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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46660-2019
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR28-2018-5631
)	
CHARLES CLIFFORD BROWN,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Brown failed to establish that the district court abused its discretion by imposing a unified sentence of 15 years, with four years fixed, upon his guilty plea to delivery of methamphetamine?

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

Brown pled guilty to delivery of methamphetamine and the district court imposed a unified sentence of 15 years, with four years fixed. (R., pp.77-79.) Brown filed a notice of appeal timely from the judgment of conviction. (R., pp.82-85.)

Brown asserts his sentence is excessive in light of his substance abuse and amenability to treatment, mental and physical health issues, purported remorse, and acceptance of responsibility. (Appellant's brief, pp.3-7.) 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 penalty for delivery of methamphetamine is up to life in prison. I.C. § 37-2732(a)(1)(A). The district court imposed a unified sentence of 15 years, with four years fixed, which falls well within the statutory guidelines. (R., pp.77-79.) Brown's sentence is appropriate in light of his continued substance abuse and criminal offending and his failure to rehabilitate or be deterred despite prior legal sanctions and treatment opportunities.

Brown has a long criminal history that dates back to at least 1990 and includes two felony convictions, 19 misdemeanor convictions and, at the time of sentencing, pending charges for robbery and misdemeanor battery. (PSI, pp.4-10.¹) Brown has previously been granted, and violated, periods of probation. (PSI, pp.10, 19.) He has also previously been incarcerated. (PSI, p.10.)

In this case, Brown delivered methamphetamine to Misty Phelps. (PSI, pp.2-3.) Hours later, Misty and her two children drowned in Fernan Lake. (PSI, pp.2-3.) An autopsy revealed "extremely high levels of Methamphetamine as well as THC and Opiate based medications consistent with ... Percocet" in Misty's blood. (PSI, p.3.) Examiners concluded that "the high and toxic levels of Methamphetamine [were] of a level to have severely affected Misty Phelps and very likely played a part in her (Misty) demise and that of her two children." (PSI, p.3.) Although Brown claimed to be remorseful for having provided methamphetamine to Misty, he also minimized the dangerousness of his conduct, stating, "There are people who wood [sic] like to Blame me for Her and The children's death Misty was a known addict was going Thru some very Difficult Times much more That I had any Idea of..." (PSI, pp.3-4.)

¹ PSI page numbers correspond with the page numbers of the electronic file "Confidential Documents - Appeal Volume 1.pdf."

Although Brown claims that he has “drastically turned his life around since the instant offense” (Appellant’s brief, p.3), the presentence investigator reported that, after his presentence interview, Brown failed to contact his treatment provider and relapsed on methamphetamine. (PSI, p.18.) While Brown was still residing at the Good Samaritan house and receiving inpatient treatment at the time of sentencing, even Brown’s sister was “skeptical” of Brown’s assurances that he was “going to make it happen (sobriety) ... because she has heard it so many times before.” (PSI, p.11 (parenthetical notation in original).) Brown’s sister reported that from the age of 13, Brown was “incouragable [sic] and was in and out of drug treatment facilities.” (PSI, p.11.) It is apparent, however, that those prior treatment opportunities neither deterred Brown from using and selling drugs nor achieved any longstanding rehabilitation.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Brown’s sentence. (10/30/18 Tr., p.40, L.20 – p.47, L.19.) The state submits that Brown 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 Brown’ conviction and sentence.

DATED this 14th 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 14th 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:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 And I felt so horribly wrong about this, that
2 I didn't know what else to do. I had nowhere else to
3 turn to. I was by myself and by the grace of God I had
4 some friends who showed up and took that weapon from me.
5 And I -- and I'm thankful for that today that I'm here
6 to actually even speak.

7 I just want to say that I'm sorry for their
8 loss. I truly really am. And if I can take this back
9 and take -- and give my life for theirs, I certainly
10 would, because I just would. I just know that I would.
11 I mean, because there was two young souls in her. They
12 were lost and she was lost. Those two babies didn't
13 deserve to -- you know, what happened to them, by any
14 means, and I can't control what happened after she left
15 my house, you know. And it was some hours, the next day
16 that this actually took place. So, you know, yeah,
17 that's all I have, your Honor.

