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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46715-2019
Plaintiff-Respondent,	)	
	)	Bingham County Case No.
v.	)	CR-2018-3586
	)	
KELLI ANN ALVAREZ,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

Alvarez pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with three years fixed. (R., pp.71-74.) Alvarez filed a timely notice of appeal. (R., pp.78-80.)

Alvarez argues her sentence is excessive in light of the fact that she “was clean for 13 months prior to her relapse,” “recognized that she needed treatment and was seeking [it] out with the Four Directions program,” and “wanted to be able to help her family.” (Appellant’s brief, pp.2-4.) 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 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 three years fixed, which falls within the statutory guidelines. (R., pp.71-74.) Furthermore, Alvarez's sentence is appropriate in light of her ongoing criminal offending, her failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions, and the risk she presents to the community.

Alvarez has an extensive history of criminal offending that spans 33 years and includes seven prior felony convictions for: synthetic narcotic, violation of pretrial release (amended to "public order crimes"), forgery, two counts of possession of methamphetamine, and two counts of possession of a controlled substance. (PSI, pp.6-9.<sup>1</sup>) Alvarez also has misdemeanor convictions for possession of drugs, obstructing justice, possession of a controlled substance – marijuana, three counts of DUI, three counts of failure to purchase or invalid driver's license, and three counts of possession of drug paraphernalia. (PSI, pp.5-9.)

Alvarez was on parole when she committed the offense in this case. (PSI, pp.4, 10.) During a traffic stop, officers asked Alvarez about an Altoids container sitting on the dashboard of her vehicle. (PSI, p.4.) Alvarez responded by telling the officers "that she didn't want to go to jail." (PSI, p.4.) When officers informed Alvarez that the car would be searched because she was on parole, she admitted that there was methamphetamine in the Altoids container. (PSI, p.4.) The officers then searched the car and found a scale, two small baggies containing methamphetamine, empty baggies, and two methamphetamine pipes. (PSI, p.4.)

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "Appeal - Confidential Exhibits.pdf."

Alvarez has had numerous opportunities on probation, and she has served multiple stints in jail, as well as in state and federal prison, yet she has failed to be deterred from her incessant criminal behavior. (PSI, p.10.) She has likewise failed to rehabilitate despite having been afforded multiple opportunities for rehabilitative programming, including at a federal treatment center and during two retained jurisdiction programs, with the last period of retained jurisdiction ending when she requested that the court relinquish jurisdiction. (PSI, p.15.) Most recently, Alvarez completed an assessment at Four Directions but, “before she could get involved in treatment, she was arrested for the instant offense.” (PSI, p.15.) “When asked why she put herself in the position to relapse,” Alvarez, demonstrating her failure to have made any rehabilitative progress over the past three decades, “said that she didn’t think to not say no.” (PSI, p.15.) When asked why she continues to commit crimes, Alvarez reported that she “liked the adrenaline rush, the euphoric feeling,” and that she didn’t think about getting caught. (PSI, p.10.) Unsurprisingly, the presentence investigator determined that Alvarez presents a high risk to reoffend. (PSI, p.17.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Alvarez’s sentence. (12/17/18 Tr., p.12, L.12 – p.16, L.9.) The state submits that Alvarez 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 Alvarez's conviction and sentence.

DATED this 5th day of September, 2019.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th 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:

JUSTIN CURTIS  
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 Thank you.  
2 THE COURT: Mr. Rogers.  
3 MR. ROGERS: Thank you, Your Honor. Looking at  
4 the tracking log from the problem solving courts, I  
5 don't remember -- I sat on the drug court here in  
6 Bingham when we staffed Ms. Alvarez. I don't recall  
7 with certainty what the issues were. On the tracking  
8 log, it says that the parole officer didn't have a  
9 recommendation, but in the PSI he does make a  
10 recommendation of a retained jurisdiction, as well.  
11 So I don't know if that was the influence. I  
12 don't know if it was the 3.1 treatment level or the -- I  
13 don't think the LSI of a 35 would be a deterrent for  
14 them. But I just can't remember if they were looking to  
15 have the parole officer come and talk to them or not.  
16 It seemed like that was part of the discussion.  
17 Regardless, Your Honor, I will go through the  
18 history. I cannot put together when she did her two  
19 riders. One of them looks like it was in 2014 on a CAPP  
20 Rider. And then from what I can tell, the other  
21 retained jurisdiction program was before that. After  
22 1998.  
23 THE COURT: Well, the way I read it, there was an  
24 old rider from --  
25 MR. ROGERS: 2003.

