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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 46867-2019 & 46868-2019
Plaintiff-Respondent,	)	
	)	Ada County Case Nos. CR01-17-6168 &
v.	)	CR01-18-52965
	)	
CHANCE MWENEMATALE LEONARD,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

ISSUES

- I. Has Leonard failed to show the district court abused its discretion when it revoked his probation and executed sentence?
- II. Has Leonard failed to show the district court abused its sentencing discretion?

STATEMENT OF THE CASE

In 2017, Chance Mwenematale Leonard was driving an SUV in Boise when he collided with another vehicle. (PSI, p.3.) The driver of the other vehicle suffered multiple physical injuries as a result of the crash. (PSI, p.3.) Officers responded to the collision and smelled the odor of an alcoholic beverage on Leonard’s breath. (PSI, p.3.) Officers administered three standardized

field sobriety tests, and Leonard failed all three. (PSI, p.3.) Leonard then provided two breath samples revealing a breath alcohol concentration of 0.283 and 0.285 respectively. (PSI, p.3.)

The State charged Leonard with operating a motor vehicle while under the influence of alcohol (third offense within ten years), felony, Idaho Code §§ 18-8004, 8005(6), and two misdemeanor offenses. (R., pp.70-71.) Pursuant to a plea agreement, Leonard pled guilty to felony operating a motor vehicle while under the influence of alcohol, and the State dismissed the misdemeanors. (R., pp.87-89.) The district court imposed a unified ten-year sentence, with two years determinate, and retained jurisdiction for 365 days. (R., pp.87-89.) Upon completion of the period of retained jurisdiction, the district court suspended Leonard's sentence and placed him on supervised probation for ten years. (R., pp.103-08.)

Four months after being placed on probation, Leonard was driving in Boise when an officer observed him make a slow, wide turn before failing to signal a lane change. (PSI, p.397.) Upon stopping the vehicle and making contact with Leonard, the officer observed an open bottle of beer between Leonard's leg and the middle console. (PSI, p.397.) The officer also observed that Leonard's eyes were glassy and bloodshot, he had slurred speech, and he smelled of an alcoholic beverage. (PSI, pp.397-98.) Leonard admitted that he had taken anxiety medication and drank two beers before driving. (PSI, pp.397-98.) Leonard failed all three standardized field sobriety tests. (PSI, p.383.) He then provided three insufficient breath samples because "he was barely blowing [into the instrument] and stopped blowing too soon." (PSI, p.399; see also PSI, p.389.) Thereafter, Leonard refused to consent to any further breath or blood testing. (PSI, p.399.) Officers obtained a search warrant for Leonard's blood. (PSI, pp.399-400). Despite Leonard's physical resistance to the blood draw, a phlebotomist was able to collect two vials of his blood for

testing. (PSI, pp.399-400.) The results of Leonard's blood sample revealed a blood alcohol concentration of 0.293. (PSI, pp.404-05.)

The State charged Leonard with felony operating a motor vehicle while under the influence of alcohol (one felony conviction within fifteen years), I.C. §§ 18-8001, 8005(6), and four misdemeanors. (R., pp.183-85.) Pursuant to a plea agreement, Leonard pled guilty to operating a motor vehicle while under the influence of alcohol and/or drugs (one felony conviction within fifteen years), and the State dismissed the four misdemeanor charges. (01/08/19 Tr., p.13, L.17 – p.14, L.14; R., pp.189-99.) The district court accepted Leonard's guilty plea and set the case out for sentencing. (01/08/19 Tr., p.21, Ls.14-18; p.22, L.17 – p.23, L.8.)

The State also filed a motion for probation violation in the 2017 DUI case, alleging eleven probation violations. (R., pp.121-26.) Leonard's guilty plea in the 2018 DUI case served as the basis for some of the alleged violations. (R., pp.121-26.) Leonard admitted to violating the terms of his probation by: (1) committing the new crime of operating a motor vehicle while under the influence of alcohol and/or drugs (one felony conviction within fifteen years), and (2) failing to abide the district court's order that he not operate a motor vehicle while on probation unless properly licensed and insured and/or without an interlock device. (01/28/19 Tr., p.4, Ls.6-17; p.4, L.21 – p.5, L.24; see R., p.122.) The two cases were then consolidated (R., p.135.)

