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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46635-2018
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2018-29769
)	
ROBERT LEROY DALEY, JR.,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Daley failed to establish that the district court abused its discretion by imposing an aggregate, unified sentence of 20 years, with four years fixed, upon his guilty pleas to two counts of sexual exploitation of a child?

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

Daley pled guilty to two counts of sexual exploitation of a child, and the district court imposed an aggregate, unified sentence of 20 years, with four years fixed. (R., pp.40-43.) Daley filed a notice of appeal timely from the judgment of conviction. (R., pp.46-48.)

Daley asserts his sentence is excessive in light of his status as a first-time sexual offender, family support, military service, mental health issues, good employment history, purported remorse, and acceptance of responsibility. (Appellant’s brief, pp.3-6.) 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. Daley, 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 two counts of sexual exploitation of a child is 20 years. I.C. § 18-1507(3). The district court imposed an aggregate, unified sentence of 20 years, with four years fixed, which falls within the statutory guidelines. (R., pp.40-43.) On appeal, Daley contends that his sentence is excessive in light of his status as a first-time sexual offender, family support, military service, mental health issues, good employment history, purported remorse, and acceptance of responsibility. (Appellant’s brief, pp.4-6.) However, these factors do not outweigh the seriousness of the offense, the great harm such offenses cause to the victims, and the danger Daley poses to the community.

While Daley has never before been *convicted* of a sexual offense, the nature of his crimes—which he committed over a period of several years—demonstrates the danger he presents to the community. In February 2018, the National Center for Missing and Exploited Children received two reports “regarding the suspected possession and distribution of child pornography.” (PSI, pp.42, 216-17. ¹) Acting on the cybertips that were generated and routed to it for investigation, the Internet Crimes Against Children (ICAC) Unit of the Idaho Attorney General’s Office determined that the IP address associated with the reports belonged to Daley. (PSI, pp.42, 216-17.) The ICAC Unit subsequently executed a search warrant at Daley’s residence and seized a number of computers and other digital media devices. (PSI, pp.15, 217.) An examination of the all the devices revealed 126 image files and three video files that were located in “active” space on digital containers. (PSI, p.217.) Some photographs and videos depicted the physical torture and sexual abuse of children as young as one year old. (PSI, p.226.) In an interview with police, Daley admitted, “I can’t stop,” and he “indicated there was no age

¹ PSI page numbers correspond with the page numbers of the electronic file “Appeal Confidential Documents.pdf”

that was too young to view.” (PSI, p.217.) Daley also admitted the images on his devices were “the worst. Torture and rape... There’s a bunch of them.” (PSI, p.217.)

Daley disclosed to the psychosexual evaluator that he had been downloading child pornography for eight to 10 years preceding his arrest, and that he viewed child pornography three to four times a week. (PSI, pp.172, 189.) Daley reported that the child pornography he viewed included images that depicted children being raped; there were also images depicting the use of physical force, threats, intimidation, and restraint, and Daley admitted that he found those images to be sexually arousing. (PSI, p.172.) Daley also reported that he masturbated to child pornography fifty percent of the time he viewed it. (PSI, p.172.) Despite these admissions, Daley did not perceive himself to be a sexual offender because he only “fantasize[d] about bondage and rape but ha[s] never participated.” (PSI, p.173.) Also concerning is the fact that the objects of Daley’s desires were not limited to the many unnamed children whose images he exploited for his own sexual gratification. As noted by the psychosexual evaluator, one of the images on Daley’s devices was that of a 15- to 16-year-old female whom Daley admitted was the daughter of a family friend; Daley admitted that he saved the image to his device from the girl’s Facebook page and that he “had fantasies about” her. (PSI, p.174.)

The psychosexual evaluator diagnosed Daley, among other things, with “Pedophilic Disorder,” “Other Specified Paraphilic Disorder: Sexual Interest in Adolescents,” “Sexual Sadism Disorder,” and “Other Specified Sexual Dysfunction: Hypersexuality.” (PSI, p.189.) The evaluator also assessed Daley as a moderate risk to re-offend, but that “risk classification was contingent on [Daley] participating in sexual offender and substance use treatment.” (PSI, pp.169, 191.)

The district court considered all of the relevant information and imposed a reasonable sentence. Daley's sentence is appropriate in light of the seriousness of the offense, the great harm such offenses cause to the victims, and the danger Daley poses to the community. Given any reasonable view of the facts, Daley has failed to establish that the district court abused its discretion by imposing an aggregate, unified sentence of 20 years with four years fixed.

Conclusion

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

DATED this 13th day of May, 2019.

/s/ Lori A. Fleming
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ALICIA HYMAS
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th 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:

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