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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46157
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2015-7995
)	
REUBEN D. BLACKHORSE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Blackhorse failed to establish that the district court abused its discretion by imposing a unified sentence of 20 years, with four years fixed, upon his guilty plea to rape?

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

Blackhorse pled guilty to rape, and the district court imposed a unified sentence of 20 years, with four years fixed. (R., pp.370-73.) Blackhorse filed a notice of appeal timely from the judgment of conviction. (R., pp.379-82.)

Blackhorse asserts his sentence is excessive in light of his substance abuse issues, cognitive issues, mental health issues, and “rehabilitative potential.” (Appellant’s brief, pp.4-6.) The record supports the sentences 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 penalty for rape is not less than one year, up to life in prison. I.C. § 18-6104. The district court imposed a unified sentence of 20 years, with four years fixed, which falls well within the statutory guidelines. (R., pp.370-73.) On appeal, Blackhorse claims that the district court did not adequately consider his substance abuse issues, cognitive and mental health issues, and his “rehabilitative potential.” (Appellant’s brief, pp.4-6.) Blackhorse’s “rehabilitative potential,” is abysmal. The psychosexual evaluator stated that Blackhorse did not feel that he needed sex offender treatment, was not concerned with anybody but himself, and that his level of insight regarding his sexually abusive behavior was “[v]ery, very poor.” (PSI, pp.47, 53.¹) The psychosexual evaluator also concluded that Blackhorse “falls within the Above Average to High [risk] range” to sexually re-offend, but that “is likely an underestimate as available risk instruments cannot take into account the presence of psychopathy.” (PSI, p.54.) The psychosexual evaluator did note that Blackhorse had some cognitive deficits, and that those deficits negatively impact Blackhorse’s ability to identify problems. (PSI, p.44.) However, it was also noted that many people have similar deficits with little to no legal history, so his cognitive limitations were “not seen as a primary factor in his antisocial behavior.” (PSI, p.44.) Additionally, Blackhorse’s previous failure to rehabilitate while in the community, and failure to complete Mental Health Court, further demonstrate his lack of amenability to treatment while in the community. (PSI, p.72.)

In this case, Blackhorse and his victim were patients at Portneuf Medical Center in the Behavioral Health Unit. (PSI, pp.67-68.) A nurse came to check on the victim and found her in her bathroom, sitting in a pool of blood. (PSI, p.68.) Blackhorse was found behind the curtain in

¹ PSI page numbers correspond with page numbers of the electronic file, “CONFIDENTIAL CERTIFICATE OF EXHIBITS BLACKHORSE 46157.pdf”

the shower of the bathroom, and when he was found behind the curtain, turned the shower on and attempted to clean blood of his clothing and exposed arms. (PSI, p.68.) The victim reported that Blackhorse forced her into her bathroom and removed her pants and underwear before pushing her to the floor where he forcibly raped her. (PSI, p.68.) The information given by the victim was later verified by a nurse at Portneuf Medical Center. (PSI, p.68.) The victim also reported that she had been sexually assaulted two times earlier that same day by Blackhorse. (PSI, p.68.) When asked about the incident, Blackhorse admitted to the sexual encounters, but claimed they were consensual. (PSI, p.69.) Blackhorse further stated he felt “real bad cause I did not do it,” and believed that “the victim should be in jail for lying.” (PSI, p.69.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Blackhorse’s sentence, including the seriousness of the offense, protection of society, and Blackhorse’s failure to be deterred. (6/25/18 Tr., p.16, L.4 – p.18, L.18.) The district court concluded, “You prayed on a vulnerable adult, and you really didn’t have any concerns with regard to what your actions – the harm that your actions would cause.” (6/25/18 Tr., p.17, Ls.12-15.) The state submits that Blackhorse 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 Blackhorse's conviction and sentence.

DATED this 2nd 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 2nd 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
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

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1 conversations about these issues. He provided
2 more relevant information as best he had.
3 So the real challenge is how do we
4 get Mr. Blackhorse treatment that is recommended,
5 because we are going to have to do some sex offender
6 treatment. That's available in the community.
7 I'm aware from other cases that sex offender
8 programs can be adjusted or modified for
9 individuals like Mr. Blackhorse. I have several
10 other clients who are in that position where
11 there are some cognitive limitations or similar
12 developmental disabilities at various times in
13 which they are on probation, and so I would ask
14 the Court to consider probation at this point in
15 time, and part of that is because he has served
16 a lengthy period of time.
17 I think we can get him into some of
18 these other programs that do address it, but I
19 also recognize that one of the primary ones was
20 Aspire.
21 The question is, is does Mr. Blackhorse
22 now present a risk to the community? And I have
23 read the PSI. I have read the psychosexual
24 evaluation, and there is concerning information,
25 but I think those can be addressed through a

