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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46701-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
V.)	CR01-18-42236
)	
ROBERT EUGENE EVERITT,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Everitt failed to establish that the district court abused its discretion by imposing a unified sentence of five years, with one year fixed, upon his guilty plea of felony intimidating, impeding, influencing, or preventing the attendance of a witness?

Everitt Has Failed To Establish That the District Court Abused Its Sentencing Discretion

The state charged Everitt with, among other things, violation of a no-contact order and intimidating, impeding, influencing, or preventing the attendance of a witness, the victim in an aggravated battery case, by trying to “influence her to recant prior statements to law

enforcement,” attempting to “manipulate” her with “expressions of affection,” and attempting suggesting to her “that the prosecution will have no case if she does not show up to testify in court.” (R., p.27-29.) Everitt pled guilty to felony intimidating, impeding, influencing, or preventing the attendance of a witness, and one count of misdemeanor violation of a no contact order. (R., pp.96-100.) For the felony, the district court imposed a unified sentence of five years, with one year fixed, and for the misdemeanor, the district court imposed a 228-day jail sentence, with 228 days of credit for time served. (R., pp. 96-100.) The district court ordered the felony sentence served concurrently with two other sentences for possession of a controlled substance that were being executed as a result of probation violations. (R., p. 97; PSI, p. 9; 1/8/19 Tr., p. 16, L. 2 – p. 17, L. 13.) Everitt filed a notice of appeal timely from the judgment of conviction. (R., pp. 101-03.)

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 intimidating, impeding, influencing, or preventing the attendance of a witness is five years. I.C. §§ 18-112, -2604(3). The district court imposed a unified sentence of five years, with one year fixed, which falls within the statutory guidelines. (R., pp. 96-100.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Everitt’s sentence. (1/8/19 Tr., p.15, L.2 – p.17, L.23 (attached as Appendix A).) Everitt’s criminal record includes 12 misdemeanor convictions, and four felony convictions for burglary, forgery, and two counts of possession of a controlled substance. (PSI, pp.4-9; R., p.30-31.¹) He committed the instant offense while on felony probation, granted after Everitt performed a rider. (1/8/19 Tr., p. 16, Ls. 2-23.) The district court’s sentencing discretion is supported by the record.

Everitt asserts that the district court abused its discretion by imposing an excessive sentence in light of his mental health issues, “employability,” acceptance of responsibility, and his “demonstrated genuine insight into the circumstances that led to this offense.” (Appellant’s

¹ PSI page numbers correspond with the page numbers of the electronic file “Pre-Sentence Report.pdf.”

brief, pp.3-6.) The record does not support Everitt's argument, and he has failed to show an abuse of discretion.

First, Everitt's claims that his mental health is a serious mitigating factor is belied by the record. According to the mental health assessment completed in 2016, Everitt reported that he was not currently on any mental health prescriptions, had no mental health concerns, and had no prior mental health diagnosis other than "situational depression/anxiety or substance induced psychosis and paranoia." (PSI, p.38.) Robert reported that his methamphetamine use leads to these mental health symptoms, and denied any past or current suicidal ideation. (PSI, p.38.)

Everitt also claims that he now has "genuine insight into the circumstances that led to this offense," namely that "personal relationships are difficult" for him. (Appellant's brief, p.4 (citing 01/08/19 Tr. p. 7, L. 3 – p.8, L. 23).) The state acknowledges that relationships can be hard, especially those subject to no-contact orders. Blaming his behavior (which included attempting to persuade his girlfriend to not be a witness against him in violation of a no-contact order) on a difficult relationship was possibly not entirely mitigating. As noted by the district court about the claim of bad relationships, "[t]here's a lot of country music songs written about that." (01/08/19 Tr. p. 15, L. 25 – p. 16, L. 1.) The record does not show any abuse of discretion by the district court in giving weight to Everitt's claim that the relationship made him do it.

Finally, Everitt's "employability" and sentencing claim of acceptance of responsibility do not outweigh his conscious decision to disregard the law and his attempt to evade punishment. Everitt has failed to show an abuse of discretion.

Conclusion

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

DATED this 30th day of September, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of September, 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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/s/ Kenneth K. Jorgensen
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APPENDIX A