The district court held a combined sentencing and probation violation disposition hearing. (See 03/04/19 Tr., pp.8-16.) In the 2017 DUI case, the State recommended that the district court revoke Leonard's probation and execute the underlying sentence. (03/03/19 Tr., p.11, Ls.1-9.) In the 2018 DUI case, the State recommended a unified sentence of ten years, with four years determinate. (03/04/19 Tr., p.8, L.24 – p.9, L.4.) Leonard recommended the district court imposed a unified ten-year sentence, with just two years determinate. (03/04/19 Tr., p.12, Ls.18-24.) In

both cases, Leonard recommended the district court place him on probation, or alternatively, retain jurisdiction so he could participate in the advanced practices programs. (03/04/19 Tr., p.12, Ls.11-17.)

In the 2017 DUI case, the district court revoked Leonard's probation and executed sentence. (R., pp.140-42.) In the 2018 case, the district court imposed a unified ten-year sentence, with three years determinate. (R., pp.211-14.) The district court ordered the sentences to run concurrently. (R., pp.211-14.) Leonard timely appealed. (R., pp.143-45, 215-17.)

## ARGUMENT

### I.

#### Leonard Has Failed To Show That The District Court Abused Its Discretion When It Revoked His Probation and Executed Sentence

##### A. Introduction

Following Leonard's admission to two probation violations in the 2017 DUI case, the district court revoked Leonard's probation and executed the underlying sentence. Leonard asserts the district court abused its discretion when it revoked his probation and executed sentence. Leonard contends the district court "should have" followed his recommendation by placing him back on probation, or in the alternative, by retaining jurisdiction so he could participate in the alternative practices program. (Appellant's brief, p.8.) The record reveals the district court had an adequate basis to revoke Leonard's probation and execute his underlying sentence.

##### B. Standard Of Review

Appellate review of a probation revocation proceeding requires a two-step analysis because "[t]he determination of whether a probation violation has been established is separate from the decision of what consequence, if any, to impose for that violation." State v. Sanchez, 149 Idaho 102, 105, 233 P.3d 33, 36 (2009) (internal quotation omitted). Therefore, the appellate court first

determines “whether the defendant violated the terms of his probation.” Id. If the appellate court determines “that the defendant has in fact violated the terms of his probation, the second question” is what the consequences of that violation should be. Id. It is undisputed that Leonard admitted to violating his probation. (Appellant’s brief, p.6). Thus, the salient issue is whether the district court’s decision to revoke Leonard’s probation and impose sentence was an appropriate consequence for that violation.

“The decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion.” State v. Lafferty, 125 Idaho 378, 381, 870 P.2d 1337, 1340 (Ct. App. 1994) (internal quotation omitted). When a trial court’s discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

C. The District Court Did Not Abuse Its Discretion When It Revoked Leonard’s Probation

As a preliminary matter, Leonard’s argument that the district court abused its discretion is conclusory and thus fatally deficient to his appeal. “[W]hen a party ‘does not contend that the district court failed to perceive the issue as one of discretion, that the district court failed to act within the boundaries of this discretion and consistent with the legal standards applicable to the specific choices available to it or that the district court did not reach its decision by an exercise of reason,’ such a conclusory argument is ‘fatally deficient’ to the party’s case.” State v. Kralovec, 161 Idaho 569, 575 n.2, 388 P.3d 583, 589 n.2 (2017) (citing Cummings v. Stephens, 160 Idaho 849, 855, 380 P.3d 168, 174 (2016)). In his brief, Leonard merely restates various pleas for

leniency made at the disposition hearing as well as portions of a letter he addressed to the district court wherein he apologized for his conduct on probation and asked the district court for treatment to address his “drinking problem.” (Appellant’s brief, pp.7-8.) However, Leonard has failed to address any of the prongs of the abuse of discretion test or to identify any possible abuse of discretion in the body of his brief, and the district court should be affirmed on that basis.

Even if Leonard’s argument is addressed on the merits, the district court did not abuse its discretion when it revoked Leonard’s probation in the 2017 case and executed his sentence. First, the district court satisfied the first prong of the abuse of discretion test by perceiving the revocation of Leonard’s probation as a discretionary matter. During the disposition hearing, the district court spoke openly about the options available to it in imposing penalty for Leonard’s probation violations. (03/04/19 Tr., p.13, L.21 – p.16, L.2.) Initially, the court addressed why it had concluded further supervision in the community would be inappropriate given Leonard’s conduct on probation and the nature of his probation violations. (03/04/19 Tr., p.14, L.5 – p.15, L.22.) Ultimately, the court concluded, “At this point, the only thing the Court can do is impose sentence.” (03/04/19 Tr., p.15, Ls.20-22.) The Court then revoked Leonard’s probation and executed sentence. (R., pp.140-142.) Thus, the record establishes that the district court correctly perceived the revocation of Leonard’s probation as a matter of discretion.

