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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 46613-2018 & 46614-2018
Plaintiff-Respondent,)	
)	Ada County Case Nos.
v.)	CR01-2018-13492 & 2018-38335
)	
JACOB LEE BEUTLER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Beutler failed to establish that the district court abused its discretion by imposing an aggregate, unified sentence of seven years, with three years fixed, upon his guilty pleas to possession of heroin and felony eluding a police officer?

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

Beutler pled guilty to possession of heroin in Docket No. 46613 and to felony eluding a police officer in Docket No. 46614, and the district court imposed an aggregate, unified sentence

of seven years, with three years fixed. (R., pp.47-48, 67-69, 137-40.) Beutler filed notices of appeal timely from the judgments of conviction. (R., pp.70-72, 141-43.)

Beutler asserts his underlying sentence is excessive in light of his substance abuse issues, willingness to participate in treatment, support from his former employer, and purported remorse. (Appellant's brief, pp.3-5.) 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 heroin is seven years, and the maximum prison sentence for felony eluding a police officer is five years. I.C. §§ 18-112, 37-2732(c)(1), 49-1404(2)(a). The district court imposed an aggregate, unified sentence of seven years, with three years fixed, which falls within the statutory guidelines. (R., pp.67-69, 137-40.) Furthermore, Beutler’s sentence is appropriate in light of the seriousness of the offenses, his demonstrated inability or unwillingness to comply with the terms of community supervision, his ongoing substance abuse, and his failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions.

Beutler committed the possession of heroin charge of which he was convicted in Docket No. 46613 while he was on probation for a felony drug possession charge, and less than one year after he had graduated from drug court. (PSI, pp.1-2, 4-5.¹) According to police reports, Beutler and another individual “were seen acting suspicious ... in the alley way behind a closed business.” (PSI, p.1-2.) After a drug dog alerted on Beutler’s vehicle, officers searched it and found “syringes, used cotton balls and a spoon, which had heroin inside of it.” (PSI, p.2.)

Less than five months after he was arrested for possessing heroin in Docket No. 46613, Beutler committed the felony eluding charge of which he was convicted in Docket No. 46614. (PSI, pp.2-3.) Beutler was “loitering on private property after hours.” (PSI, p.2.) When an officer attempted to make contact with him, Beutler “instantly fled the scene” in his vehicle, “traveling at fluctuating speeds of 85-100 MPH in a posted 45 MPH zone” and “without any

¹ PSI page numbers correspond with the page numbers of the electronic file “Beutler 46613 & 46614 psi.pdf.”

illuminated taillights.” (PSI, p.2.) Beutler ultimately “crashed his car ... into a posted street sign,” after which he fled on foot before being apprehended by police. (PSI, p.2.) After being advised of his *Miranda* rights, Beutler “admitted to using meth or bath salts intravenously.” (PSI, p.2.) Officers later recovered a cigarette box that contained methamphetamine “in the direct area where [Beutler] ran on foot.” (PSI, p.2.) They also found “[s]everal syringes” inside of Beutler’s vehicle. (PSI, p.3.)

Beutler’s actions in these cases are in keeping with, and an escalation of, his prior criminal history. Beutler began committing alcohol, drug, and theft-related crimes as a juvenile, resulting in five juvenile adjudications and his first stint on probation. (PSI, pp.9-10.) He continued his criminal offending as an adult, amassing 13 misdemeanor convictions and two felony convictions before he was convicted of the crimes to which he pled guilty in these cases. (PSI, pp.4, 10-12.) In addition to possession of heroin and felony eluding, Beutler was also originally charged in these cases with two counts of possession of drug paraphernalia, failure to appear, two additional counts of possession of a controlled substance, DUI, failure to notify of accident, and resisting/obstructing. (PSI, pp.3-4.) But those charges, along with a separate case in which Beutler was charged with possession of a controlled substance, possession of drug paraphernalia, and failure to appear, were dismissed as part of the plea agreement. (PSI, pp.1, 3; see, e.g., R., p.61.) Despite having previously participated in and completed both a retained jurisdiction program and drug court, Beutler has failed to rehabilitate and has continued to abuse illegal substances. (PSI, pp.5, 45.) Beutler has also failed to be deterred from his criminal activity despite multiple periods of incarceration in jail. (PSI, pp.10-12.)

Beutler contends that, in imposing sentence, the district court did not “properly consider[] his substance abuse, desire for continued treatment, community support, and remorse.”

(Appellant’s brief, p.5.) All of this information was before the court at the time of sentencing; that Beutler believes the district court should have given this information more mitigating weight does not establish an abuse of discretion. Indeed, this Court’s “standard of review does not require (nor indeed, does it permit) [the appellate court] to conduct [its] own evaluation of the weight to be given each of the sentencing considerations ... in order to determine whether [it] agree[s] with the district court's conclusion.” State v. Windom, 150 Idaho 873, 880, 253 P.3d 310, 317 (2011). Because Beutler has not argued, much less demonstrated, that the court applied the incorrect legal standards or otherwise acted unreasonably and/or outside the bounds of its discretion, he has failed to demonstrate any abuse of discretion in the court’s sentencing decision.

At sentencing, the district court set forth its reasons for imposing Beutler’s sentence, concluding:

And you didn’t use any of your tools. You kept committing offenses until finally you escalate to a point where you committed a very serious offense, which is the eluding, because that put other people besides yourself at risk.

So I think at this point, we are talking primarily about penalty. You have got to make the choices. You have got the tools. You’ve got to take them out of the toolbox.

(12/3/18 Tr., p.15, Ls.4-12.) The state submits that Beutler 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. (12/3/18 Tr., p.13, L.23 – p.16, L.4 (Appendix A).)

