

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

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|-----------------------|---|---------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 46224 |
| Plaintiff-Respondent, |) | |
| |) | Ada County Case No. |
| v. |) | CR01-2017-15173 |
| |) | |
| CHAD WAYNE ATCHLEY, |) | |
| |) | RESPONDENT'S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

Issue

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

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

While Atchley was incarcerated in relation to a federal drug distribution charge, law enforcement responded to Atchley's home, at the request of Atchley's uncle, and seized nearly 28 grams of methamphetamine that Atchley's uncle had found among Atchley's possessions.

(PSI, pp.2-3, 32-33, 38¹; see also 5/23/18 Tr., p.19, L.24 – p.20, L.9, p.21, Ls.19-23.) While at the residence, the officers also discovered a stolen bicycle. (PSI, pp.3, 32-34, 45.)

The state charged Atchley with grand theft and with possession of methamphetamine with the intent to deliver. (R., pp.44-45.) Pursuant to a plea agreement, Atchley pled guilty to an amended charge of possession of methamphetamine and the state dismissed the grand theft charge. (R., pp.51-53, 55-63.) The district court accepted Atchley’s plea and imposed a unified sentence of seven years, with two years fixed, to run concurrently with Atchley’s sentence in the federal drug distribution case, 1:17-00031-001. (R., pp.76-79.) Atchley filed a notice of appeal timely from the judgment of conviction. (R., pp.80-82.)

Atchley argues his sentence is excessive in light of his “rehabilitative potential,” family support, mental health issues, substance abuse issues, and purported remorse. (Appellant’s brief, pp.3-8.) 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

¹ PSI page numbers correspond with the page numbers of the electronic file “Atchley 46224 psi.pdf.”

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 two years fixed, which falls within the statutory guidelines. (R., pp.76-79.) Furthermore, Atchley’s sentence is appropriate in light of his ongoing substance abuse, criminal history, and failure to be deterred despite prior legal sanctions.

Atchley has demonstrated an ongoing disregard for the law. Atchley’s criminal history includes at least five juvenile adjudications and 12 misdemeanor convictions. (PSI, pp.3-6.²) Moreover, at the time law enforcement discovered the methamphetamine of which he was convicted of possessing in this case, Atchley was in custody on a federal drug distribution charge, of which he was ultimately convicted. (PSI, pp.2-3, 5.) Atchley has been afforded multiple opportunities for community supervision but has nevertheless failed to rehabilitate or be

² The presentence investigator noted that, when preparing her report, she only had intermittent access to the Idaho iCourt Portal due to connectivity issues and, as a result, was unable to see all of Atchley’s cases before losing access. (PSI, p.5.)

deterred from committing new crimes, including possessing and distributing trafficking quantities of methamphetamine. (PSI, pp.3-5; see also 5/23/18 Tr., p.19, L.24 – p.20, L.15.)

Atchley has been abusing substances for over 35 years. (PSI, pp.6-7, 10.) He reported that he started drinking “socially” in the seventh grade, was then “introduced to weed,” and “[b]y the time [he] was 18 [his] life was completely surrounded with drugs.” (PSI, pp.6-7.) Atchley also reported that he has abused alcohol, marijuana, methamphetamine, cocaine, heroin, other hallucinogens, and prescription drugs. (PSI, p.10.) Despite Atchley’s apparent substance abuse issues, he reported no history of participating in self-help groups or seeking substance abuse treatment while in the community. (PSI, p.10.) Although Atchley was participating in a substance abuse program in federal prison at the time he was sentenced in this case (see PSI, pp.10, 19), such does not mitigate the fact that Atchley never sought treatment for his self-proclaimed “addict[ion]” (PSI, p.3) before being required to as a condition of confinement; nor does it override the concern, expressed by the prosecutor, that Atchley took “little, if any, accountability for his distribution,” claiming instead that that the nearly 30 grams of methamphetamine he was convicted of possessing in this case was for his personal use (see PSI, p.3 (claiming the drugs were “there because I was a daily addict); 5/23/18 Tr., p.21, Ls.7-18). Finally, it is clear from the court’s reasoning at sentencing that it specifically considered Atchley’s substance abuse issues and efforts at rehabilitation. (See 5/23/18 Tr., p.32, Ls.12-15.) That the court determined Atchley’s rehabilitation prospects were outweighed by “competing considerations”—including Atchley’s “significant misdemeanor history,” his “long substance abuse history,” and, “in particular,” the “quantity” of drugs Atchley possessed in this case (see 5/23/18 Tr., p.32, Ls.12-21)—does not establish an abuse of discretion.

The other factors Atchley claims are mitigating also do not show an abuse of discretion. Without citation to the record, Atchley claims to have “the support of his family.” (Appellant’s brief, p.4.) It appears, however, that such is not the case, as the grandmother with whom he was living before he was incarcerated was refusing to accept his calls, and he is estranged from his children. (PSI, pp.7-8.) Atchley’s claim that he “suffers from mental illness” is also suspect. (See Appellant’s brief, p.4.) Although Atchley was taking medication for “depression/anxiety” while incarcerated pending sentencing in this case, he “reported no past mental health counseling” and told the presentence investigator he did “not believe he need[ed] any” at that time. (PSI, p.9.) Moreover, when asked if the anti-depressant medication he was taking was helping, he “replied that he feels better, but he’s not sure if that’s attributable to the medication or the fact he’s been clean and sober for over a year.” (PSI, pp.9-10.)

The district court considered all of the relevant information and imposed a reasonable sentence considering both the nature of the crime and Atchley’s character. Atchley’s sentence is appropriate in light of his ongoing substance abuse, criminal history, and failure to be deterred despite prior legal sanctions. Given any reasonable view of the facts, Atchley has failed to establish an abuse of discretion.

Conclusion

The state respectfully requests this Court to affirm Atchley’s conviction and sentence.

DATED this 28th 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 28th 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
documents@sapd.state.id.us.

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