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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46261-2018
Plaintiff-Respondent,)	
)	Canyon County Case No.
v.)	CR14-2017-18495
)	
JORGE LUIS SANCHEZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Sanchez failed to establish that the district court abused its discretion by imposing a unified sentence of eight years, with five years fixed, upon his guilty plea to felony DUI?

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

Sanchez pled guilty to felony DUI and the district court imposed a unified sentence of eight years, with five years fixed. (R., pp.53-54.) Sanchez filed a notice of appeal timely from the judgment of conviction. (R., pp.62-65.)

Sanchez asserts his sentence is excessive in light of the fact that he “understood that he needed alcohol and substance abuse treatment,” has an employment opportunity, wants to be a better father and member of the community, and accepted responsibility. (Appellant’s brief, pp.2-4.) 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 felony DUI (prior felony DUI conviction within 15 years) is 10 years. I.C. §§ 18-8005(6), -8005(9). The district court imposed a unified sentence of eight years, with five years fixed, which falls well within the statutory guidelines. (R., pp.53-54.) Furthermore, Sanchez's sentence is appropriate in light of his ongoing disregard for the law and the safety of others, the danger he presents to the community, and his failure to rehabilitate or be deterred despite prior legal sanctions and treatment opportunities.

Sanchez has a long history of criminal offending. His criminal record includes 13 juvenile adjudications, 13 misdemeanor convictions, and two prior felony DUI convictions. (PSI, pp.4-10.¹) Sanchez's record also includes multiple charges that were ultimately dismissed, including DUI and open container charges. (PSI, pp.4-10.) Sanchez has demonstrated that prior treatment opportunities and legal sanctions have not deterred him: After he committed a felony DUI in 2013 and was placed on probation following a period of retained jurisdiction, he violated his probation and was charged with another felony DUI in 2014. (PSI, p.11.) He subsequently spent 20 months in prison in both cases before being released in November 2016, and then committed the felony DUI of which he was convicted in this case less than a year later, in October 2017. (PSI, p.11.) Sanchez has participated in substance abuse treatment at Bell Counseling, A Fresh Start Recovery Services, and Family Services Center. (PSI, p.18.) He also completed the CAPP program during his period of retained jurisdiction. (PSI, p.18.) Despite the multiple prior interventions, Sanchez chose, yet again, to endanger the community by driving while intoxicated in the instant offense, resulting in what is at least his *fifth* DUI conviction. (PSI, pp.3-10, 18.)

¹ PSI page numbers correspond with the page numbers of the electronic file "Confidential Exhibits Appeal.pdf."

In this case, an officer pulled Sanchez over for having “too dark of a window tint.” (PSI, p.3.) The officer smelled the odor of marijuana and observed an open can of Bud Light on the driver’s side floor board. (PSI, p.3.) Upon searching the vehicle, the officer found marijuana in a brown paper bag, which Sanchez admitted was his. (PSI, p.3.) Sanchez failed field sobriety tests and provided breathalyzer samples of .130/.135. (PSI, p.3.) Sanchez’s employment opportunity, his desire to be a better father a member of the community, and his acceptance of responsibility do not outweigh his continued criminal conduct, his unwillingness to abide by the terms of community supervision, or his failure to rehabilitate or be deterred despite prior treatment and legal sanctions.

At sentencing, the district court noted that Sanchez’s conviction in this case marks his third felony DUI conviction and that prior treatment programs and incarceration have failed to deter him from driving while intoxicated. (Tr., p.19, L.23 – p.20, L.5.) Sanchez’s sentence is appropriate in light of the danger he poses to society, his unwillingness to abide by the terms of community supervision, and his failure to rehabilitate or be deterred. Given any reasonable view of the facts, Sanchez has failed to establish an abuse of discretion.

Conclusion

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

DATED this 1st day of April, 2019.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st 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:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General