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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46391-2018
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2018-16465
)	
LANCE MOLYNEUX,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Molyneux failed to establish that the district court abused its discretion when it imposed a unified sentence of seven years, with two years fixed, and declined to retain jurisdiction, after Molyneux pled guilty to possession of methamphetamine?

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

Molyneux pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with two years fixed. (R., pp.17-18, 34-37, 56-59.) Molyneux filed a notice of appeal timely from the judgment of conviction. (R., pp.42-44.)

Molyneux argues that the district court abused its discretion, both by imposing an excessive sentence and by declining to retaining jurisdiction. (Appellant’s brief, pp.3-5.) A review of the record and the applicable law supports the court’s sentencing determination. Molyneux has failed to establish an abuse of discretion.

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 decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

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.34-37, 56-59.) On appeal, Molyneux contends that the district court abused its discretion, both by imposing an excessive sentence and by declining to retain jurisdiction, in light of his substance abuse issues and the fact that he is willing to participate in treatment. (Appellant's brief, pp.3-5.) However, Molyneux's ongoing substance abuse and criminal offending, disregard for the terms of community supervision, and failure to rehabilitate while in the community demonstrate that he is not a viable candidate for probation and that his sentence appropriate.

Molyneux's criminal history includes a juvenile adjudication for felony possession of a controlled substance, 15 misdemeanor convictions (primarily for theft, driving, and drug related offenses), and two prior felony convictions—one for burglary and one for possessing

methamphetamine. (PSI, pp.19-23.¹) Molyneux committed his prior felonies in 2015 and, while awaiting sentencing in those cases, Molyneux acknowledged that he had substance abuse issues and reported that he believed treatment in the community would be appropriate. (PSI, pp.28-30.) The district court retained jurisdiction in both cases and, while on his rider, Molyneux completed CBI-Substance Abuse, Thinking for a Change, Career Bridge Two, and Pre-release. (PSI, pp.2-5.) At the conclusion of his rider, Molyneux stated that he had “gained a much needed year clean” and, although he was “resistant” at the beginning of his programming, he could “feel the growth & change inside [him]self physically, mentally, & emotionally.” (PSI, p.7.) The district court placed Molyneux on probation and, despite the fact that he acknowledged his substance abuse issues and had just completed intensive substance abuse programming, Molyneux began using drugs “[w]ithin a month of being released back into the community following [his] rider” and was subsequently arrested in this case. (PSI, pp.3-7; 5/30/18 Tr., p.20, L.24 – p.21, L.3.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Molyneux’s sentence and for declining to retain jurisdiction. (5/30/18 Tr., p.27, L.12 – p.32, L.2.) In declining to retain jurisdiction the district court stated:

This is not a case of the Court not trying to give you every possible benefit to get treatment. You were in the drug court program. You were on – you were removed from that program for noncompliance. You did a rider. You were placed on probation. The rider was to allow you to get more treatment. You were placed on probation and then you were noncompliant.

(5/30 Tr., p.28, Ls.5-12), and:

So the State has given you the programming and will give you the programming again through IDOC. And you can either sit in the classes and just do the work sheets, or you can actually reevaluate your life and say do I want to

¹ PSI page numbers correspond with the page numbers of the electronic file “Molyneux 46391 psi.pdf.”

be with my kids? What is it going to take for me to be with my kids? What kind of commitment is it going to take? What kind of plan is it going to take?

Because you have done it before. Look at what you did before that was successful and come up with your plan for implementing it once you are released because you will be released back into the community. But without a plan it is just wishes. So come up with your plan, come up with your support system, and dedicate yourself to actually going to treatment.

(5/30/18 Tr., p.30, Ls.4-20). The state submits that Molyneux 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 Molyneux's conviction and sentence.

DATED this 3rd 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 3rd 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:

KIMBERLY A. COSTER
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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11:13AM 1 And again, I think if you look at his
 11:13AM 2 history too, it is not a long history here, and I
 11:13AM 3 am looking at his felony history. There is some
 11:13AM 4 misdemeanor stuff that falls here and there, but
 11:13AM 5 if you look at his felony stuff, it all starts in
 11:13AM 6 2015. And I talked to him about that. I said,
 11:13AM 7 "What is going on?"
 11:13AM 8 And he talks about this in the PSI,
 11:14AM 9 that he had used before, about a ten-year period
 11:14AM 10 of sobriety, and then he had some family issues.
 11:14AM 11 And again, you see this in the PSI. He says that
 11:14AM 12 his dad gets a felony out of the blue in 2012 and
 11:14AM 13 said that wasn't anything that anyone expected.
 11:14AM 14 He goes off to prison.
 11:14AM 15 He says when his dad finally gets out
 11:14AM 16 in 2015 he passed of cancer later that year, and
 11:14AM 17 there really wasn't a lot of closure. And there
 11:14AM 18 was a lot of turmoil in the family going on at
 11:14AM 19 that time. He said it was a tough time for his
 11:14AM 20 mom, in particular, in the family. And then 2015
 11:14AM 21 roles around and Lance picks up these things and
 11:14AM 22 the next thing he knows he is in custody. And
 11:14AM 23 again, it was a tough time for him. And clearly
 11:14AM 24 he didn't deal with it as well as he should have.
 11:14AM 25 But he goes on this rider and he really