18 THE COURT: Okay.

19 THE DEFENDANT: I'm...

20 THE COURT: The reason Detective Maskell looks
21 so much older than he is, he's seen too much. There's a
22 reason I look older than I should, I've seen a lot.

23 The legislature decided that people who
24 deliver controlled substances should be punished at a
25 greater rate or more severely than those who merely use

1 drugs, and that's reflected in the statute.

2 Crime that you're charged with is potentially
3 punishable by life. You made a plea agreement. You
4 accepted responsibility for the delivery as part of that
5 plea agreement. The State entered that plea agreement.
6 The prosecutor who entered that plea agreement
7 understood all of the background facts, and a lot of
8 people come to court and they want the Court to fix
9 everything. Some things you can't fix.

10 THE DEFENDANT: I understand.

11 THE COURT: You have a long history of letting
12 people that love you down. Going back to your school
13 years, acting out, running and gunning, using drugs.

14 From reviewing your presentence report, it
15 appears that everybody in the world in your family has
16 turned their back to you except for your sister. And I
17 believe that she made the statement she did in support
18 of the plea agreement because she wants to save your
19 life. She's been hurt enough.

20 She's been sitting back there crying through
21 this whole proceeding. That's because she loves you,
22 not because she hates you. She's the only person in
23 your family who hasn't given up on you. You've been
24 creating problems all around you by refusing to accept
25 responsibility. You're 47. You first started substance

1 abuse when you were 17. That's 30 years.

2 Your case is the kind of a case that comes
3 before the Court -- it's the kind of a case that the
4 legislature contemplated in terms of punishing people
5 who deliver controlled substances more severely than
6 simple users. There's been representations here that
7 there was no sale. It was a barter. I want \$300 for
8 the dog. I'll take 150 if you give me some drugs.
9 That's a sale. There's nothing other than a sale.

10 I would like to make Misty's family whole; I
11 can't. There's a hole in their hearts that will never
12 be filled. And you're not before the Court for what
13 happened to her.

14 THE DEFENDANT: Right.

15 THE COURT: You're before the Court because
16 you engaged in conduct that causes harm to others, not
17 only yourself. When the Court imposes a sentence, I
18 have a job to do.

19 THE DEFENDANT: I understand.

20 THE COURT: And that job says, No. 1, protect
21 the public. I've always treated driving under the
22 influence and people who deliver drugs as violent
23 offenders. There were over 60,000 people in this
24 country that died in the last year because people
25 delivered drugs. It's a crisis and it's -- that whole

1 business is run by cartels out of China and Columbia and
2 wherever. It's a business. They create customers.
3 They hook them. You're hooked.

4 You've admitted that you're a functioning
5 addict. You've never really had a good shot at
6 treatment. I really respect the fact that you found the
7 Good Sam. I respect that program. That program has
8 saved a lot of lives, and it's not just because they
9 give you substance abuse treatment. It's that they give
10 you a community. They give you people that you can lean
11 on. "Hey, I'm about to relapse. You got somebody to
12 call?"

13 And the people that I see that succeed in
14 staying clean and sober coming out of addiction are the
15 ones that go through the Good Sam program, or some
16 others that are similar, and remain engaged in the
17 church because that's what they believe in. The Court
18 can't send you there without your consent.

19 THE DEFENDANT: Right.

20 THE COURT: And it's because they have a
21 community. You feel part of something.

22 THE DEFENDANT: Absolutely.

23 THE COURT: For most of your life, you haven't
24 felt part of anything.

25 THE DEFENDANT: I have not.

1 THE COURT: You weren't named Sue, but you
2 were named Charlie Brown. That's in the PSI too and you
3 paid some price for that.

