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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46198
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR-2013-5996
)	
LAWRENCE HENRY GRIZZARD,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Grizzard failed to establish that the district court abused its discretion by imposing a unified sentence of 21 years, with six years fixed (with credit for five years and four days served), upon his guilty plea to robbery?

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

Grizzard pled guilty to robbery, and the district court imposed a unified sentence of 21 years, with six years fixed, and gave him credit for “1,829 days (5 years and 4 days) served.” (R., pp.106-09; Aug., p.2 (underlining and bolding omitted).) Grizzard filed a notice of appeal timely from the judgment of conviction. (R., pp.113-16.)

Grizzard asserts his sentence is excessive in light of his rehabilitative potential, acceptance of responsibility, and claim that “the district court’s reliance on [his] criminal history to justify the sentence imposed went beyond what was reasonable.” (Appellant’s brief, pp.4-6.) 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 penalty for robbery is not less than five years, up to life in prison. I.C. § 18-6503. The district court imposed a unified sentence of 21 years, with six years fixed, which falls well within the statutory guidelines. (R., pp.106-09.) Moreover, the district court gave Grizzard credit for five years and four days of prejudgment incarceration, effectively making the fixed portion of his sentence less than one year. (Aug., p.2.) Although Grizzard argues otherwise, the court's sentencing decision was not only statutorily authorized, it was perfectly reasonable in light of the nature of the crime, Grizzard's criminal history, his demonstrated failures to be deterred or rehabilitated despite prior legal sanctions and opportunities on probation, and the need to punish Grizzard while at the same time protecting the community.

Grizzard committed the robbery of which he was convicted in this case in May 2013. (PSI, pp.4-5.¹) He approached a Walmart cashier under the pretense of purchasing a bottle of water, but as soon as the cashier opened the cash register, Grizzard "came around the counter, held his right hand up to her neck and demanded money." (PSI, p.4.) He "then reached into the register and grabbed a handful of cash," including \$100 and \$50 bills. (PSI, pp.4, 53.) He also "grabbed the radio that was in [the cashier's] pocket and the bottle of water, and fled the store." (PSI, p.4.) Officers who responded to the scene reported that, in reviewing video surveillance of the incident, it "appeared [Grizzard] was holding a shiny object in his right hand when he held it up to [the cashier's] neck," although it "was unclear" what that object was. (PSI, pp.4, 56.)

After leaving the Walmart, Grizzard discarded some of his clothing, as well as the radio he had stolen from the cashier. (PSI, pp.4-5.) Apparently believing he was having a heart attack, he then checked himself into a local hospital for testing. (PSI, pp.5-6.) Upon being released "a

¹ PSI page numbers correspond with the page numbers of the electronic file, "Supreme Court No 46198-2018 Lawrence Henry Grizzard Confidential Exhibits on Appeal.pdf."

couple of hours” later, Grizzard drove to South Carolina, where he was later arrested on a misdemeanor warrant. (PSI, pp.6, 9.)

Grizzard’s conviction in this case was only the latest in a string of convictions resulting from violent and theft related offenses. (See PSI, pp.6-9.) Grizzard was on probation for a 2009 felony “Criminal Domestic Violence” conviction when he committed the robbery in this case. (PSI, pp.7, 9.) He also had a prior felony conviction for grand larceny. (PSI, p.7.) He had also been convicted of several misdemeanor offenses, including simple assault, criminal domestic violence, and second degree assault and battery. (PSI, pp.6, 8.) Additionally, Grizzard’s criminal record contains multiple charges that were eventually dismissed, including simple assault, simple assault and battery, malicious injury to property, criminal domestic violence, assault and battery with intent to kill, and kidnapping. (PSI, pp.6-7.) Grizzard has had multiple chances to be successful both on community supervision and while incarcerated, but he has demonstrated an inability or unwillingness to conform his behavior to the law. (PSI, pp.6-9.)

As a result of having violated his probation in the 2009 domestic violence case, Grizzard was incarcerated in a South Carolina prison for almost four years after he committed, but before he was sentenced for, the robbery of which he was convicted in this case. (PSI, p.9.) Grizzard reported that, while incarcerated, he earned his GED and participated in numerous programs, including anger management, parenting, substance abuse classes, victim’s impact, Alcoholics Anonymous, and Therapeutic Housing Community. (PSI, pp.7, 9.) The record shows, however, that Grizzard also incurred a number of disciplinary sanctions while incarcerated, including for “create/assist with social networking site,” possession of contraband, and three sanctions for “possess or attempt to possess.” (PSI, p.9 (capitalization altered).) Grizzard incurred the last

