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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46686-2019
Plaintiff-Respondent,	)	
	)	Bingham County Case No.
v.	)	CR-2018-3583
	)	
CHRISTOPHER ADAM BYNUM,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Bynum failed to establish that the district court abused its discretion by imposing a unified sentence of seven years, with two years fixed, upon his guilty plea to possession of methamphetamine?

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

On August 18, 2018, officers from the Blackfoot Police Department and the Bingham County Sheriff's Office went to Bynum's apartment to assist Bynum's probation officer with conducting a search of the residence. (R., p.8.) Upon searching Bynum's apartment, the officers

located “a can of Snapple Peach green tea with a false compartm[en]t” on the kitchen counter, “a secret compartment in the floor” of the apartment that contained “a pipe used to consume drugs” and several empty baggies, and – “behind a clock in the kitchen area” – “another secret compartment,” inside of which was a digital scale with methamphetamine residue, a baggie containing “a small amount of crystal meth,” and more empty baggies. (R., p.8.)

The state charged Bynum with possession of methamphetamine, with a persistent violator enhancement, and possession of drug paraphernalia. (R., pp.28-31.) Pursuant to a plea agreement, Bynum pled guilty to possession of methamphetamine and the state agreed to dismiss the remaining charge and the enhancement, to “concur with the PSI recommendation,” and to recommend that “the sentence in this case run concurrently with the case he’s currently on probation for.” (11/5/18 Tr., p.18, L.16 – p.19, L.3.) The presentence investigator recommended a rider. (PSI, p.24.<sup>1</sup>) At Bynum’s sentencing hearing, held on November 5, 2018, the state also recommended – in accordance with the plea agreement – that the district court retain jurisdiction. (11/5/18 Tr., p.23, Ls.21-23.) The district court imposed a unified sentence of seven years, with two years fixed. (R., pp.66-69.) On November 19, 2018, Bynum filed a timely Rule 35 motion for a reduction of sentence, which the district court subsequently denied. (R., pp.71-72, 75-80.) Bynum filed a timely notice of appeal. (R., pp.81-83.)

Bynum asserts his sentence is excessive in light of his substance abuse and willingness to participate in treatment, acceptance of responsibility, education “level,” housing, and support from his brother. (Appellant’s brief, pp.3-6.) The record supports the sentence imposed.

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

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 possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with two years fixed, which falls well within the statutory guidelines. (R., pp.66-69.) Furthermore, Bynum's sentence is appropriate in light of his ongoing criminal offending, his failure to rehabilitate or be

deterred despite numerous prior treatment opportunities and legal sanctions, and the risk he presents to the community.

Bynum has an extensive history of criminal offending that spans 28 years and includes juvenile adjudications for burglary, forgery, battery, aggravated assault, aggravated battery, rape, two adjudications for petit theft, two adjudications for runaway, and three adjudications for malicious injury to property; as well as criminal convictions for driving without privileges, failure to purchase/invalid driver's license, two convictions for minor in possession of alcohol, two convictions for alcohol-age violations, petit theft, battery, obscene conduct, driving a vehicle without the owner's consent, attempt to elude a police officer, failure to give immediate notice of an accident, five convictions for resisting/obstructing officers, three convictions for DUI - second offense, and five convictions for felony DUI. (PSI, pp.4-14.) He also has a history of failing to appear, being held in contempt of court, and violating his probation by absconding supervision. (PSI, pp.9-10, 13-14.)

Bynum has had numerous opportunities on probation, and he has served multiple stints in youth correctional facilities, in jail, and in prison, yet he has failed to be deterred from his incessant criminal behavior. (PSI, pp.4-6, 8-15.) He has likewise failed to rehabilitate despite having been afforded an abundance of rehabilitative programming, including inpatient substance abuse treatment via Road to Recovery, the Drug Court program, two retained jurisdiction programs, and "a substance abuse program while in prison." (PSI, pp.15, 21, 23, 26.) At the time of his arrest for the instant offense, Bynum was on probation for his eighth DUI and was "drinking six or seven beers a day" and "smoking one to two grams" of methamphetamine daily; he admitted to officers that he "had been back to using meth for about five or six months, and he

was also selling it.” (PSI, pp.3-4, 9, 11-14, 21.) The presentence investigator determined that Bynum presents a high risk to reoffend. (PSI, p.22.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Bynum’s sentence. (11/5/18 Tr., p.25, L.8 – p.30, L.24.) The state submits that Bynum 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 Bynum’s conviction and sentence.

