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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46617-2018
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR14-2018-15061
	)	
GERARDO AYALA, JR.,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Ayala failed to establish that the district court abused its discretion by imposing a unified sentence of five years, with one and one-half years fixed, upon his guilty plea to aggravated assault?

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

While incarcerated in the Canyon County Jail on a felony eluding charge, Ayala and several of his fellow “Southside” gang members attacked another inmate who was a rival gang

member. (PSI, pp.4-6. <sup>1</sup>) A grand jury indicted Ayala on one count of aggravated assault, with criminal gang enhancement. (R., pp.7-10.) Pursuant to a plea agreement, Ayala pled guilty to aggravated assault, and the state dismissed the enhancement. (R., pp.34-37, 40-53.) The district court imposed a unified sentence of five years, with one and one-half years fixed, and ordered the sentence to run concurrently with Ayala's sentence for felony eluding in Canyon County case CR14-18-9208. (R., pp.58-59; PSI, pp.1, 3-4, 11.) Ayala filed a notice of appeal timely from the judgment of conviction. (R., pp.60-63.)

Ayala argues his sentence is excessive in light of his acceptance of responsibility, purported remorse, substance abuse issues, desire for treatment, and the fact that he, "has the ability to obtain gainful employment when not incarcerated." (Appellant's brief, pp.2-4.) 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

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "Confidential Exhibits Appeal.pdf."

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 aggravated assault is five years. I.C. § 18-906. The district court imposed a unified sentence of five years, with one and one-half years fixed, which falls within the statutory guidelines. (R., pp.58-59.) Furthermore, Ayala’s sentence is appropriate in light of the seriousness of the offense and his ongoing disregard for the law and the safety of others.

Ayala and his fellow gang members attacked another inmate in the Canyon County Jail based solely on that inmate’s association with a rival gang. (PSI, pp.4-6.) Although he was only [REDACTED] at the time of sentencing, Ayala has a long history of committing crimes. (PSI, pp.1-2, 6-13.) His first contact with law enforcement occurred at age 16, when he was arrested for petit theft and a curfew violation. (PSI, pp.7, 12.) His adult criminal record includes a prior felony conviction for possession of a controlled substance, 12 misdemeanor convictions, and multiple charges that were ultimately dismissed. (PSI, pp.6-12.) Ayala has repeatedly violated terms of probation and has previously participated in a rider program from which he was relinquished when, “[a]fter several interventions to assist Mr. Ayala in changing his behavior,

staff at the CAPP facility recommended that Mr. Ayala be considered for relinquishment due to continued disciplinary issues and lack of participating in the program.” (PSI, p.12.) During prior periods of incarceration Ayala incurred multiple DOR’s, including for possession of tobacco, testing positive for marijuana, getting a new tattoo, aggravated battery, gang-related violence, disobedience to orders, having a tattoo motor in his cell, and refusing to stand and delaying count. (PSI, pp.12-13.) He was incarcerated for a pending felony eluding charge when he committed the offense in this case and, during his most recent period of incarceration, he was involved in a fight that required stitches to his eyelid, was involved in threatening another inmate, threw toilet paper at another inmate, and received a Notice of Intent to Discipline for “throwing an object and participating/inciting a demonstration, riot, or disturbance.” (PSI, p.13.) Staff at the Canyon County Jail also reported that Ayala had been in lockdown since being placed into custody on the current offense. (PSI, p.13.)

Ayala also has substance abuse issues that have persisted despite prior treatment attempts. (PSI, pp.18-19.) He reported that he first tried alcohol when he was ■■■■■ and that he was consuming it regularly by the time he was ■■■■■ (PSI, pp.18-19.) He started smoking marijuana when he was ■■■■■ and was smoking two bowls, five days a week, until his most recent arrest. (PSI, p.19.) Ayala stated that his drug of choice is methamphetamine, and that he has been using it since he was ■■■■■ (PSI, p.19.) Ayala also reported that he has snorted cocaine, used Spice, and experimented with hallucinogenic mushrooms. (PSI, p.18-19.) Despite his more than decade-long use of illicit substances, Ayala told the presentence investigator that “he doesn’t think treatment is necessary at this point in time, and he has too many outside obligations to be involved in a program.” (PSI, p.19.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Ayala's sentence. (11/19/18 Tr., p.30, L.16 – p.32, L.18.) The state submits that Ayala 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 Ayala's conviction and sentence.

