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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46016-2018
Plaintiff-Respondent,)	
)	Bingham County Case No.
v.)	CR-2016-2188
)	
KRISTOPHER ALLEN WREDE,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Wrede failed to establish that the district court abused its discretion by imposing a unified sentence of three years, with two years fixed, upon his guilty plea to battery against a health care worker?

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

Wrede pled guilty to battery against a health care worker and the district court imposed a unified sentence of three years, with two years fixed, and retained jurisdiction. (R., pp.186-93.) The original judgment, entered on December 20, 2017, did not contain a written pronouncement

of Wrede’s underlying sentence. (See R., pp.186-89.) On January 9, 2018, the district court entered an amended judgment of conviction that reflected the sentence pronounced in open court. (R., pp. 190-93.) Wrede filed a notice of appeal on April 23, 2018. (R., pp.195-99.) Thereafter, on February 26, 2019, the district court entered an order relinquishing jurisdiction. (See Bingham County case number CR-2016-2188 at <https://mycourts.idaho.gov/odysseyportal/Home/Dashboard/29>.)

Wrede asserts his sentence is excessive in light of his “developmental and mental health issues.” (Appellant’s brief, pp.16-19.) The record supports the sentence imposed.

“An appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion.” State v. Bonilla, 161 Idaho 902, 905, 392 P.3d 1243, 1246 (Ct. App. 2017). “To show an abuse of discretion, the defendant must show that in light of the governing criteria, the sentence was excessive, considering any view of the facts.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016). “Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender, and the protection of the public interest.” State v. Diaz, 158 Idaho 629, 637, 349 P.3d 1220, 1228 (Ct. App. 2015) (citing State v. Reinke, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982)). “A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case.” State v. Reed, 163 Idaho 681, 417 P.3d 1007, 1013 (Ct. App. 2018). The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. McIntosh,

160 Idaho 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).

“When considering whether the district court abused its sentencing discretion, we review the entire sentence, but we presume that the defendant’s term of confinement will probably be the fixed portion of the sentence, because whether or not the defendant’s incarceration extends beyond the fixed portion of the sentence will be within the sole discretion of the parole board.” State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017). “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 State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)). 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 battery against a health care worker is three years. I.C. § 18-915C. The district court imposed a unified sentence of three years, with two years fixed, which falls well within the statutory guidelines. (R., pp.190-93.) On appeal, Wrede contends his sentence is excessive because he has “developmental and mental health issues” and the sentence will have no “deterrence value,” nor, he claims, will it foster his rehabilitation. (Appellant’s brief, pp.16-19.) However, a sentence need not serve all sentencing goals; one may be sufficient, State v. Sheahan, 139 Idaho 267, 285, 77 P.3d 956, 974 (2003) (citing State v. Waddell, 119 Idaho 238, 241, 804 P.2d 1369, 1372 (Ct. App. 1991), and the primary goal of sentencing is to protect society, State v. Jimenez, 159 Idaho 466, 475, 362 P.3d 541, 550 (Ct. App. 2015) (citations omitted) (“[A]s a matter of policy in Idaho, the primary consideration in

sentencing is the good order and protection of society, and all other factors are subservient to that end.”). At sentencing, the district court stated that protection of society was “something I’ve really got to consider in this case, because as I review the – particularly the addendum to the Presentence Report, there are obviously still concerns about Mr. Wrede’s ability to function in society.” (12/14/17 Tr., p.22, L.23 – p.23, L.3.) The court also noted that “in this case there has to be maybe some punishment or retribution for wrongdoing.” (12/14/17 Tr., p.23, Ls.6-7.) The district court’s determination that the objectives of protecting society and retribution were the overriding factors in this case was appropriate in light of Wrede’s ongoing violent behavior and the harm done to the victim.

