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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46210
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2018-17886
)	
ALEX THOMAS GIBSON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Gibson failed to establish that the district court abused its discretion by imposing a unified sentence of seven years, with six months fixed, upon his guilty plea to possession of methamphetamine?

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

Gibson pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with six months fixed. (R., pp.20-21, 34-36.) Gibson filed a notice of appeal timely from the judgment of conviction. (R., pp.37-39.)

Gibson asserts his sentence is excessive in light of his remorse, support of family and friends, good employment history, substance abuse issues, and desire for treatment. (Appellant's brief, pp.3-6.) 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 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 six months fixed, which falls within the statutory guidelines. (R., pp.34-36.) Furthermore, Gibson's sentence is appropriate in light of his ongoing substance abuse, the repetitive nature of his criminal behavior, his unwillingness to comply with the terms of community supervision, and his failure to rehabilitate or be deterred.

Gibson has demonstrated an ongoing disregard for the law. As a juvenile, Gibson had eight juvenile adjudications. (PSI, pp.4-6.¹) Gibson continued his criminal conduct as an adult, accruing 10 misdemeanor convictions for: operating an unregistered vehicle, failure to purchase a driver's license, two counts of DUI, two counts of possession of alcohol by a minor, two counts of driving without privileges, and two counts of possession of marijuana. (PSI, pp.6-7.) Gibson also has three prior felony convictions, one for DUI and two for possession of a controlled substance. (PSI, pp.7-8.) Gibson has also been incarcerated and has violated prior periods of probation multiple times. (PSI, pp.6-9.) In this case, probation and parole officers found three loaded syringes, a baggie containing methamphetamine, and a silver smoking device with marijuana residue in Gibson's room of his residence. (PSI, p.3.)

Gibson has previously participated in substance abuse treatment at Pathways Counseling for nine months, had an Alcohol/Drug Evaluation done at Sage Recovery, and started the Addiction Recovery Program at Saint Alphonsus, but failed to complete the program. (PSI, pp.78, 105.) Gibson's failure to rehabilitate or be deterred demonstrates that his sentence is appropriate. Furthermore, Gibson's remorse, support from family and friends, and employment

¹ PSI page numbers correspond with the page numbers of the electronic file "Gibson 46210 psi.pdf."

history, do not outweigh his ongoing substance abuse or his unwillingness to comply with the terms of community supervision.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Gibson's sentence. (7/23/18 Tr., p.24, L.18 – p.28, L.7.) The state submits that Gibson 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 Gibson's conviction and sentence.

DATED this 4th day of March, 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 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:

ELIZABETHH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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

APPENDIX A

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1 him a probationary sentence and give him an
 2 opportunity on that side, we would ask the Court
 3 to do a zero fixed and give him that opportunity
 4 to be out there and making the progress that he
 5 has made while he's been in custody.
 6 Sometimes folks just need to have their
 7 head cleaned out and get away from the drugs for a
 8 period of time, get back on track. You know, with
 9 Mr. Gibson, I think it's the little things. He --
 10 the inmate worker is not a big deal on whether
 11 it's correct or not. He felt like it was
 12 important for him to be honest with the Court that
 13 he's not been an inmate worker and not have any of
 14 those discrepancies in there because he wants the
 15 Court to judge him for what he's done.
 16 Those kinds of characteristics are the
 17 characteristics of folks that need a
 18 recalibration, need a sanction, and get back on
 19 the street, and get back to where they were going.
 20 THE COURT: Okay.
 21 Mr. Gibson, what do you have to say?
 22 THE DEFENDANT: Well, you know, I relapsed
 23 after doing some -- pretty well on parole. I
 24 didn't fall back on any of the tools or things
 25 that I've learned through treatment. And I

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1 definitely -- I think the biggest thing is I
 2 didn't develop a support group that I could fall
 3 back on.
 4 And once I started struggling, I went
 5 to my boss and told him what was going on, and
 6 then he did call. And I'm glad he did. I'm happy
 7 that I'm sober today. And I'm really hopeful that
 8 I can be successful on sobriety this time and
 9 actually maintain my sobriety and stay in recovery
 10 for me and for my daughter.
 11 My boss is also going to my on-site,
 12 so -- yeah.
 13 I had some other stuff, but I'm a
 14 bundle of nerves at the moment.
 15 THE COURT: Well, is there legal cause why
 16 we should not proceed?
 17 MR. MARX: No, Your Honor.
 18 THE COURT: Well, Mr. Gibson, I don't see
 19 that your problem is working because you did a
 20 good job and your employer liked you. But you
 21 were out for two and a half months, and then you
 22 are back using again.
 23 So what I see is your problem is your
 24 commitment to not using. And the reality is that
 25 with this being the fourth felony, you are at a