4 I'm supposed to protect the public, first of
5 all, by promoting rehabilitation. You found
6 rehabilitation and you've engaged in it. On the other
7 hand, I have to consider protection of the public by
8 either punishment or by way of deterrence for you and
9 others similarly situated.

10 There's a huge disparity in legal circles
11 about whether deterrence works on other people. Are
12 there other people out doing what you did that say, hey,
13 I'm not going to do that. I know what happened to
14 Charlie Brown. I wouldn't dare do that. Maybe it
15 works. Maybe it doesn't. I don't know.

16 What happened here didn't deter you. You
17 collected another paraphernalia charge in '16. It was
18 dismissed. I don't know if it was dismissed as part of
19 the plea agreement or not. You've got a battery charge.
20 It arose afterwards. But you've got a long history
21 here.

22 And I think to save your life and in no way to
23 punish you for the unintended consequences, they're the
24 kinds of things that the legislature feared, but I can't
25 fix that. I can't bring them back. I can't deal with

1 how you deal with that in the middle of the night when
2 you jolt awake and think about what you did for the rest
3 of your life. I know you didn't intend it, but you let
4 it happen.

5 She's culpable as well. She was a drug addict
6 herself. We have a lot of speculation here about
7 whether it was suicide or not, whether or not if the
8 State's right, emphasizing the fact that she and her
9 kids are gone. They're gone. The only thing you can do
10 about that is help other people not do what you did.

11 THE DEFENDANT: Absolutely.

12 THE COURT: And I think it would depreciate
13 the seriousness of the offense, the delivery, by not
14 imposing a prison term in this case. I'm mindful of the
15 Toohill factors, and I think this case, as Mr. Whitaker
16 said, justifies some prison time. He upped it. I'm
17 going to give you benefit of the doubt on the testing,
18 that you were doing it. You just weren't doing it the
19 way you were ordered to do it by the Court.

20 Under the facts I have before me, I don't
21 think that's enough to void the plea agreement. I'm
22 going to give you the bargain you made: 15 years in
23 prison, four fixed, 11 indeterminate. That has two
24 components. You have to serve four years less any time
25 you've already served in the case. If your attorney

1 wants to submit an affidavit that sets those forth,
2 that's fine.

3 After that, you'll go to the parole board.
4 I'm not going to give you a withheld judgment. The Good
5 Sam will be there when you get out. If you believe what
6 you told me today, run, don't walk, back to them when
7 you get out, when you make parole.

8 The parole board will have this entire file.
9 They'll have everything in the background. I doubt
10 you'll make parole in the first go. Probably do more
11 than four. We're supposed to minimize that, get you
12 close to the fixed time. When you get within a year of
13 your parole date, you're going to be eligible for some
14 programming, some education, some counseling, some
15 substance abuse.

16 Take advantage of everything they give you so
17 you can go before the parole board and say, "This is my
18 probation plan or my parole plan. I'm going to get out.
19 I'm going back to the Good Sam. I've got four years
20 clean and sober now. I want to build on that. I want
21 to find a way to make amends for what I did." Not for
22 the State, not for the Court, but because that's the
23 right thing to do.

24 You have 42 days to appeal. I give you my
25 best wishes. You're going to be tortured for the rest

1 of your life about what happened here. That will be the
2 judgment of the Court today. I will impose court costs,
3 pay those within five years of today's date. I'm not
4 going to impose a fine.

5 As you go to prison, as you have time to sit
6 and think about things, I think you need to pick up a
7 couple of things. Put a lot of thought into it. Pick
8 up a piece of paper and a pencil. Write a letter to the
9 father of that young woman that died, not because you
10 intentionally killed her. Share your grief, understand
11 his. Pick up the phone, write a letter to your sister
12 and say thank you for staying with me. Nobody else
13 would. And I'm so sorry for what I put you and the rest
14 of the family through. I'm sure there's some other
15 people that you need to atone to.

16 Terrible case. The consequences were not
17 intended, but it's a serious crime and it justifies a
18 prison sentence. That will be the order of the Court.
19 Thank you.

20 (Matter adjourned.)
21
22
23
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25