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1 THE COURT: -- find it here I marked it. Yeah,  
2 it was in a 2008 case, a forgery case.  
3 MR. ROGERS: Okay.  
4 THE COURT: And then the 2014 rider, she didn't  
5 complete because her supervising person there  
6 recommended that she be -- that jurisdiction be  
7 relinquished and that she proceed with the treatment  
8 program in the prison. That's why she went into prison  
9 until 2017. April, I think.  
10 MR. ROGERS: And then released --  
11 THE COURT: And then she released, was out  
12 about -- it was May 2017. And she was out about 15  
13 months when she committed this crime.  
14 MR. ROGERS: Okay. I just didn't put together  
15 that first rider -- is the one I couldn't piece  
16 together.  
17 So with that, Your Honor, I know that it's not  
18 really new anymore, but relatively new compared to her  
19 criminal history, is the retained jurisdiction that they  
20 have put together. It's a little bit more in depth than  
21 the CAPP rider program to my knowledge.  
22 So our recommendation would be a sentence of four  
23 years fixed with three years indeterminate for a total  
24 of seven years. We're asking for \$100 of restitution,  
25 and we'd ask the Court to retain jurisdiction.

10

1 THE COURT: Have you reviewed the restitution  
2 request, Mr. Murdoch?  
3 MR. MURDOCH: Your Honor, can I take a moment?  
4 THE COURT: Yes.  
5 MR. MURDOCH: We have no objection, Your Honor.  
6 THE COURT: All right. It was \$1100 even?  
7 MR. ROGERS: 100.  
8 THE COURT: 100. Oh, that makes sense.  
9 Yeah, that's what I had.  
10 MR. ROGERS: Yeah.  
11 THE COURT: I go, 1100. Where did that come --  
12 MR. ROGERS: I might have said 1100.  
13 THE COURT: Yeah. Well, I don't know what you  
14 said, but that's what I heard in my old age.  
15 All right. Ms. Alvarez, would you like to make  
16 any statement on own your behalf or give me any  
17 additional information in mitigation here?  
18 THE DEFENDANT: Yes, Your Honor. I would just  
19 like to let you guys know, I am an addict, and I did  
20 relapse. But I'm -- I've come to terms with this whole  
21 "in and out of jail" business, and I -- you know, I  
22 really want to take my sobriety seriously this time.  
23 And I did plan on going to Four Directions to get  
24 treatment there -- or the program there. And I did  
25 write to Mr. Waite to let him know, and Mr. Bench, as

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1 well. But I have not yet heard from them. And I would  
2 like to know their reason why -- or Mr. Waite's reason  
3 why. Just, I would like an opportunity, a chance, you  
4 know, for -- to be back on probation and prove myself.  
5 That is -- yeah.  
6 THE COURT: All right. Are you fully satisfied  
7 the representation that Mr. Murdoch has provided?  
8 THE DEFENDANT: Yes.  
9 THE COURT: Do you know of any legal reason why  
10 we should not sentence you today?  
11 THE DEFENDANT: No.  
12 THE COURT: I know that there's some --  
13 potentially some confusion as to how those early cases  
14 back in the '90s in the federal jurisdiction add up.  
15 But by my count here -- I don't know if it's correct or  
16 not -- but by my count this is the eighth felony over a  
17 20-year period.  
18 And it seems to me from going back over these  
19 cases, that they all have the same -- basically the  
20 same -- there's one burglary in there -- or forgery in  
21 there, but I think they're all connected to drug use --  
22 THE DEFENDANT: Right.  
23 THE COURT: -- for 20 years. And I just can't  
24 imagine how all of the sudden 20 years into this  
25 long-term drug use, you have an epiphany where you are

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1 not going to use anymore. It seems to me to be  
2 inconsistent. Particularly, where here the last time  
3 you were in a retained jurisdiction, you weren't doing  
4 very well in the CAPP program, and so they pulled you  
5 out of that. They had the judge relinquish  
6 jurisdiction, and you did your -- went to your term and  
7 were in prison until 2017 in order to facilitate a more  
8 in-depth treatment experience so that you could  
9 potentially come out and stay clean.

