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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46345
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2018-6915
)	
MICHAEL LEE MUNOZ, JR.,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Munoz pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with three years fixed. (R., pp.68-71.) Munoz filed a notice of appeal timely from the judgment of conviction. (R., pp.72-74.)

Munoz asserts his sentence is excessive in light of his difficult childhood, support of family and friends, health issues, mental health issues, substance abuse issues, and desire for treatment. (Appellant’s brief, pp.2-6.) 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 three years fixed, which falls within the statutory guidelines. (R., pp.68-71.) Furthermore, Munoz'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.

Munoz has demonstrated an ongoing disregard for the law. As a juvenile, Munoz was arrested at the age of 17 for domestic battery. (PSI, pp.4, 7.¹) Munoz continued his criminal conduct as an adult, accruing seven misdemeanor convictions: for domestic assault, malicious injury to property, DUI, possession of paraphernalia, and three counts of providing false information to an officer. (PSI, pp.4-6.) Munoz also has prior felony convictions for robbery and prevent/dissuade a witness by threat/force. (PSI, pp.5-6.) Munoz was incarcerated for two years for his robbery conviction and, upon being placed on parole, absconded to California. (PSI, p.7.) Munoz was then convicted of prevent/dissuade a witness by threat/force, and was incarcerated for seven years in California. (PSI, p.7.) After his incarceration in California, Munoz was extradited to Idaho and was imprisoned for an additional two years. (PSI, p.7.)

After his release from prison in 2015, Munoz violated his parole multiple times by admitting to abusing marijuana and methamphetamine after a positive substance test in December of 2016, and again in February of 2017. (PSI, p.7.) Munoz also told his parole officer he was "trying to get into Alambaugh house to live there" and receive substance abuse treatment; however, he only "lasted one (1) night," and then "just took off." (PSI, p.7.) On February 21,

¹ PSI page numbers correspond with the page numbers of the electronic file "Munoz 46345 psi.pdf."

2017, when Munoz was being held at the Canyon County jail, his parole officer noted, “I am going to have him released from jail and his PV will not be filed with the parole commission.” (PSI, p.7.) Two months later Munoz was found in possession of a loaded syringe, and he “admitted to injecting himself with methamphetamine 30 minutes prior to his contact with probation and parole officers.” (PSI, p.7.) Munoz thereafter failed to report to his parole officer, and a parole violation was issued for “meth use x7 / marijuana use x7 / alcohol use / (M) Paraphernalia / absconding.” (PSI, p.7.) Despite his failure to comply with the terms of community supervision, Munoz stated that his past experience on supervision was “good.” (PSI, P.7.)

In this case, officers made contact with Munoz and arrested him on three outstanding warrants. (PSI, p.3.) When officer searched Munoz they found four syringes, one containing a bloody liquid substance. (PSI, p.3.) Munoz reported that he relapsed “for about a year” prior to his arrest in this case and “was shooting up [methamphetamine] every half hour.” (PSI, p.14.)

Munoz claims that he desires treatment for his mental health issues and substance abuse issues. (PSI, pp.12-14.) However, Munoz completed a mental health screening in February 2018 with the result, “Mental Health Cleared,” and he did not exhibit any symptoms of concern or exhibit a need for prescribed medication. (PSI, p.21.) Prior to his arrest, Munoz admitted to abusing marijuana, methamphetamine, cocaine, heroin, ecstasy, and bath salts, but he believes community supervision and “classes” would help him stay drug free. (PSI, p.14.) Additionally, Munoz has previously participated in Interpersonal Relationships, Cognitive Skills, Relapse Prevention, Anger Management, and Clinical Care Group, but has failed to be deterred from his continued drug use. (PSI, p.14.) Munoz’s health issues and difficult childhood, while

unfortunate, do not outweigh the seriousness of the offense or Munoz's failure to rehabilitate or be deterred.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Munoz's sentence. (8/22/18 Tr., p.33, L.2 – p.35, L.2.) The state submits that Munoz 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 Munoz's conviction and sentence.

DATED this 8th 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 8th 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:

ELIZABETHH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 there, I know I got this.
 2 THE COURT: My thought, Mr. Munoz, is
 3 this: Your history has shown -- it's the past.
 4 It's not you today. You can make different
 5 choices in the future. Your past has shown your
 6 willingness to use violence, your willingness to
 7 lie, your willingness to use drugs. You tell me
 8 you have anger.
 9 So here you are sober, wanting to get
 10 out. And I look through that lens and wonder who
 11 the future you will be. So the challenge is
 12 balancing all that.
 13 THE DEFENDANT: Right.
 14 THE COURT: Thank you, Mr. Munoz.
 15 THE DEFENDANT: Thank you.
 16 THE COURT: Mr. Vogt, is there any legal
 17 cause why sentence cannot be imposed?
 18 MR. VOGT: No, your Honor.
 19 THE COURT: Mr. Loschi?
 20 MR. LOSCHI: No, your Honor.
 21 THE COURT: Mr. Munoz, I consider four
 22 factors in your sentence: Protection of society,
 23 deterrence of crime, your rehabilitation, and
 24 punishment.
 25 I appreciate your arguments, Mr. Munoz,

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1 and your counsel's about getting you programming
 2 earlier. I am concerned about protecting society
 3 from the issues I just mentioned, your anger, your
 4 willingness to lie and steal from others, your
 5 violence.
 6 I appreciate your articulateness in
 7 talking to me now. I think you are an affable
 8 person. But those moments can pivot on you where
 9 you make different choices. You just told me
 10 about some of them.
 11 That's the reason I sentence you to the
 12 custody of the Idaho State Board of Corrections
 13 under the unified sentence law of the state of
 14 Idaho for an aggregate term of seven years.
 15 I specify a minimum period of confinement
 16 of three years and a subsequent indeterminate
 17 period of custody of four years.
 18 I remand you to the custody of the
 19 sheriff to be delivered to the proper agents of
 20 the State in execution of the sentence.
 21 You are to receive credit for time served
 22 in the amount of 120 days.
 23 I will not impose a fine.
 24 I will impose restitution in the amount
 25 of \$100.

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1 Sentence to run concurrent with your
 2 existing holds.
 3 And I will impose court costs.
 4 Mr. Vogt, any calibrations to what I've
 5 said?
 6 MR. VOGT: No, your Honor.
 7 THE COURT: Mr. Loschi?
 8 MR. LOSCHI: No, your Honor.
 9 THE COURT: Mr. Munoz, you have 42 days
 10 from the date this judgment is made and filed to
 11 appeal to the Idaho Supreme Court, at which you
 12 may be represented by counsel. If you cannot
 13 afford to hire an attorney for that appeal, one
 14 will be provided for you at public expense if you
 15 are indigent under Title 19. Thank you.
 16 (Whereupon the proceedings were concluded
 17 at 9:47 a.m.)
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