sanction less than one year before being released from prison and “turned over to Idaho officials” in September 2017. (PSI, p.9.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Grizzard’s sentence, including Grizzard’s violent criminal history, the risk he poses to the community, and the need for punishment in this case. (6/18/18 Tr., p.21, L.20 – p.23, L.24.) The court expressly recognized that Grizzard had been incarcerated in South Carolina for a number of years and that Grizzard had claimed to have “changed” during that period of incarceration. (6/18/18 Tr., p.23, Ls.4-9.) The court, however, was understandably “concern[ed]” by “the violence of [Grizzard’s] past criminal history” and also “believe[d],” based on the crime in this case, that the sentence it imposed should have “a deterrent effect,” as well as an aspect of “retribution and punishment.” (6/18/18 Tr., p.22, L.18 – p.23, L.3.) That Grizzard would have liked the district court to have given more mitigating weight to his most recent rehabilitative efforts does not establish an abuse of discretion. Grizzard has failed to show that the sentence imposed (which, with credit for time served, resulted in a fixed sentence of less than one year) is excessive under any reasonable view of the facts.

The state submits that Grizzard 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 Grizzard's conviction and sentence.

DATED this 4th day of February, 2019.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of February, 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:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 THE COURT: Okay. Thank you, Mr. Essma.

2 Mr. Grizzard, at this time you can address the
3 Court if you'd like to. You are not required to say anything,
4 but you're certainly welcome to.

5 THE DEFENDANT: I'd like to take a moment and apologize
6 to the victim. I understand what I did that day was wrong,
7 and I accept responsibility for it. And I understand that
8 there must be some punishment for that. And I just hope one
9 day that they can forgive me for it.

10 The second, to the Court, for the last five years
11 I've worked on making a change with myself, not only for
12 myself but for my children, so that hopefully that I'd be able
13 to see them grow up and be a part of that and not have to
14 watch them grow up from a prison cell.

15 Thank you.

16 THE COURT: Okay. Thank you, sir.

17 Mr. Essma, any objection to the amount of
18 restitution being sought in this case?

19 MR. ESSMA: No, Your Honor.

20 THE COURT: All right. The Court has reviewed the
21 presentence investigation report. As well, I'll note for the
22 record that I have reviewed a letter from the defendant which
23 is filed -- which is in the file regarding some irregularities
24 that occurred at his change of plea.

25 I have also reviewed the letters from his aunt,

1 Ms. Guerrero; from Ms. Grizzard, his mother. I've also
2 reviewed the documents showing that he obtained his GED and
3 certain Work Keys class completions and so forth. I've also
4 reviewed the victim impact statement that was submitted in
5 writing to the Court. I've considered the comments and
6 recommendations of both counsel.

7 In arriving at my sentence today, I've considered
8 and applied the Toohill factors, namely, the good order and
9 protection of society, which is the primary factor to take
10 into account, as well as the deterrent effect of any sentence,
11 the likelihood of rehabilitation of the defendant, and the
12 need for retribution or punishment. In addition, I have
13 considered and applied the factors set forth in Idaho Code
14 Section 19-2521.

15 With respect to the Toohill factors, in this case I
16 do believe that most of the factors are present; that is,
17 there is a need to protect society in this case.

18 In looking through the PSI, I was, quite frankly,
19 struck by the violence of the defendant's past criminal
20 history. Every -- I think just about every crime in there was
21 of a violent nature. That is of concern to the Court. And in
22 the sentencing of this particular matter, I do take that into
23 consideration.

24 With respect to the deterrent effect of the
25 sentence, I do believe that, based upon the crime in this

1 particular case, there is a deterrent effect that is required
2 as well as some need for retribution and punishment in this
3 case.

4 With respect to the likelihood of rehabilitation of
5 the defendant, I'm a bit in a quandary. The defendant has
6 been in custody for a little over four years in South
7 Carolina, and I understand the argument that he has changed.
8 The question for the Court is: How much of a change has
9 occurred as a result of that incarceration?

10 Nevertheless, I do take that into consideration,
11 but that is not the primary factor that -- which I am viewing
12 in this particular case. I don't believe that, given the
13 history of the defendant, that there is a likelihood of
14 rehabilitation through probation, so I don't believe that
15 that's appropriate at all in this particular case.

16 Given those factors, I do believe that the
17 defendant is a risk to the community and that a sentence
18 involving some punitive aspect is entirely appropriate in this
19 case.

20 With that said, the Court pronounces sentence as
21 follows:

22 I sentence the -- the defendant to a unified
23 sentence of 21 years, consisting of a 60-year fixed term and a
24 15-year indeterminate term. And that is to serve.

25 I do also order court -- or I do impose court