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11:16AM 1 time for me to grow up and I can't be doing this.
 11:16AM 2 I had a ten-year span of sobriety. Like he said,
 11:16AM 3 there were some family things that I just couldn't
 11:16AM 4 help. I couldn't cope with. I had problems with
 11:16AM 5 asking for help. That was a big problem with
 11:16AM 6 dealing with the family issues was not having that
 11:16AM 7 outreach.
 11:16AM 8 I just really want to get this
 11:16AM 9 addiction under control. I have done it before, I
 11:16AM 10 know I can do it again. I just need help. That
 11:16AM 11 is all I have, Your Honor.
 11:16AM 12 THE COURT: Thank you, sir. Based on your
 11:16AM 13 plea of guilty to possession of a controlled
 11:16AM 14 substance, and in an exercise of my discretion in
 11:16AM 15 sentencing I have considered the Toohill factors,
 11:16AM 16 the nature of the offence, the character of the
 11:16AM 17 offender, any mitigating or aggravating factors,
 11:16AM 18 fulfilling the objectives of protecting society,
 11:16AM 19 achieving deterrence, rehabilitation or
 11:16AM 20 retribution.
 11:16AM 21 This is a very difficult case. And
 11:17AM 22 respectfully, another rider this quick would not
 11:17AM 23 serve any purpose. All the same programming that
 11:17AM 24 is available on the rider is available at IDOC.
 11:17AM 25 And so if you feel like you need to take those

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11:14AM 1 does a good job on it. But I think it was a
 11:14AM 2 situation where he really processed a lot of the
 11:14AM 3 family stuff that was going on. And I think it is
 11:14AM 4 evident he had a tough time putting it all back
 11:15AM 5 together when he got back out in the community,
 11:15AM 6 Judge.
 11:15AM 7 We believe a second rider as opposed to
 11:15AM 8 straight jail time makes sense. He is 33. I
 11:15AM 9 think that is a pretty typical time in someone's
 11:15AM 10 life. He has two kids. When you read the PSI,
 11:15AM 11 his mom is pretty adamant about what a great
 11:15AM 12 father he is and how important that is to him.
 11:15AM 13 Obviously some motivation here. He wants help.
 11:15AM 14 He is asking for treatment. Again, we can
 11:15AM 15 certainly put him in prison. He will do fine
 11:15AM 16 there. He is asking for help, Judge. So we will
 11:15AM 17 ask the Court to consider a second rider here.
 11:15AM 18 Thank you.
 11:15AM 19 THE COURT: Thank you.
 11:15AM 20 Sir, do you have any statement you
 11:15AM 21 would like to make?
 11:15AM 22 THE DEFENDANT: Yes, Your Honor. Like he
 11:15AM 23 said, I can do time. Obviously my kids and my
 11:15AM 24 mom, they do more time than I do. I am really
 11:15AM 25 just tired of doing time at this point. It is

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11:17AM 1 classes again, which clearly you do, then they
 11:17AM 2 will all be available for you in custody. You
 11:17AM 3 just completed the rider in October of 2017 and
 11:17AM 4 quickly were failing to use those tools.
 11:17AM 5 This is not a case of the Court not
 11:17AM 6 trying to give you every possible benefit to get
 11:17AM 7 treatment. You were in the drug court program.
 11:18AM 8 You were on -- you were removed from that program
 11:18AM 9 for noncompliance. You did a rider. You were
 11:18AM 10 placed on probation. The rider was to allow you
 11:18AM 11 to get more treatment. You were placed on
 11:18AM 12 probation and then you were noncompliant.
 11:18AM 13 And I get that you are an honest person
 11:18AM 14 in the sense that you tell your probation officer,
 11:18AM 15 "Yeah, I am going to have a dirty UA. Yeah, I am
 11:18AM 16 using." But that is not an excuse for not taking
 11:18AM 17 advantage and going to treatment. That's not an
 11:18AM 18 excuse for getting yourself to a meeting and
 11:18AM 19 coming up with a support system to try not using.
 11:18AM 20 You are unusual in that you have that
 11:18AM 21 ten-year period of sobriety. So I agree, it can
 11:18AM 22 be done. We don't have more tools to give you.
 11:18AM 23 And based on how you performed when you were just
 11:18AM 24 recently on probation, it doesn't justify either
 11:18AM 25 another rider or giving you another chance to

