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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46676-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2018-34677
)	
JUAN ROBERTO JIMENEZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Jimenez failed to establish that the district court abused its discretion by imposing a unified sentence of three years, with six months fixed, upon his guilty plea to possession of LSD?

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

Jimenez pled guilty to possession of LSD, and the district court imposed a unified sentence of three years, with six months fixed, and ordered the sentence to be served consecutively to the sentence Jimenez was serving for aggravated battery in Twin Falls County

Case No. CR-2013-1283.¹ (R., pp.21-22, 44-47; see also PSI, p.1.²) Jimenez filed a timely notice of appeal. (R., pp.48-50.)

Jimenez argues his sentence is excessive in light of the fact that he was “continuing his education” and “wanted to take his family to Oregon and Washington and be away from negative influences in Idaho.” (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

¹ At the time Jimenez was sentenced in this case, he was also facing a 23-month federal prison sentence for unlawful possession of a firearm. (See PSI, p.11; 12/13/18 Tr., p.24, Ls.8-14.) Although the district court announced at sentencing that it had no authority to order Jimenez’s sentence in this case to run consecutively to Jimenez’s federal sentence (12/13/18 Tr., p.27, Ls.14-15, p.28, Ls.6-8), the judgment of conviction states that “[t]he sentence in this case shall run consecutively to the sentence imposed in Twin Falls County Case No. CR-2013-1283 and any federal case the Defendant may be currently serving” (R., p.45). On appeal, Jimenez argues “this case should be remanded so that the judgment can be amended to conform with the oral pronouncement.” (Appellant’s brief, p.4.) The state submits “remand” for this purpose is inappropriate for two reasons. First, it is well settled that where, as here, there is a disparity between the oral pronouncement and written order, the oral pronouncement controls. See, e.g., State v. Watts, 131 Idaho 782, 786, 963 P.2d 1219, 1223 (Ct. App. 1998). Second, although I.C.R. 36 permits the district court to correct clerical mistakes in judgments at any time, there is no indication in the record that Jimenez has ever asked the district court to correct the judgment to conform to the court’s oral ruling and, as such, the issue is not properly before this Court on appeal. See, e.g., State v. Gonzalez, 165 Idaho 95, 439 P.3d 1267 (2019) (where defendant never asked district court for credit for time served from service of warrant, issue was not preserved for appeal; however, failure to preserve issue did not preclude defendant from raising issue in renewed motion to district court).

² PSI page numbers correspond with the page numbers of the electronic file “Appeal Confidential Documents.pdf.”

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 LSD is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of three years, with six months fixed, which falls well within the statutory guidelines. (R., pp.44-47.) Furthermore, Jimenez’s sentence is appropriate in light of his ongoing criminal offending while incarcerated and the risk he presents to the community.

Jimenez’s criminal history includes one juvenile adjudication, seven misdemeanor convictions, four felony state court convictions (including his conviction in this case), and a federal conviction for felony unlawful possession of a firearm. (PSI, pp.9-12.) Jimenez has had numerous opportunities on probation, has previously participated in a retained jurisdiction program, and was incarcerated in a state correctional facility when he committed the offense in this case. (PSI, pp.12, 65-67; R., pp.22-23.)

In this case, officers were notified by a known source that Jimenez was selling LSD to inmates at ISCC. (PSI, p.65.) Officers observed a possible contraband pass between Jimenez and his visitor and, after terminating the visit, officers located “a small cellophane wrapped item” near Jimenez’s chair. (PSI, p.65.) The wrapped item contained 32 “small paper tabs” that tested positive for LSD. (PSI, pp.65-66.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Jimenez’s sentence. (12/13/18 Tr., p.26, L.20 – p.28, L.16.) Jimenez’s desire to continue his education and his claim that he would like to move his family “to Oregon and Washington and be away from negative influences in Idaho” (Appellant’s brief, pp.4-5), while laudable, do not outweigh his ongoing criminal offending, even while incarcerated, or the risk he presents to the community. The state submits that Jimenez 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 Jimenez’s conviction and sentence.

DATED this 30th 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 30th 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:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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

APPENDIX A

25

1 year.