DATED this 9th day of September, 2019.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of September, 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:

ERIC D. FREDERICKSEN  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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

# APPENDIX A

1 nonactive since my release from IDOC. I wish to overcome  
2 my past with a successful plan in employment, treatment  
3 and education. I can find employment upon my release from  
4 past employers due to my hard work. I'll seek treatment  
5 at Mountain States to address my substance abuse issues.

6 Lastly, I plan on making it a priority to attend  
7 courses at CWI to complete my GED. With all that said, I  
8 respectfully ask Your Honor to please consider my goals  
9 and possibly bless me with the opportunity to make my  
10 family, friends and community proud once again instead of  
11 incarceration.

12 THE COURT: Thank you, sir.

13 Mr. Gatewood, is there any lawful cause why  
14 judgment should not be entered at this time?

15 MR. GATEWOOD: No, Your Honor.

16 THE COURT: Mr. Ayala, I do want you to know I've  
17 considered the guidelines set forth by statute, as well as  
18 the goals of sentencing, including protection of the  
19 public and society, the issue of deterrence, the issue of  
20 rehabilitation and the issue of punishment.

21 And I have listened to what everyone has said  
22 here today, including yourself. I truly hope that you  
23 have denounced gang membership. I hope that in the future  
24 you will seek to get your GED. It's a tool that will help  
25 you succeed.

1           However, I also have significant concerns in  
2 looking at the factors. I have concerns about the factual  
3 information in each of these cases, what occurred.  
4 They're dangerous and violent acts.

5           I have concerns about your mentality. When you  
6 were interviewed, you indicated with the respect to the  
7 eluding that you were caught up in the moment. With  
8 respect to the aggravated assault, you indicated that you  
9 tried to kick the individual just out of instinct.

10           There have been issues in the jail. I know I  
11 just received another updated report. And at this point  
12 in time, I do think that a period of incarceration is the  
13 appropriate sentence.

14           Mr. Ayala, though, I don't think you're someone  
15 who is beyond being rehabilitated. I think you can truly  
16 come out and contribute to our society in the future. So,  
17 I am going to do a shorter fixed period on your sentence.

18           In each case, I am going to sentence you to five  
19 years, one and a half years fixed, followed by an  
20 indeterminate period of three and a half years, less  
21 credit for time served. I am going to execute on those  
22 sentences. And they will run concurrent to one another.

23           And sir, I hope you will take seriously any  
24 programming that is offered so that you don't face this  
25 situation again in the future.



1           As to the eluding, I am going to suspend your  
2 driver's license for a period of three years. And that  
3 will be following a period of incarceration. You're  
4 required to provide a DNA sample in each case.

5           There's also the resisting and obstructing. And  
6 I'm going to sentence you to six months on that. Again, I  
7 will execute and that will run concurrent as well.

8           In each case, I am going to order costs. I'm not  
9 going to order any additional fine. I think that would  
10 only hinder you ultimately when you are eventually  
11 released back into the community.

12           I am going to reserve the issue of restitution  
13 for a period of six months. I think that's reasonable  
14 given the circumstances. I'm also going order the costs  
15 of the public defender in the amount of \$350.

16           You do have the right to appeal my decision, you  
17 have the right to file a motion for sentence modification  
18 and you also have the right to post conviction relief.

19           Counsel, is there anything further that we need  
20 to address on these matters today?

21           MR. GATEWOOD: Not from me, Judge.

22           MR. PASKETT: No, Judge.

23           MR. GATEWOOD: I believe that's all I have,  
24 Your Honor.

25           THE COURT: Thank you, Mr. Gatewood.