DATED this 25th day of June, 2019.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of June, 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  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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

# APPENDIX A

1 THE DEFENDANT: Thank you.  
2 THE COURT: Are you fully satisfied with the  
3 representation Mr. Murdoch has provided?  
4 THE DEFENDANT: Absolutely, sir.  
5 THE COURT: Do you know of any legal reason why  
6 I should not sentence you today?  
7 THE DEFENDANT: No, sir.  
8 THE COURT: Well, Mr. Bynum, I went through the  
9 report. And, frankly, this -- your record is just plain  
10 scary.  
11 You start back well into your juvenile years  
12 with -- and I'm not going to go through the misdemeanors, but  
13 a felony burglary, felony forgery, felony grand theft, felony  
14 aggravated assault, felony rape -- the felony aggravated  
15 assault twice, felony rape, lots of -- once you become an  
16 adult, lots of alcohol-related things.  
17 And then -- frankly, that's so typical of  
18 alcohol addiction -- resisting/battery issues, theft issues,  
19 driver's license issues, obtaining beer and alcohol.  
20 And then, in '99, you start with your first  
21 felony DUI. And, again in 2002, the second felony DUI. 2008,  
22 a third felony DUI, and another one in 2008.  
23 Misdemeanor DUI in 2013, and then the 2014 DUI  
24 for which you're on probation now.  
25 And then possession of methamphetamine here,

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1 with the clear indication that you're starting to use or have  
2 been using methamphetamine the last couple of years. I think  
3 there are five felonies for DUI.  
4 And you've done a retained jurisdiction in 2001  
5 and another in 206 -- 2015 to 2016. In your prior cases, you  
6 served prison time in 2003 and 2004 and then topped your case  
7 in 2007.  
8 Come back with a 2008 conviction. And -- and  
9 then you were in prison until you were discharged in 28 -- you  
10 were on probation in your 2008 case until you were discharged.  
11 That was pursuant to a drug court?  
12 THE DEFENDANT: Yes, sir.  
13 THE COURT: And -- and then you came back with  
14 another case and went on a rider after -- that's a Bonneville  
15 case. You went on a rider in that case. However, you didn't  
16 get any programming, I guess, in that rider, is what it says.  
17 And there's a pending probation violation in  
18 the 2014 case in Bonneville. I haven't dealt with that yet?  
19 THE DEFENDANT: No. That's -- this charge is  
20 the violation.  
21 THE COURT: Okay. Now, I appreciate what  
22 you're telling me in terms of family. I -- frankly, I don't  
23 know how they've put up with you for as long as they have.  
24 It's just -- I see cases like this where people  
25 just say, I've had enough. Go do whatever you're going to do,

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1 but don't come back into my life.  
2 THE DEFENDANT: Yes, sir.  
3 THE COURT: Because it hurts too much. And you  
4 seem to somehow maintain that relationship.  
5 But it seems to me you're sacrificing just  
6 about everything good in your life -- and you seem to be a  
7 good, articulate, intelligent person. You're sacrificing  
8 everything that's good in your life for alcohol and drugs.  
9 You're just letting -- as you told someone else  
10 here this afternoon, you're letting the monster run your life  
11 instead of your taking charge of your life and taking the  
12 monster out, you know.  
13 And I know it's not easy. That's kind of a  
14 easy way of portraying it, but it's true.  
15 We can give you, you know, the treatment stuff.  
16 I can tell from what you say you know the treatment stuff.  
17 You've been through it enough times that you got the language  
18 down.  
19 You're just not accepting it. You're not  
20 integrating it into your life and making it part of your life.  
21 You -- you do it for a little while, and then you go back.  
22 The only way to stay sober when you're a  
23 long-term alcoholic -- and, frankly, alcohol is the hardest  
24 addiction to deal with. I'll take a meth addict any day over  
25 an alcohol addict.

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1 It's just horrible to deal with, but it can be  
2 done. And those who do it tell me the only way they do it is  
3 kind of the old 12-step program.  
4 But you've got to start the day sober and end  
5 the day sober and then start the next day sober and keep it  
6 going. If you don't do it day by day, it's going to come back  
7 and bite you. That's all there is to it.  
8 It's easy. I mean it's easy said; it's easy  
9 done. But it's not -- it's hard to do. Right?  
10 THE DEFENDANT: Yes, sir.  
11 THE COURT: So I got to decide what to do with  
12 you. As I'll say in a minute here, at some point, I have an  
13 overriding obligation to protect society from someone who's  
14 going to just keep on doing this and put other people at risk.  
15 And one of our biggest threats in the community  
16 to safety -- we're not -- you know, we're not in a ghetto in  
17 New York where people are shooting each other in the street.  
18 One of our biggest threats to safety in this  
19 area -- I see it almost every day in the paper -- is people  
20 who get drunk and hit other people and either kill them or  
21 maim them or cause them harm. And so I got to deal with that.  
22 Based upon your plea of guilty, it is the  
23 judgment of the Court that you are guilty of the crime of  
24 possession of methamphetamine.  
25 In addition to the presentence investigation

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1 report, I have reviewed the objectives of criminal punishment  
2 adopt by the Idaho Supreme Court.