10 And then we have that old bogeyman, the  
11 companions, that comes back and drags you back into the  
12 stuff. Now, I know that's how it happens. I'm not  
13 being facetious about that, but it's something you can  
14 be prepared for. That's the only way to get past  
15 substance abuse is to be prepared for the things that  
16 occur that drag you back in: The cravings, the  
17 companions, the associations, the -- you know, all those  
18 thing, the mental health stuff.

19 If you are not addressing those and preparing for  
20 them, they'll sneak up on you and pull you back, and  
21 that's what happens. You're 20 years into this, having  
22 it happen over and over and over and over again. And  
23 now we're at a point where this is number eight going  
24 forward, and you're getting to an age where that's -- I  
25 don't know, I'd think you would get tired of it.

13

1 THE DEFENDANT: I am.  
2 THE COURT: But you're not going to get away from  
3 it. I mean, it doesn't go away.

4 THE DEFENDANT: Right.

5 THE COURT: When you are addicted, you are going  
6 to have those cravings for a long time, and unless you  
7 are prepared to handle them and deal with them, you will  
8 be using when you're 80, if you live that long.

9 And I just don't see a way forward at this point,  
10 a treatment-way forward, short of having you do it in a  
11 controlled environment. You're on parole. You violated  
12 parole by committing this crime. I don't know what the  
13 board's going to do. But, you know, my impression is  
14 that, you know, there just has to be an end of the line  
15 here, and I think that's where we are.

16 So based upon your plea of guilty, it is the  
17 judgment of the Court that you are guilty of the crime  
18 of possession of methamphetamine. In addition to the  
19 Presentence Investigation Report, I have reviewed the  
20 objectives of criminal punishment established by the  
21 Idaho Supreme Court.

22 My primary duty, where there's this kind of  
23 recidivistic behavior, over and over again, and  
24 continuing damage to the community, is to protect the  
25 community from that behavior. I must also deter you and

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1 others like you from committing this type of crime. I  
2 must see to your rehabilitation if I can. And I must  
3 impose and element of punishment.

4 I've also reviewed and considered the criteria  
5 set in the Idaho Code, in Idaho Code Section 19-2521,  
6 relative to whether I place you on probation or not. I  
7 think everybody agrees you are not in the position where  
8 probation is even a reasonable outcome in this case.

9 So based upon all of the circumstances of the  
10 case, it will be the judgment of the Court that you be  
11 sentenced to the Idaho Board of Correction for a minimum  
12 period of three and a maximum period of seven years.  
13 That shall be concurrent with Bingham County Case  
14 CR-14-163.

15 I'll order restitution in the amount of \$100.  
16 Order reimbursement for the public defender in the  
17 amount of \$500. And I'll order court fees and costs as  
18 required by statute.

19 Do you have any question about that?

20 THE DEFENDANT: So I -- do I get the rider?

21 THE COURT: No.

22 THE DEFENDANT: No. Okay.

23 THE COURT: I don't think it's even feasible at  
24 this point. I haven't heard anything that makes me  
25 convinced that you would respond.

15

1 THE DEFENDANT: Even though I was trying to get  
2 into treatment before?

3 THE COURT: Well, you can have all the good  
4 intentions, but the point is you've had that opportunity  
5 many times in the past, and fairly recently, and you are  
6 still going back to the same old behaviors. So I'm not  
7 even going to argue with you about it. I want you to  
8 get treated, but you've got to pay the penalty here at  
9 this point. This has just gone on far too long.

10 You are advised that you have the right to appeal  
11 to the Idaho Supreme Court from this judgment. You have  
12 the right to be represented by an attorney on that  
13 appeal. If you cannot afford an attorney, one will be  
14 appointed to assist you at public expense, but you only  
15 have 42 days from today's date to file any notice of  
16 appeal.

17 You may have up to 120 days under Rule 35 to ask  
18 for relief if you wish, and you may have up to a year  
19 under the Uniform Post-Conviction Relief Act to ask for  
20 relief if you qualify.

21 You are hereby remanded to the custody of the  
22 Sheriff of Bingham County for delivery to the proper  
23 agent of Idaho Department of Correction and execution of  
24 sentence.

25 Anything else, Mr. Rogers?

16