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11:18AM 1 start the programming in the community. So the
 11:19AM 2 Court finds that an imposition of sentence is
 11:19AM 3 appropriate in this case.
 11:19AM 4 The question becomes how long is
 11:19AM 5 necessary? And the Court finds that a two-year
 11:19AM 6 period of incarceration is appropriate. That will
 11:19AM 7 allow you, based on your credit for time served,
 11:19AM 8 which is 56 days, sufficient time to take the
 11:19AM 9 programming for substance abuse treatment, any
 11:19AM 10 counseling or mental health treatment you may also
 11:19AM 11 need for the family issues that you have dealt
 11:19AM 12 with recently, to develop any additional work
 11:19AM 13 skills that you might be able to develop through
 11:19AM 14 any classes available at the IDOC because you are
 11:19AM 15 going to be released back into the community.
 11:19AM 16 So the sentence is going to be two
 11:19AM 17 years fixed plus five years indeterminate for a
 11:20AM 18 total sentence of seven years to run concurrent
 11:20AM 19 with Judge Bail's cases in 15-4886 and 15-5799.
 11:20AM 20 The Thinking For Change class is also
 11:20AM 21 available. You completed your GED so that is --
 11:20AM 22 you don't need to work on that while you are in
 11:20AM 23 prison, but there may be some other vocational
 11:20AM 24 classes that are available.
 11:20AM 25 Have you ever heard the saying, "You

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11:21AM 1 of a friend is. Because my definition of a friend
 11:21AM 2 is not someone who gets you put back in jail.
 11:21AM 3 So you've got your kids to motivate
 11:21AM 4 you. You've got the fact that you were sober for
 11:22AM 5 ten years. You know you can do this, but you have
 11:22AM 6 to actually use the tools that we have been
 11:22AM 7 providing for you over these past few years.
 11:22AM 8 The Court is going to dismiss count
 11:22AM 9 two. I believe I said credit for time served of
 11:22AM 10 56 days. The Court is imposing standard court
 11:22AM 11 costs, DNA, thumbprint. I am not imposing a fine.
 11:22AM 12 Again, not because the crime didn't deserve a
 11:22AM 13 fine, but I want you to use your money on
 11:22AM 14 substance abuse treatment, and that is the most
 11:22AM 15 important thing. It's got to be priority one in
 11:22AM 16 your life. Until you can make staying sober
 11:22AM 17 priority number one, your kids aren't -- you're
 11:22AM 18 not going to get to be with your kids. You aren't
 11:22AM 19 going to have -- use the education that you've
 11:22AM 20 gained. So it just comes down to that. One
 11:22AM 21 priority. So you figure out how you are going to
 11:23AM 22 achieve that priority.
 11:23AM 23 If you disagree with the Court's
 11:23AM 24 judgment you have the right to appeal. Any appeal
 11:23AM 25 must be filed within 42 days. You have the right

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11:26AM 1 can lead a horse to water but you can't make the
 11:26AM 2 horse drink"?
 11:26AM 3 THE DEFENDANT: Yes, Your Honor.
 11:26AM 4 THE COURT: So the State has given you the
 11:26AM 5 programming and will give you the programming
 11:26AM 6 again through IDOC. And you can either sit in the
 11:26AM 7 classes and just do the work sheets, or you can
 11:26AM 8 actually reevaluate your life and say do I want to
 11:26AM 9 be with my kids? What is it going to take for me
 11:26AM 10 to be with my kids? What kind of commitment is it
 11:26AM 11 going to take? What kind of plan is it going to
 11:26AM 12 take?
 11:26AM 13 Because you have done it before. Look
 11:26AM 14 at what you did before that was successful and
 11:26AM 15 come up with your plan for implementing it once
 11:26AM 16 you are released because you will be released back
 11:26AM 17 into the community. But without a plan it is just
 11:26AM 18 wishes. So come up with your plan, come up with
 11:26AM 19 your support system, and dedicate yourself to
 11:26AM 20 actually going to treatment.
 11:26AM 21 And if you have friends that you can't
 11:26AM 22 say no to, you need to be done with those friends
 11:26AM 23 because they are not exactly friends if what they
 11:26AM 24 ask you to do is going to cause you to be back in
 11:26AM 25 front of me. So figure out what your definition

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1 to counsel on appeal. If you cannot afford
 2 counsel, counsel will be appointed for you.
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 4 (Hearing concluded.)
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