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1 I've been locked up. It is just really messing
2 with my head. You know, I do take pills for
3 what I got, and, you know, I come to realize what
4 I thought I did -- or I think I did is just,
5 you know, it's crazy to me, but I would just
6 like to say that I'm sorry for wasting all your
7 time and stuff, but I just really want to move
8 on with my life and get out there and do good
9 because I got kids out there too.
10 That's all I got to say, Your Honor.
11 THE COURT: Ms. Call, is there anything
12 else? Is the victim present and wanting to
13 be heard?
14 MS. CALL: She is not present,
15 Your Honor, and I don't have any statement from
16 her in the file, and she has not submitted any
17 claim for restitution.
18 THE COURT: Okay. Thank you.
19 All right. Mr. Reynolds, any legal
20 reason we shouldn't proceed to sentencing then?
21 MR. REYNOLDS: No, Your Honor.
22 THE COURT: Mr. Blackhorse, is there
23 any legal reason I shouldn't proceed to sentencing?
24 THE DEFENDANT: No, sir, Your Honor.
25 THE COURT: Sir, remember, you have

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1 outpatient community-based treatment program,
2 so for an underlying sentence, I would ask the
3 Court to consider four fixed, four indeterminate,
4 and the Court placing him on probation with the
5 understanding that he will have to register, as
6 required by law. We have discussed that.
7 The other reason I recommend that it is
8 focused on rehabilitation. We have already
9 satisfied punishment with the amount of time
10 he has been in custody.
11 And so those are my recommendations.
12 I'm not aware of Mr. Blackhorse having -- any
13 problems in the jail.
14 THE DEFENDANT: (Shakes head.)
15 MR. REYNOLDS: Any issues in jail. I
16 have not heard any reports that he has not been
17 compliant with jail staff. I think that is
18 another factor that weighs in favor of him being
19 able to be compliant on probation.
20 THE COURT: All right. Well, thank you,
21 Mr. Reynolds.
22 Mr. Blackhorse, is there anything you
23 wanted to tell me?
24 THE DEFENDANT: Yes, sir. I just --
25 would like to say that, you know, doing my time,

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1 forty-two days in which to appeal any sentence
2 the Court imposes here; okay?
3 THE DEFENDANT: Yes, sir.
4 THE COURT: I have considered protection
5 of society, punishment, deterrence, and
6 rehabilitation in your case. I carefully
7 reviewed the presentence investigation report,
8 your prior criminal record, and the facts and
9 circumstances of this case. Considering whether or
10 not you're a viable candidate to be placed on
11 probation, pursuant to Idaho Code 19-2521, was
12 another consideration here, Mr. Blackhorse.
13 I have some concerns with regard to
14 placing you on probation. You would be a high
15 risk to commit another crime if you were placed
16 on probation. You have struggled on probation in
17 the in past with regard to complying, and you have
18 not been successful in community supervision in
19 years past without warrants and things like that.
20 I do think you do need correctional
21 treatment. As I said, you failed in community
22 supervision. You have not been successful in
23 a problem-solving court. You have been noted
24 as above average or high risk to reoffend. I'm
25 not sure you have any real insight into your

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1 criminal behaviors, and you have little motivation
2 to want to change.

3 A lesser sentence would be -- would
4 certainly depreciate the seriousness of the
5 crime. This was a very violent and intrusive act
6 on another person, this Rape charge, and I think
7 imprisonment would be an appropriate punishment
8 and deterrence for you.

9 You have to be punished for your
10 actions, and society has to be protected from
11 you; okay?

12 You prayed on a vulnerable adult, and
13 you really didn't have any concerns with regard
14 to what your actions -- the harm that your actions
15 would cause. You are a multiple offender now.
16 You completed prison in the past, and you have
17 multiple felony convictions.

18 So on the Rape charge, sir, I'm going
19 to impose a sentence of four years fixed, sixteen
20 years indeterminate. I'm going to give you
21 credit for all time served on that fixed portion,
22 so there is not a lot of fixed time left.

23 So, really, what it comes down to is
24 you and the Parole Commission deciding when
25 and how you will be paroled.

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1 housekeeping. You had ordered a recent PSI to
2 expire --

3 THE COURT: I had.

4 MR. REYNOLDS: And I have had this in
5 hand with the cover letter.

6 THE COURT: All right. Thank you so much,
7 Mr. Reynolds.

8 Mr. Blackhorse, good luck to you.

9 I'll go ahead and remand you back to the
10 custody of the Sheriff.

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15 (CONCLUSION OF PROCEEDINGS HELD 6/25/2018.)
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1 I'm going to impose a fine of \$500,
2 plus court costs. \$500 reimbursement to the
3 county for partial costs of your attorney.
4 And \$1400 restitution for the psychosexual
5 evaluation that was performed.

6 I'm going to extend that no-contact
7 order until -- until, oh, yeah it was extended,
8 so that was the second extension, until the
9 year 2028.

10 And, of course, as Mr. Reynolds
11 pointed out, you're going to have to register
12 as a sex offender; okay?

13 So I think he has probably somewhere
14 around a year or less to serve on that fixed
15 time. Hopefully he will be able to get into a
16 track and make -- and they can look at a parole
17 date as soon as possible. That's what my hope is for
18 him, Mr. Reynolds.

19 MR. REYNOLDS: Yes, Your Honor.

20 THE COURT: Mr. Blackhorse, any questions?

21 MS. CALL: Did you ask me something?

22 THE COURT: I just wondered if there is
23 anything else?

24 MS. CALL: No.

25 MR. REYNOLDS: One last matter of