

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46634-2018
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2018-2122
)	
KYLE LEE ADAMS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Adams failed to establish that the district court abused its discretion, either by imposing a unified sentence of 10 years, with five years fixed, upon his guilty plea to felony DUI, or by relinquishing jurisdiction?

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

Adams pled guilty to felony DUI and the district court imposed a unified sentence of 10 years, with five years fixed, and retained jurisdiction. (R., pp.33-37.) Following a period of

retained jurisdiction, the district court relinquished jurisdiction. (R., pp.39-41.) Adams filed a notice of appeal timely from the order relinquishing jurisdiction. (R., pp.42-44.)

Adams asserts his sentence is excessive in light of his desire for treatment, support from the community, purported remorse, and acceptance of responsibility. (Appellant's brief, pp.4-7.) 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 felony DUI is 10 years. I.C. §§ 18-8004, -8005(6), -8005(9). The district court imposed a unified sentence of 10 years, with five years fixed, which falls within the statutory guidelines. (R., pp.33-37.) Furthermore, Adams’ sentence is reasonable in light of his ongoing substance abuse and criminal offending, the risk he presents to the community, and his failure to rehabilitate or be deterred.

Adams has a lengthy criminal history that dates back to 1990 and includes four prior felony DUI convictions, three misdemeanor DUI convictions, and misdemeanor convictions for invalid driver’s license, use of telephone to terrify or harass, malicious injury to property, two counts of battery, and two counts of driving without privileges. (PSI, pp.2, 8-10.¹) His record also includes multiple other charges that were ultimately dismissed. (PSI, pp.7-10.) One of Adams’ felony DUI convictions was an aggravated DUI conviction in which the victim suffered several broken bones, a dislocated elbow, lacerations, scarring, and cracked ribs. (PSI, p.10.)

Adams has participated in a rider program, served jail time, and had multiple opportunities on probation and parole, but has failed to be deterred by legal sanctions. (PSI, pp.10-13.) While Adams claims that he desires treatment, he has had multiple treatment opportunities both while incarcerated and in the community, and has failed to rehabilitate. (PSI, pp.10-13, 20-21.) Adams’ community support, purported remorse, and acceptance of responsibility do not outweigh his continued decisions to drive while intoxicated and the danger he presents to the community.

¹ PSI page numbers correspond with the page numbers of the electronic file “ConfidentialDocsAdams.pdf.”

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Adams' sentence. (6/13/18 Tr., p.17, L.14 – p.22, L.7.) The state submits that Adams 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.)

Adams next asserts the district court abused its discretion by relinquishing jurisdiction in light of his performance while on his rider. (Appellant's brief, pp.7-9.) Adams has failed to establish an abuse of discretion.

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant 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. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013) (citing State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205–06, 786 P.2d 594, 596–97 (Ct. App. 1990)). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013); Hansen, 154 Idaho at 889, 303 P.3d at 248 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)). “While a recommendation from corrections officials who supervised the defendant [during the period of retained jurisdiction] may influence a court's decision, it is purely advisory and is in no way binding upon the court.” State v. Hurst, 151 Idaho 430, 438, 258 P.3d 950, 958 (Ct. App. 2011) (citations omitted). Likewise, an offender's “[g]ood performance while on retained jurisdiction, though commendable, does not alone establish an abuse of discretion in the

district judge's decision not to grant probation.” Hurst, 151 Idaho at 438, 258 P.3d at 958 (citing Statton, 136 Idaho at 137, 30 P.3d at 292).

At Adams’ sentencing hearing, the district court specifically told Adams that the rider was for evaluation purposes only, stating:

...And I agree with your counsel that the programming environment is different when you are on a rider than in the general population. So I am trying to give you the programming and the best possible environment. But I do not want to mislead you by this sentence. I do not intend to place you on probation after this rider. But I do expect to see a very good rider. And the Court will take that into consideration in determining the final disposition of this case.

