the prosecution from its recommendation. (06/06/18 Tr., p. 5, L. 11 – p. 6, L. 16.)

Rudolph began using methamphetamine when she was 17, and her only sustained period of sobriety has been while in custody. (PSI, p. 14.) She was evaluated as being in the high risk category for recidivism. (PSI, p. 15.) The district court’s decision to impose a sentence whereby Rudolph could qualify for parole in as little as 18 months, while being under some form of supervision for seven years, was well within its discretion.

Rudolph claims that her long history of substance abuse, undiagnosed mental health issues, and traumatic childhood are mitigating, and that her claim of commitment to changing her life, warrant “a more lenient sentence, including a rider.” (Appellant’s brief, pp. 3-6.) Rudolph’s arguments show no abuse of discretion.

“There can be no abuse of discretion in a trial court's refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation.” State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). The record, as laid out above, demonstrates that Rudolph is not a suitable candidate for probation. The district court gave adequate opportunity for rehabilitation through parole. Rudolph’s lengthy

criminal history has already tested the mercy of the justice system. Rudolph has failed to show that the district court's sentence is unsupported by a reasonable view of the facts.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 5th day of March, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of March, 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:

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/s/ Kenneth K. Jorgensen
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