Conclusion

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

DATED this 31st day of July, 2019.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of July, 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:

ELIZABETH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

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

APPENDIX A

<p style="text-align: center;">12</p> <p>1 in this circumstance, he did well for awhile. And 2 then as happens when things fall apart, they -- 3 the wheels fell completely off. They fell off 4 pretty quickly and pretty significantly, and he 5 finds himself back in front of the Court for 6 numerous violations and obviously facing a prison 7 sentence.</p> <p>8 I think if he is able to successfully 9 get through drug court, he is able to successfully 10 comply with supervision at some point. Really 11 what he needs is a -- for lack of a better word -- 12 is a timeout, a temporary pull off of supervision 13 where he can have that higher structure. 14 Something like the work center does that in terms 15 of its certainly in custody. The 18 months is 16 certainly an extensive work release type of 17 punishment and penalty.</p> <p>18 If there are any additional classes or 19 programming that he needs to get, he can get while 20 there. And it gives him an opportunity to get his 21 head back straight where it needs to be.</p> <p>22 I think that it's notable that he has 23 an employer who is willing to go to bat for him 24 like that and willing to reach out and make those 25 initial contacts in hopes that he is able to get</p>	<p style="text-align: center;">14</p> <p>1 rider. You got a chance to get back into drug 2 court. You did well enough to graduate. You had 3 the tools. The whole program is designed to give 4 you the tools.</p> <p>5 And then you start picking up in March, 6 not a year after graduation, another possession 7 case. And like counsel pointed out, that doesn't 8 make you, like, go back to using your tools. So I 9 have had other people that have done poorly after 10 drug court, and if they start using their tools 11 again, then that's certainly a positive sign.</p> <p>12 But then you picked up another pretty 13 serious matter, I think. When you get the next -- 14 well, get the March case, and you are clearly 15 using, and you don't take any steps after it. 16 Then you actually picked up a June case, which is 17 going to be dismissed as part of this plea bargain 18 agreement, but then you pick up a June case. And 19 then you still don't change directions.</p> <p>20 And then you pick up a felony eluding 21 where you are going up to a hundred miles an hour 22 around the St. Luke's area. That is 23 extraordinarily dangerous. Your attorney talks 24 about the wheels going off like you had nothing to 25 do with it. But the wheels came off because you</p>
<p style="text-align: center;">13</p> <p>1 to that type of sentence.</p> <p>2 The three-year sentence really is 3 simply a punitive measure. I don't think that it 4 does much to remove him long term from the 5 community. I think that the recommendation that 6 we are making to the Court gives him an 7 opportunity to get things straightened back out. 8 He has demonstrated he has been able to do it in 9 the past.</p> <p>10 But it also sends a significant enough 11 of a message to him that he doesn't get to have 12 all the freedoms that he has when he is 13 successfully staying sober and maintaining those 14 prosocial skills. But it does give him an 15 opportunity to have some of those things going 16 forward and really put those skills back to use.</p> <p>17 So that is our request at this time.</p> <p>18 THE COURT: Mr. Beutler, your comments. 19 THE DEFENDANT: No, I don't, Your Honor. 20 THE COURT: Is there legal cause why we 21 should not proceed? 22 MR. MARX: No, Your Honor. 23 THE COURT: Well, you got yourself into lots 24 of trouble initially, and you had lots of chances. 25 You messed up while in drug court. You got a</p>	<p style="text-align: center;">15</p> <p>1 took off the lug nuts. That's basically what 2 happened is you took off everything that held 3 those wheels on.</p> <p>4 And you didn't use any of your tools. 5 You kept committing offenses until finally you 6 escalate to a point where you committed a very 7 serious offense, which is the eluding, because 8 that put other people besides yourself at risk.</p> <p>9 So I think at this point, we are 10 talking primarily about penalty. You have got to 11 make the choices. You have got the tools. You've 12 got to take them out of the toolbox.</p> <p>13 Now as far as case number 2013-3511, 14 I'm going to impose that but commute that to time 15 already served because there's lots of time 16 already served on that, and I don't think it 17 serves any useful purpose.</p> <p>18 As far as case number 01-18-13492, I am 19 going to impose a sentence of three years fixed 20 followed by four years indeterminate for a 21 seven-year sentence.</p> <p>22 And on case ending in 38355, I'm 23 imposing three years fixed followed by two years 24 indeterminate for a five-year sentence to be 25 concurrent with the case ending in 13492.</p>

1 And then six months each on a
 2 misdemeanors in case number 38355.
 3 And bottom line is nobody can do it for
 4 you. You do have 42 days in which to appeal.
 5 MR. MARX: Thank you, Your Honor.
 6 (Proceedings concluded at 5:55 p.m.)
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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF IDAHO)
 4 COUNTY OF ADA) SS
 5
 6 I, ROXANNE K. PATCHELL, Official Court
 7 Reporter, Ada County, State of Idaho hereby
 8 certify:
 9 That I am the reporter who took the
 10 proceedings had in the above-entitled action in
 11 machine shorthand and thereafter the same was
 12 reduced into typewriting under my direct
 13 supervision; and
 14 That the foregoing reporter's transcript
 15 contains a full, true, and accurate record of the
 16 proceedings had in the above and foregoing cause,
 17 which was heard in Boise, Idaho
 18 IN WITNESS WHEREOF, I have hereunto set my
 19 hand this 15th day of April, 2019.
 20
 21
 22 Roxanne K. Patchell, RPR, CSR
 23 Roxanne K. Patchell, RPR, CSR
 24 Idaho CSR Number 733
 25 California CSR Number 12057