Wrede has a history of violent behavior. (PSI, pp.4-7.¹) In addition to his conviction for battery against a health care worker in this case, Wrede’s criminal record includes convictions for assault, three convictions for battery, malicious injury to property, disturbing the peace (amended from malicious injury to property), public nuisance, threats against state elected officials, and injury to governmental property (amended from two counts of felony destruction of postal property). (PSI, pp.5-7; 11/29/17 APSI, p.2.) At the time of sentencing, he had a charge for false reporting of explosives in a public or private place that was still pending. (PSI, p.6; 11/29/17 APSI, p.1.) Wrede’s record also contains multiple charges for crimes of violence that were later dismissed, including charges for: battery in 2003; two counts of malicious injury to property in 2009; resisting/obstructing officers, disturbing the peace, and malicious injury to property in 2011; and malicious injury to property and resisting/obstructing officers in 2016. (PSI, pp.4-7.)

¹ PSI page numbers correspond with the page numbers of the electronic file “PSI, 11-29-2016.pdf.”

In this case, Wrede “walked away” from Bingham Memorial Hospital while he was subject to a “protective custody hold,” threw a heart monitor “onto the ground breaking it,” and, when Social Worker Sarah Russell told him that he needed to return to the hospital, Wrede became angry “because he did not want to go,” so he “ran and charged at” Sarah, tackling her to the ground, and then kicked her “in the right glute” while she was still on the ground. (PSI, pp.25, 153; 11/28/17 APSI, p.3.) Sarah was transported to the hospital due to her injuries; she later reported that, as a result of the attack, she missed several weeks of work, suffered “excruciating back spasms” (PSI, p.30), and will be required to undergo surgery “to repair the damage that [Wrede] did to [her] knees” (12/14/17 Tr., p.11, Ls.8-10). She also stated, at the sentencing hearing, that Wrede “caused [her] to have fear” and trust issues (12/14/17 Tr., p.9, Ls.18-21), and that she “had to be in counseling for PTSD over the course of the last year” (12/14/17 Tr., p.11, Ls.10-12).

In the mental health evaluation that was completed just before sentencing in this case (on December 4, 2017), the evaluator noted that Wrede “has a history of assaulting multiple health care workers including a nurse while hospitalized at Portneuf Medical Centers Behavioral Health Services in 2014 resulting in battery charges and that person having to take a 2 month leave to recover from her injuries. He is banned from ever going there again.” (12/12/17 APSI, p.2.) The evaluator also noted that Wrede has a history of “reckless disregard for the safety of others,” “homicidal threats,” “lying,” “manipulating his doctors,” “medication and treatment noncompliance,” and failing to “take responsibility for his behaviors blaming medications and circumstances for his outbursts and multiple battery charges with little to no remorse.” (12/12/17 APSI, pp.2, 5, 10.) The evaluator advised that Wrede “becomes easily anxious which results in assaulting others” and, if “left to his own devices when he is released and in the community[,] at

such time he becomes anxious or is not getting his way he will act out in an aggressive/assaultive manner as evidenced by his prolific assaultive history.” (12/12/17 APSI, p.6.) Of concern, Wrede has previously told officers that he “wanted to fantasize what if felt like to shoot at somebody. Just wanted to see what it felt like,” and, when officers asked Wrede “if the fantasy could ever become a reality,” Wrede stated that he “wanted to see how fast [police] could get out there or respond.” (PSI, p.36.) Even Wrede’s mother, who is supportive of Wrede, reported that she is concerned about Wrede’s potential for violence, advising that Wrede “has been threatening and aggressive toward her younger son and she fears she will ‘have one son in jail and the other dead.’” (12/1/16 APSI, p.6.)

