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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 46278 & 46279
Plaintiff-Respondent,)	
)	Ada County Case Nos.
v.)	CR01-2018-15605 &
)	CR01-2018-22016
JERRICK J. ENGLER,)	
)	
Defendant-Appellant.)	RESPONDENT’S BRIEF
_____)	

Has Engler failed to show that the district court abused its sentencing discretion when it sentenced him to concurrent sentences totaling 14 years with three years determinate upon Engler’s convictions for two counts of grand theft, one count of burglary, and one count of aggravated assault?

ARGUMENT

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

A. Introduction

Jerrick Engler went to an Albertsons store, snatched a shopper’s purse from her cart, and used her credit card twice that same day. (PSI, p. 4.) About a year later, Engler went to a Fred

Meyer store, snatched a shopper's purse from her cart, and, when a citizen tried to stop him, he both punched and pulled a knife and threatened the man. (PSI, p. 3.) Engler was arrested in the course of the second offense, leading to police also solving the first offense. (PSI, pp. 3-4.) The first victim reported an initial loss of about \$1,845.00, and the second victim reported a loss of \$2,987.38. (PSI, pp. 3-5.)

For the 2017 incident the state charged Engler with six counts of grand theft and two counts of burglary. (R., pp. 98-100.) For the 2018 incident the state charged Engler with two counts of grand theft, aggravated assault, with a deadly weapon enhancement, and battery. (R., pp. 30-31, 39-40.) Pursuant to a plea agreement, Engler pled guilty to two counts of grand theft, aggravated assault, and burglary, and the state dismissed the remaining charges. (R., pp. 41-52, 102-11; 6/6/18 Tr., p. 9, L. 14 – p. 12, L. 6; 5/31/18 Tr., p. 5, L. 12 – p. 6, L. 13.) The state agreed to recommend concurrent sentences of 10 years with three years determinate for the burglary, five years with three years determinate for the aggravated assault, ten years with three years determinate for one grand theft, and 14 years with three years determinate for the other grand theft. (R., pp. 51, 110; 6/6/18 Tr., p. 11, Ls. 14-18; 5/31/18 Tr., p. 5, L. 22 – p. 6, L. 3.) The district court imposed concurrent sentences of 10 years with three years determinate for the burglary, five years with three years determinate for the aggravated assault, ten years with three years determinate for one grand theft, and 14 years with three years determinate for the other grand theft. (R, pp. 60-62, 121-23.)

Engler argues the district court abused its discretion asserting the court “failed to give proper weight and consideration to the mitigating factors” in the case. (Appellant's brief, pp. 4-6.) Engler's hope that the court would have given more weight to factors he considers mitigating does not 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)).

C. Engler 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)).

In imposing sentences, the district court applied the relevant legal standards. (8/2/18 Tr., p. 42, Ls. 1-23.) The district court noted that Engler had a prior felony conviction, for which he served a rider, was released on probation, and then violated his probation “within one month.” (8/2/18 Tr., p. 44, Ls. 13-22.) He then violated the terms of his release and absconded, was arrested again, and given a second rider. (8/2/18 Tr., p. 44, L. 22 – p. 45, L. 3.) The district court determined that Engler “had been an IV drug user, stealing purses from little old ladies and burglarizing cars and perhaps homes [and] selling drugs to support his addiction.” (8/2/18 Tr., p. 45, Ls. 4-8.) The district court also noted that Engler had been subject to jail discipline for “assaultive behavior; having threatened to kill a deputy and his family.” (8/2/18 Tr., p. 45, Ls. 14-16.)

The district court also considered mitigation. Specifically, that Engler obtained his GED, “admits that he needs substance abuse treatment,” and “has significant mental illness issues.” (8/2/18 Tr., p. 45, L. 17 – p. 46, L. 7.) However, Engler still posed a high risk of recidivism, and the court stated it did not believe that more programming would do any good. (8/2/18 Tr., p. 46, Ls. 8-24.) The court therefore concluded that the sentences were necessary to protect the community. (8/2/18 Tr., p. 47, Ls. 1-19.) Engler does not challenge the district court’s findings, and those findings support the reasonableness of the sentence imposed.

On appeal Engler argues the district court “failed to give proper weight and consideration to the mitigating factors.” (Appellant’s brief, p. 4.) His invitation to simply re-weigh the evidence shows no abuse of discretion. The district court’s view that cumulative sentences of 14 years with three years determinate on the four felonies before it were necessary to protect the community from Engler’s ongoing and repeated criminal activities is reasonable.

CONCLUSION

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

DATED this 7th day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of March, 2019, served a true and correct copy of the foregoing RESPONDENT’S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen
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