2 My client is a diabetic. And so he had

3 concerns that those notes that he is a diabetic were not

4 put into those C notes. So he did take the sandwich

5 because that was his sandwich. So I wanted to just

6 point that out to the Court.

7 Juan is really trying to focus on his future

8 right now. He doesn't want to end up spending the rest

9 of his life in prison. His children are very important

10 to him. He wants to go ahead and continue his

11 education. He wants to go back to school. Right now,

12 he signed up for a paralegal program and for a writing

13 course while he is out at the prison.

14 As the Court is aware, until he gets closer

15 to his parole eligibility date, he's not able to go

16 ahead and take any other courses. The IDOC won't allow

17 him to. So he's trying to fill up his time taking some

18 other courses that he's allowed to do. And he does have

19 a sponsor who's paying for those classes for him.

20 He would like to eventually be able to move

21 to Oregon or Washington with his entire family. That's

22 something that he's hoping to get out of the negative

23 influences here in Idaho and just start over.

24 This is something -- as the Court is aware,

25 Juan went ahead and entered an Alford plea. This is

26

1 something that he is disappointed about and just would

2 like to move on. And so that's why we're asking for the

3 six months fixed so he does have some hope for his

4 future and he's not serving that whole time -- a

5 significant amount of time of fixed time in prison.

6 Thank you, Judge.

7 THE COURT: All right. Thank you.

8 Mr. Jimenez, is there anything that you would

9 like for me to consider?

10 THE DEFENDANT: No, ma'am.

11 MS. DAVIS: Oh, and, Judge, I'm sorry, I

12 forgot to tell you, there's no objection to the

13 restitution.

14 THE COURT: Okay.

15 And is there any legal cause why the Court

16 cannot impose a sentence in this case?

17 MS. FAULKNER: No, Your Honor.

18 MS. DAVIS: No, Judge.

19 THE COURT: All right.

20 Mr. Jimenez, I've considered the factors that

21 I consider in every case, which is protecting society,

22 deterring crime, rehabilitating an offender, as well as

23 punishment.

24 In your context, protecting society is a

25 little different. A lot of people view prison as

27

1 something that protects people on the outside of the

2 prison, that society, from people on the inside of the

3 prison. But in this particular context, I also view it

4 in terms of protecting society within the institution,

5 other inmates and the staff that may work there as well.

6 And then I've also considered the criteria for placing

7 someone on probation or imposing imprisonment under

8 19-2521.

9 Given your criminal history and the fact that

10 this behavior actually occurred within the institution,

11 this should be a prison sentence, quite frankly. The

12 question is if there is a parole eligibility, should it

13 run concurrently or the same time as these other cases.

14 I don't have any authority over the federal

15 government, because they're separate sovereign. But

16 really, in some cases, if you're in prison, you're

17 already in prison.

18 But in this case, I do think that there is

19 actually a deterrent effect by having some indeterminate

20 time for this particular time remaining over your head

21 so that if you do engage in this conduct, it extends out

22 the time that you're eligible once you've topped your

23 determinate time in the other case. So I think that

24 there is a significant deterrent aspect of the sentence

25 that I'm going to give.

28

1 So for Count 1, the possession of a

2 controlled substance, I'm going to impose six months

3 fixed, two and a half years indeterminate, for a total

4 of three years that will run consecutive to Twin Falls

5 CR-2013-1283.

6 I do not have the authority to order it

7 consecutive to the federal government; that is their

8 determination.

9 So if they can parole you, once you've done

10 your determinate time, your fixed time, as long as your

11 behavior is warranted of that, and they can parole you

12 to the federal detainer. But that's up to the parole

13 commission.

14 But in order to be eligible to do that,

15 you'll have to follow all of the laws of Idaho and the

16 rules of the institution as well.

17 You'll be given credit of 135 days that

18 you've served in this case. I'm not going to require

19 you to give a DNA sample. I'm going to order a fine of

20 \$500. I'll order court costs in this case, restitution

21 of \$100 that will be joint and several with your

22 codefendants, and public defender reimbursement of \$50.

23 Now, this is a final judgment. You have the

24 right to appeal to the Idaho Supreme Court. The time

25 for taking an appeal is 42 days from the date the