(6/13/18 Tr., p.20, L.19 – p.21, L.3.) While Adams completed his programming, he also incurred a class B DOR for stealing \$593.04 from the Jpay system. (PSI, pp.233, 240-41.) At the jurisdictional review hearing, the district court acknowledged Adams’ progress in his treatment programs, but also commented that it was not a perfect rider saying, “But I cannot ignore the JPay issue. That’s an instance of knowing right from wrong and making the decision to do something wrong.” (12/12/18 Tr., p.18, Ls.11-14.) The district court’s decision to relinquish jurisdiction was appropriate in light of Adams’ extensive criminal history and the need to protect society. Given any reasonable view of the facts, Adams has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

Conclusion

The state respectfully requests this Court to affirm Adams' conviction and sentence and the district court's order relinquishing jurisdiction.

DATED this 3rd day of May, 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 May, 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:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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

APPENDIX A

17

11:42AM 1 handle this. I can't take it.

11:42AM 2 The gentlemen before me that spoke to

11:42AM 3 you said that there's no programs available for

11:42AM 4 reentry, that is not true. The gentlemen sitting

11:42AM 5 in this courtroom, Mark Petersperson, who is my

11:43AM 6 very good friend and who I work with on these

11:43AM 7 programs is having great success with them, with

11:43AM 8 the inmates. I would obviously like to rejoin him

11:43AM 9 in that effort, but I also understand that the

11:43AM 10 Court has the obligation to protect society from

11:43AM 11 people like me.

11:43AM 12 That's all I have to say. Thank you,

11:43AM 13 Your Honor.

11:43AM 14 THE COURT: Thank you.

11:43AM 15 Based on your plea of guilty to felony

11:43AM 16 DUI and in an exercise of my discretion and

11:43AM 17 sentencing, I have considered the Toohill factors,

11:43AM 18 the nature of the offence, the character of the

11:43AM 19 offender, any mitigating or aggravating factors,

11:43AM 20 fulfilling the objectives of protecting society,

11:43AM 21 achieving deterrence, rehabilitation or

11:43AM 22 retribution.

11:44AM 23 This, sir, is a very difficult case. It

11:44AM 24 is a very sad case when you think about if you

11:44AM 25 could just get a handle on your alcoholism you

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11:45AM 1 terms that has not deterred you. Yet it appears

11:45AM 2 to be the only tool we have to try and get you to

11:46AM 3 change your behavior.

11:46AM 4 So now you are at your fifth felony

11:46AM 5 DUI, and the question is what is the appropriate

11:46AM 6 sentence to keep society safe? But more

11:46AM 7 importantly to deter you from this conduct in the

11:46AM 8 future? Because at some point you will be

11:46AM 9 released back into the community on parole. The

11:46AM 10 Court finds the appropriate disposition in this

11:46AM 11 case is as follows:

11:46AM 12 I am going to sentence you to five

11:46AM 13 years fixed, plus five years indeterminate, for a

11:46AM 14 total sentence of ten years. I am going to retain

11:46AM 15 jurisdiction and send you on a rider. And the

11:46AM 16 reason I am doing that is your last rider was in

11:46AM 17 2003. I think the rider program has significantly

11:46AM 18 changed. But I am only sending you on that rider

11:46AM 19 for evaluative purposes only. I have no intent,

11:46AM 20 even if you have a successful rider, I am quite

11:47AM 21 confident your rider will be successful. When you

11:47AM 22 are in prison you follow the rules. You do the

11:47AM 23 programming. You are a model inmate. So I am not

11:47AM 24 going to allow good performance on a rider to

11:47AM 25 allow you to be released early into the community.

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11:44AM 1 could have your freedom and remain in society.

11:44AM 2 You could not be putting people -- innocent people

11:44AM 3 as well as yourself at risk. You were sober for

11:44AM 4 six-and-a-half years prior to this crime being

11:44AM 5 committed. But in reality, we don't know how long

11:44AM 6 you were off the wagon and drinking based on your

11:44AM 7 pattern of drinking excessively before you were

11:44AM 8 caught on this DUI.