On appeal, Wrede argues that a prison sentence is not conducive to his rehabilitation, pointing out that his counselor believed incarceration was not in Wrede’s best interest because he is “‘extremely vulnerable’” and “‘to lock him up again will be very stressful [and] could undo the good the State Hospital did.’” (Appellant’s brief, p.18 (quoting R., p.98).) To the contrary, during his December 2017 mental health evaluation, Wrede told the evaluator that “‘things are fine, the pod is good, no problems,’” and that he “has been able to remain safe while in jail and that he has not been involved in any physical altercations” for nine months; he also reported that his mental health had improved, that his medication “‘is working very well’ to control ‘[his] mood because of [his] Asperger’s,’” and that he “is not currently seeking any mental health treatment nor is he struggling with any identifiable mental health symptoms.” (12/12/17 APSI, pp.2, 6, 10.) The evaluator concluded that Wrede “appears to function safely in environments that are highly structured and predictable” and stated, “It is anticipated as his levels of daily structure decline and become less predictable his level of dangerousness to others and becoming gravely disabled will increase and become high if not accessing and engaging in community

mental health and DD services.” (12/12/17 APSI, p.10.) Although the evaluator recommended that Wrede “live in a structure[d] living environment such as an Assisted Living Facility with primarily peers of his own age due to his propensity for assault when he feels increased frustration” (12/12/17 APSI, p.11), by the time of sentencing, Wrede had demonstrated that residing in an assisted living facility will not stop his violent and destructive behavior or prevent him from committing crimes.

Prior to sentencing in this case, Wrede was released, “under the supervision of H.A.S. Incorporated,” to an assisted living facility where he would “receive one-on-one staffing twenty-four hours per day with oversight provided by professionals trained specifically” to meet the needs of individuals like Wrede. (R., pp.142, 146 (parenthetical notations omitted).) However, “in a very short period of time [Wrede] became aggressive and threatening at his assisted living facility.” (R., p.211.) Just three weeks after he was placed at the facility, Wrede was charged with two counts of felony destruction of postal property after he “had another outburst” and damaged postal boxes. (Appellant’s brief, p.14; 11/29/17 APSI, pp.1-2.) Wrede later stated that he “had a ‘fight, was evicted [from the assisted living facility] because they were scared and then [he] was taken into custody,’” and that he ““only went there because people said it would help in [his] case to show that [he] was in an assisted living.”” (12/12/17 APSI, p.4.) In a psychological evaluation that was completed on February 13, 2018, the evaluator concluded that “it has become apparent that Mr. Wrede has been unable to safely function in an assisted or group home placement,” that Wrede “has demonstrated repeated patterns of aggression and impulsive behavior which has affected himself and others,” and that Wrede “is in need of a higher level of supervision than what he has received and what others with the same diagnosis need.” (R., pp.210, 214-15.)

At sentencing, the district court imposed a unified sentence of three years, with two years fixed, and retained jurisdiction. (12/14/17 Tr., p.24, Ls.17-20.) The court explained:

... I'm doing this for several reasons. One of the reasons is, I'm concerned for you. I just have a feeling if I put you on probation right now, you're going to be facing more serious charges than you're facing now. I just don't think you're ready for it, based on this report. And I'm hopeful that by you going and serving a Rider, that you can get some treatment, some guidance. And then I'll have an opportunity to put you on some probation that will be meaningful so that you're no longer in the court system, because the way you've been going, you're kind of heading to a dead end. It doesn't look very good.

(12/14/17 Tr., p.25, L.17 – p.26, L.4.) The district court considered all of the relevant information and imposed a reasonable sentence. Wrede's sentence is appropriate in light of his ongoing disregard for the law and violence toward others, the harm done to the victim, the danger Wrede presents to the community, and his demonstrated unwillingness or inability to reside safely in the community, even when placed in an assisted living facility that provided 24-hour supervision and one-on-one staffing from professionals trained to meet the needs of individuals such as Wrede. Given any reasonable view of the facts, Wrede has failed to establish an abuse of discretion.

Conclusion

The state respectfully requests this Court to affirm Wrede's conviction and sentence.

DATED this 8th day of August, 2019.

/s/ Lori A. Fleming
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Deputy Attorney General

VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of August, 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:

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