

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

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

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NOS. 46163-2018, 46264-2018, 46165-
	)	2018
v.	)	
	)	Kootenai County Case Nos. CR18-3625,
BRENDA K. AUTREY,	)	CR14-9083, CR14-13417
	)	
Defendant-Appellant.	)	RESPONDENT’S BRIEF
_____	)	

Has Autrey failed to show that the district court abused its sentencing discretion when it imposed aggregate sentences of five years with three years fixed upon Autrey’s convictions for burglary, possession of methamphetamine and possession of heroin?

ARGUMENT

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

A. Introduction

Autrey stole a backpack out of a parked truck. (46164 R., pp. 28-29.) The state charged her with burglary and grand theft. (46164 R., pp. 44-45.) Autrey and the state entered a plea agreement for her to plead guilty to burglary in exchange for the state’s dismissal of the grand theft

charge, a recommendation of probation, and a bond reduction. (46164 R., p. 43.) The state dismissed the grand theft charge, Autrey moved for the bond reduction and entered the guilty plea, and the district court granted the bond reduction motion and released Autrey on her own recognizance. (46164 R., pp. 46-50, 52, 59.)

About sixteen days after her release, police found Autrey in possession of methamphetamine and syringes. (46165 R., pp. 23-24.) The state charged her with possession of a controlled substance and possession of paraphernalia. (46165 R., pp. 40-41.) The new case was consolidated with the prior burglary case. (46165 R., p. 29.) After getting a bond reduction to \$5,000 and posting bond, Autrey failed to appear for her arraignment. (46165 R., pp. 5, 34, 39; 46164 R., p. 54.)

After her re-arrest, Autrey was accepted into drug court. (46164 R., p. 58; 46165 R., p. 52.) In the burglary case the district court imposed and suspended a sentence of five years with two years determinate. (46164 R., pp. 62-66.) In the possession case the district court released Autrey on her own recognizance to appear in drug court, with the intention that she plead guilty there.<sup>1</sup> (46165 R., pp. 52-53.)

About three months later Autrey failed to appear for drug court. (46164 R., p. 68; 46165 R., p. 54.) The state filed for an order to show cause why Autrey was not in violation of her probation. (46164 R., pp. 69-86.) Autrey admitted violating her probation, and the district court imposed a sentence of five years with two years determinate for the possession of methamphetamine conviction, concurrent with the burglary sentence previously imposed, and retained jurisdiction. (46164 R., pp. 87-90; 46165 R., pp. 55-58.) At the conclusion of the

---

<sup>1</sup> Autrey does not dispute that she pled guilty to the two possession counts in drug court. (Appellant's brief, p. 2 (citing 46165 PSI, p. 16).)

retained jurisdiction, the district court placed Autrey on probation. (46164 R., pp. 91-94; 46165 R., pp. 60-68.)

About eight months later the state filed a motion to revoke probation. (46164 R., pp. 95-107; 46165 R., pp. 69-77.) The district court revoked probation and ordered a new period of probation. (46164 R., pp. 111-15; 46165 R., pp. 81-85.)

Less than five months later, the state moved to revoke Autrey's probation for using controlled substances and not attending her rehabilitation counselling. (46164 R., pp. 116-22, 125-32; 46165 R., pp. 86-93, 96-117.) Autrey admitted violating her probation. (46164 R., p. 134; 46165 R., p. 119.) The district court revoked probation and retained jurisdiction. (46164 R., pp. 135-38; 46165 R., pp. 120-23.)

At the conclusion of the retained jurisdiction, the district court placed Autrey back on probation. (46164 R., pp. 139-42; 46165 R., pp. 124-27.)

About six months later police found Autrey in possession of heroin. (46163 R., pp. 10-11.) The state charged her with possession of heroin and moved to revoke her probation. (46163 R., pp. 30-31; 46164 R., pp. 144-60, 163-209; 46165 R., pp. 128-44, 147-78.) Pursuant to a plea agreement, Autrey pled guilty to possession of heroin and admitted violating her probation in the other two cases. (46163 R., pp. 29, 32-34; 46164 R., pp. 210-11; 46165 R., pp. 179-80.)

The district court imposed a sentence of five years with three years determinate for possession of heroin, concurrent with the prior two felony sentences, and revoked probation in the first two cases. (46163 R., pp. 42-46, 49-51; 46164 R., pp. 212-16; 46165 R., pp. 181-85.) Autrey filed a motion to reduce her sentence for possession of heroin to two years determinate. (46163 R., p. 47.) The district court denied the motion. (46163 R., p. 80; 11/2/18 Tr., p. 11, L. 2 – p. 12,

L. 24.) Autrey filed notices of appeal timely from the entry of the judgments. (46163 R., pp. 52-54; 46164 R., pp. 219-21; 46165 R., pp. 188-90.)

Autrey contends the district court erred by either not giving her a lesser sentence or by not giving her another chance at probation. (Appellant’s brief, pp. 5-11.) She 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)).

“Once a probation violation has been proven, the decision of whether to revoke probation is within the sound discretion of the court.” State v. Le Veque, 164 Idaho 110, \_\_\_, 426 P.3d 461, 464 (2018) (quoting State v. Rose, 144 Idaho 762, 765, 171 P.3d 253, 256 (2007)). “When a trial court’s discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered

inquiry to determine whether the lower court correctly perceived the issue as one of discretion, acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it, and reached its decision by an exercise of reason.” State v. Clausen, 163 Idaho 180, 182, 408 P.3d 935, 937 (Ct. App. 2017).

C. Autrey 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 this 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 district court specifically stated it considered the relevant factors of sentencing. (6/4/18 Tr., p. 30, Ls. 15-18.) It found that Autrey represented a threat to the community and herself because of her ongoing thefts and drug use. (6/4/18 Tr., p. 29, L. 24 – p. 30, L. 2.) This finding is supported by Autrey’s record. (46163 PSI, pp. 5-8.) The court found that “rehabilitation has not been successful,” and therefore neither probation nor retaining jurisdiction again could

protect the community. (6/4/18 Tr., p. 30, Ls. 15-20; p. 31, Ls. 14-17.) This finding is supported by Autrey’s track record with probation in these cases, set forth above. The record supports the district court’s exercise of sentencing discretion.

Autrey argues that “mitigating factors, including her substance abuse issues, amenability towards treatment, and acceptance of responsibility” demonstrate that she should have been given another chance on probation or a lesser sentence. (Appellant’s brief, p. 6.) The district court, however, specifically considered these factors. (6/4/18 Tr., p. 29, L. 2 – p. 33, L. 2.) The district court saw this as “primarily an addiction case.” (6/4/18 Tr., p. 29, Ls. 7-8.) It considered Autrey’s mental health, her extensive and long-standing addictions, and her “tough life.” (6/4/18 Tr., p. 29, Ls. 9-15.) Although Autrey seems to “want to do the right thing,” and she had the “tools” of rehabilitation, “rehabilitation has not been successful.” (6/4/18 Tr., p. 30, Ls. 11-20.) The “primary reason” the court imposed and executed the sentences it did was that Autrey required “a substantial period of enforced sobriety” in which she could work on being able to use the tools of sobriety upon her release and “break the cycle” of relapse. (6/4/18 Tr., p. 31, L. 25 – p. 33, L. 1.) Autrey’s argument that the district court should have given more weight to certain factors and made different findings than it did (without claiming clear error in those findings) shows no abuse of discretion under the relevant legal standards.

### CONCLUSION

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

DATED this 30th day of April, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of April, 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:

JENNY C. SWINFORD  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

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