3 I just got through talking about my duty to  
4 protect the community. I must also try to deter you, and  
5 that's not been easy in the past. You haven't responded to  
6 deterrence.

7 You've done prison time. You've done  
8 programming. You've done probation. You're still doing it.

9 I must see to your rehabilitation, if that's  
10 possible, and I must impose an element of punishment.

11 I've also reviewed and considered the criteria  
12 set forth in Idaho Code Section 19-2521 relative to whether I  
13 place you on probation or send you to prison.

14 Based upon all of the circumstances, it is the  
15 judgment of the Court that you be sentenced to the custody of  
16 the Idaho Board of Correction [sic] for a minimum period of  
17 two and a maximum period of seven years.

18 That sentence shall run concurrent with  
19 Bonneville County Case Number CR-14-16995.

20 I'm going to impose a fine of \$1,000, order  
21 restitution in the amount of \$100.

22 And I'll order that you reimburse the county  
23 \$500 for the services of the public defender and that you pay  
24 court costs and fees as required by statute.

25 You've already provided a DNA sample and

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1 appeal to the Idaho Supreme Court for the judgment. You have  
2 the right to be represented by an attorney on that appeal.

3 If -- if one can't be -- or if you can't afford  
4 one, one will be appointed to assist you at public expense.  
5 But you only have 42 days in which to, you know, file any  
6 notice of appeal.

7 You also may have up to 120 days under Rule 35  
8 to ask for -- for relief, if you wish. And you may have up to  
9 a year under the Uniform Post-Conviction Relief Act [sic].

10 You are hereby remanded to the custody of the  
11 Sheriff of Bingham County for delivery to the proper agent of  
12 the Idaho Department of Corrections upon completion of your --  
13 your other proceedings in Bonneville County.

14 Anything else at this time, Mr. Murdoch?

15 MR. MURDOCH: No, your Honor.

16 THE COURT: Mr. Chandler?

17 MR. CHANDLER: No. Thank you.

18 THE COURT: All right. Thank you.

19 You may be excused.

20 (Proceedings concluded.)

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1 thumbprint exemplar, so we don't have to do that. Now, do you  
2 have any question about that?

3 I'm not going to retain jurisdiction. You've  
4 done that twice. I don't think there's anything -- you'll get  
5 that program anyway in the -- in the prison setting. Same  
6 program.

7 But we're -- we're going to -- we're going to  
8 take the next step here. If you go there and do well --  
9 frankly, I was going to make this consecutive today, but  
10 you've changed my mind. I'll let you do it concurrent.

11 But I want you in there working to get the  
12 program. I've kept the determinate pretty short. And I want  
13 you to get the program and get sober, and then I want you to  
14 get out and show the world that you can be sober.

15 You're get -- you're 40 years old. You're  
16 getting too old for this.

17 THE DEFENDANT: Yes.

18 THE COURT: If you don't take control of it  
19 now, in ten years, you'll be an old man, if you haven't killed  
20 yourself first -- you'll be an old man without friends,  
21 family, or home.

22 You'll probably be homeless and on the streets  
23 the way you're going. That's pretty sad. Take charge of your  
24 life. Make something of yourself. All right.

25 You are advised that you have the right to

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#### REPORTER'S CERTIFICATE

STATE OF IDAHO )  
COUNTY OF BONNEVILLE ) CASE NO. CR-2018-3583

I, Amy Laurel Bland, Certified Shorthand Reporter and  
Registered Professional Reporter, do hereby certify:

That pursuant to notice of appeal, the foregoing  
proceedings, having been previously recorded in digital audio,  
were reported in machine shorthand by me from said digital  
audio recording and thereafter reduced to computer type by me  
or under my direction and that the foregoing transcript  
contains a true and accurate record of said proceedings to the  
best of my ability and contains all of the material designated  
in the notice of appeal served upon me.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st  
day of February 2019.

  
Amy L. Bland  
ID CR 15AL-1055, CR CR 110706  
AR CR 13092  
Registered Professional Reporter

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