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1 persistent violator stage. And are really at risk
 2 of getting a much longer sentence, and just
 3 continuing to do that.
 4 Now, it seems to me that the primary
 5 focus has to be on what you would do to handle
 6 things differently because I don't see you making
 7 sobriety your primary goal, and that concerns me.
 8 Now, I don't see this as having a lot
 9 of aggravated features except that you keep coming
 10 come back before the Court for the same thing.
 11 The reality is, I assume you have
 12 gotten some level of treatment in the institution,
 13 and you have some idea of what your tools are.
 14 You've got to use those tools. It doesn't do any
 15 good. Lots of us buy something for some fancy
 16 project that we are going to do, and it stays in
 17 the garage in a box, and it never gets done. And
 18 that kinda seems to me what's been going on with
 19 your recovery. You've got tools, but they are all
 20 in the box, and you are not taking them out.
 21 I don't see this as warranting an
 22 extremely heavy penalty, but I also think that
 23 you've got to spend a lot more time and effort on
 24 how you are going to maintain sobriety. Because
 25 you are going to blow everything up every time you

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1 get a chance out if you don't commit yourself a
 2 lot more solidly to deal with whatever your
 3 relapse triggers are. It's whatever attitude you
 4 have that are keeping you coming back before the
 5 Court for the same thing.
 6 Now, the problem I see is that you are
 7 already on parole. That is a totally different
 8 structure. That is a different system than our
 9 system, so what I'm going to do is I'm going to
 10 impose six months with credit for time already
 11 served, and then six and a half years
 12 indeterminate after that with the idea that you
 13 can qualify sooner to get back on parole.
 14 I think what you've got to spend your
 15 time on is figuring out what you gotta do so you
 16 do it differently because I think it's to your
 17 credit that your employer liked you, and I think
 18 you got some things you care about. But I think
 19 you're going to have to figure out how to use
 20 those tools a little better.
 21 But I'll certainly set it so you can
 22 get out more quickly and you can get back into the
 23 community and start working again. But,
 24 realistically, I don't see that the other approach
 25 is going to be feasible. And so I'll set it up so

1 you qualify more soon for release.
 2 And you'll only have to deal with one
 3 particular group instead of multiple groups, which
 4 I think has a tendency to sometimes mess people up
 5 without anyone meaning to. It's not because they
 6 are responding to the courts, but they are also
 7 under the supervision of the Department. And I
 8 think sometimes that causes more confusion, and
 9 sometimes it sets people up for trouble which
 10 shouldn't be having trouble. This way, at least,
 11 you only have your parole officer to be the one to
 12 be your contact person.

13 And, certainly, I wasn't aware of some
 14 of the logistical problems with getting people
 15 treatment in the community until very recently,
 16 but it certainly is going to be, I think, the top
 17 priority of the judges the advocate that the
 18 Department of Corrections take over all that money
 19 for that isn't being spent for treatment, so that
 20 the Department can authorize treatment.

21 But look into a halfway house.
 22 Consider NA or -- a lot of people like it, and
 23 they find it helps them. And then if, you know,
 24 then keep going because I think you got a lot of
 25 things that could be going for you, but you are

1 going to have to -- you are going to have to work
 2 out for yourself because you know what -- you are
 3 the only person who really knows what is going on
 4 when you are tempted. So you are going to have to
 5 work out for yourself some plan to deal with that.
 6 But I'll set it up so that you can qualify for
 7 that in the near future.

8 You do have 42 days in which to appeal.
 9 MR. MARX: Thank you, Your Honor.
 10 (Proceedings concluded at 4:17 p.m.)

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REPORTER'S CERTIFICATE

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 3 STATE OF IDAHO)
 4 COUNTY OF ADA) SS

6 I, ROXANNE K. PATCHELL, Official Court
 7 Reporter, Ada County, State of Idaho hereby
 8 certify:

9 That I am the reporter who took the
 10 proceedings had in the above-entitled action in
 11 machine shorthand and thereafter the same was
 12 reduced into typewriting under my direct
 13 supervision; and

14 That the foregoing reporter's transcript
 15 contains a full, true, and accurate record of the
 16 proceedings had in the above and foregoing cause,
 17 which was heard in Boise, Idaho

18 IN WITNESS WHEREOF, I have hereunto set my
 19 hand this 17th of October, 2018.

21 *Roxanne K. Patchell, RPR, CSR*

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 23 Roxanne K. Patchell, RPR, CSR
 24 Idaho CSR Number 733
 25 California CSR Number 12057