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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 46762-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-18-47648
)	
TRAVIS DARREL TENNANT,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

Has Tennant failed to show the district court abused its sentencing discretion?

STATEMENT OF THE CASE

On September 27, 2018, Travis Darrel Tennant stole a 2004 Dodge Ram pickup and nearly ran someone over in the process. (PSI, p.3.) He “drove recklessly, passing on double solid lines, driving into oncoming traffic, and running red lights.” (PSI, p.3.) The police chased Tennant and activated their lights. (PSI, p.3.) Tennant “fled at a ‘high rate of speed.’” (PSI, p.3.) For the next

hour, Tennant “was observed speeding, driving on sidewalks, speeding through parking lots, driving over curbs, driving across farm fields and through sage brush, driving through Falcon Crest Golf Course and vacant lots, and striking a patrol car.” (PSI, p.3.) Tennant’s chaotic and dangerous drive ruined the stolen truck. (PSI, p.3.)

The state charged Tennant with felony eluding a police officer, aggravated battery on a police officer, aggravated assault on a police officer, and grand theft. (R., pp.25-27.) Pursuant to a plea agreement, Tennant pled guilty to felony eluding a police officer and grand theft. (R., pp.29-40.) The district court sentenced Tennant to an aggregate unified term of four years fixed and six years indeterminate. (R., p.46.) Tennant timely appealed. (R., pp.52-54.)

STANDARD OF REVIEW

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).

ARGUMENT

Tennant Has Failed To Show That The District Court Abused Its Sentencing Discretion

The district court did not abuse its discretion when it imposed an aggregate unified sentence of four years fixed and six years indeterminate. 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) (holding district 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)).

Tennant’s sentence fits within the statutory limits. The statutory maximum for felony eluding a police officer is five years see I.C. § 49-1404; I.C. § 18-112, and the district court imposed a sentence of four years fixed and one year indeterminate (R., p.46). The statutory maximum for grand theft is fourteen years see I.C. § 18-2407(b)(1); I.C. § 18-2408(2)(a), and the district court imposed a sentence of four years fixed and six years indeterminate (R., p.46).

That leaves Tennant with the burden of proving that his sentence is excessive under any reasonable view of the facts. See McIntosh, 160 Idaho at 8, 368 P.3d at 628. He cannot do so.

The district court considered all of the necessary sentencing factors but properly gave the most weight to the protection of society. (Tr., p.17, L.13 – p.22, L.18.) As the district court indicated, Tennant engaged in reckless criminal behavior that risked the lives of numerous innocent people. (Tr., p.17, L.19 – p.18, L.22.) And this was not his first rodeo. Tennant has a

lengthy criminal history that mirrors his behavior in this case, including convictions for burglary, theft, reckless driving, and eluding a police officer. (PSI, pp.4-7.)

Tennant suggests that the district court did not properly consider his mental health as required by I.C. § 19-2523. (Appellant’s brief, pp.4-6.) The record says otherwise. The district court emphasized that the mental health evaluation supported the sentence imposed: “Dr. Johnston’s [mental health] evaluation of the defendant only goes to support that conclusion.” (Tr., p.19, Ls.25 – p.20, L.2.) Specifically, Dr. Johnston concluded that Tennant “would pose a high risk to re-offend within the next year as compared to other offenders.” (PSI, p.54.) The district court cited that conclusion to support its sentencing decision and quoted extensively from Dr. Johnston’s report at the sentencing hearing. (Tr., p.20, Ls.1-18.)

Similarly, the record belies Tennant’s claim that the district court did not even consider giving Tennant probation so that Tennant could receive treatment. (Appellant’s brief, p.6.) The district court acknowledged Dr. Johnston found Tennant “is at least moderately amenable to treatment” but went on to explain, using Dr. Johnston’s report, why “this case [was] a prison case.” (Tr., p.20, Ls.2-25.) The district court quoted from Dr. Johnston’s report:

The examinee’s most relevant issues and dynamic risk factors that contribute to his risk to reoffend would be antisocial personality characteristics, problems with impulse control, poor insight, insufficient fear of consequences, callousness, beliefs that support the manipulation of others, attitudes that support an antisocial lifestyle, *propensity towards rule breaking*, poor problem solving skills, *unresponsiveness to treatment*, and *a history of difficulty complying with the conditions of probation/parole*.

(Tr., p.20, Ls.9-18 (emphases added).) The district court also found “the fact that [Tennant] was on parole when these [crimes] happened . . . is something that weighs very heavily against the idea that probation is appropriate.” (Tr., p.19, Ls.5-19.) The district court thus considered and reasonably rejected Tennant’s request for probation.

In sum, the district court acted reasonably when it imposed an aggregate unified sentence of four years fixed with six years indeterminate after considering all of the relevant factors, including Tennant's mental health and the possibility of placing Tennant on probation so he could receive treatment. Thus, the district court did not abuse its sentencing discretion.

CONCLUSION

The state respectfully requests this Court affirm the district court's judgment of conviction.

DATED this 7th day of October, 2019.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of October, 2019, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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