11:44AM 9 And while we all know someone who has

11:44AM 10 been charged with a DUI. Some people it is a life

11:44AM 11 defining moment and they don't have any additional

11:44AM 12 problems in the future. There are other people who

11:44AM 13 it continues to haunt. But we also know someone

11:45AM 14 who has been injured. Most of us know someone who

11:45AM 15 has been injured by a drunk driver or someone who

11:45AM 16 has been killed by a drunk driver. In fact, when

11:45AM 17 these cases go to trial it is surprisingly -- it

11:45AM 18 is surprising to me about how many jurors raise

11:45AM 19 their hand who have had their lives effected by

11:45AM 20 DUI.

11:45AM 21 So the prosecutor's argument for a

11:45AM 22 hefty sentence is appropriate because that is the

11:45AM 23 only way we can protect society. And with your

11:45AM 24 criminal history of four other felony DUIs, one

11:45AM 25 aggravated, and with the increase in your prison

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11:47AM 1 Not based on your history.

11:47AM 2 So I am going to allow you to do the

11:47AM 3 rider so that you can get the front-end additional

11:47AM 4 programming to hopefully figure out how you are

11:47AM 5 going to manage your alcoholism when you are

11:47AM 6 released. I thought it was interesting that

11:47AM 7 someone said well, he has done the 12 steps

11:47AM 8 before. Well, there is a difference between doing

11:47AM 9 the 12 steps and continuing to do the 12 steps.

11:47AM 10 You don't get done doing the 12 steps. You need

11:48AM 11 to continue to go to those meetings. Continue to

11:48AM 12 have the support system. So when you have a

11:48AM 13 challenge in life you don't relapse. It is not

11:48AM 14 something you can be done with. This is the rest

11:48AM 15 of your life. You are going to be seeking

11:48AM 16 treatment to maintain sobriety. That is all there

11:48AM 17 is to it.

11:48AM 18 So take advantage of all of this

11:48AM 19 programming. And I agree with your counsel that

11:48AM 20 the programming environment is different when you

11:48AM 21 are on a rider than in the general population. So

11:48AM 22 I am trying to give you the programming and the

11:48AM 23 best possible environment. But I do not want to

11:48AM 24 mislead you by this sentence. I do not intend to

11:48AM 25 place you on probation after the rider. But I do

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11:48AM 1 expect to see a very good rider. And the Court
 11:48AM 2 will take that into consideration in determining
 11:49AM 3 the final disposition of this case.
 11:49AM 4 The Court is going to order standard
 11:49AM 5 court costs, DNA sample, right thumbprint
 11:49AM 6 impression. And in order to deter you, sir, I am
 11:49AM 7 going to impose the maximum fine allowed by
 11:49AM 8 statute of \$5,000. I am not going to suspend any
 11:49AM 9 of that. We've got to figure out what it is going
 11:49AM 10 to take to force you to comply with the rules of
 11:49AM 11 society and to deal with your addiction.
 11:49AM 12 The Court's going to give you credit
 11:49AM 13 for time served of 153 days. The Court is going
 11:49AM 14 to absolutely suspend your driving privileges from
 11:49AM 15 whenever you are released from custody for five
 11:49AM 16 years, with absolutely no driving and no ability
 11:49AM 17 to get restricted driving privileges.
 11:50AM 18 If you disagree with the Court's
 11:50AM 19 judgment you have the right to appeal. Any appeal
 11:50AM 20 must be filed within 42 days. You have a right to
 11:50AM 21 an attorney for purposes of appeal, and if you
 11:50AM 22 cannot afford one, one will be appointed for you.
 11:50AM 23 Do you have any questions for the
 11:50AM 24 Court?
 11:50AM 25 THE DEFENDANT: No, ma'am.

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11:50AM 1 THE COURT: Sir, continue to make use of the
 11:50AM 2 support system that is here. Continue to maintain
 11:50AM 3 communications with your support system while you
 11:50AM 4 are in custody. Establishing that support system
 11:50AM 5 now and building on it is your only chance of real
 11:50AM 6 success down the line. Good luck to you. I look
 11:50AM 7 forward to visiting with you after that rider.
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 9 (Hearing concluded.)
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