Second, the district court acted within the boundaries of its discretion when it revoked Leonard’s probation and executed sentence. The boundaries of the district court’s power when it determines whether to revoke a defendant’s probation are set forth in Idaho Code § 19-2603. Section 19-2603 states, “When the court finds that the defendant has violated the terms and conditions of probation, it may . . . revoke probation.” I.C. § 19-2603; see also I.C. § 20-222 (stating, “[T]he court . . . may revoke the probation and suspension of sentence and cause the

sentence imposed to be executed, or . . . [it] may continue or revoke the probation.”) Leonard admitted to two violations of the terms of his probation. (01/28/19 Tr., p.4, Ls.6-17; p.4, L.21 – p.5, L.24; see R., p.122.) Accordingly, the district court acted well within the boundaries of its discretion when it revoked Leonard’s probation and executed sentence upon his admission to two probation violations.

Third, the district court acted consistently with the legal standards applicable to the choices before it. “The applicable legal standard the district court must utilize in determining whether to revoke probation is based upon whether the violation was willful or non-willful.” State v. Sanchez, 149 Idaho 102, 106, 233 P.3d 33, 37 (2009). “If a knowing and intentional probation violation has been proved, a district court’s decision to revoke probation will be reviewed for an abuse of discretion.” State v. Leach, 135 Idaho 525, 529, 20 P.3d 709, 713 (Ct. App. 2001) (internal citations omitted). “However, if a probationer’s violation of a probation condition was not willful, or was beyond the probationer’s control, a court may not revoke probation and order imprisonment without first considering alternative methods to address the violation.” Id. The district court in this case did not articulate any finding of willfulness. Nevertheless, the willfulness Leonard’s violations is irrelevant because the district court satisfied the more stringent legal standard associated with non-willful violations by considering alternative methods to address the violation before revoking Leonard’s probation. See Sanchez, 149 Idaho at 106, 233 P.3d at 37.

Leonard admitted to two probation violations. Among other restrictions, the terms and conditions of Leonard’s probation prohibited him from committing new crimes, driving at all for any reason, consuming alcohol, and refusing any blood alcohol content tests when requested by any law enforcement officer. (R., pp.103-07; see 03/04/19 Tr., p.14, Ls.10-19.) Leonard admitted to violating the terms of his probation in the 2017 case by consuming alcohol; by operating a motor

vehicle, which did not have an interlock device, while not properly licensed or insured; and by pleading guilty to the new crime of operating a motor vehicle while under the influence of alcohol and/or drugs (one felony conviction within fifteen years). (01/28/19 Tr., p.4, Ls.6-17, p.5, L.21 – p.5, L.24; see R., p.122.) Before revoking Leonard’s probation, the district court considered alternative methods of addressing the violation. Leonard requested continued supervision in the community, either through additional probation or retained jurisdiction. (03/04/19 Tr., p.12, Ls.11-17.) The district court rejected this request emphasizing how Leonard’s probation conditions had been designed to help him address his substance abuse issues, yet he had not complied. (03/04/19 Tr., p.15, Ls.1-20.) Despite considering alternatives to revoking probation, the court reasoned that “the only” appropriate consequence for resolution of Leonard’s probation violations was to revoke his probation and execute the underlying sentence. (03/04/19 Tr., p.15, Ls.20-22.) Therefore, the district court acted consistently with applicable legal standards when it revoked Leonard’s probation on the basis of his admission to multiple probation violations.

Fourth, the record reveals that the district court reached its decision to revoke Leonard’s probation by an exercise of reason. During disposition, the district court specifically expressed its reasons for revoking probation and executing the sentence. (03/04/19 Tr., p.14, L.5 – p.15, L.6.) The court explained that Leonard had done a “very poor job” on his rider, he had consumed alcohol despite a “specific condition” prohibiting such behavior, he drove a car while on a suspended license, he provided “insufficient [breath alcohol] samples” to the stopping officer, he did not “cooperate in any meaningful way with the blood alcohol content test,” and he “had a blood alcohol content of .293.” (03/04/19 Tr., p.14, L.5 - p.15, L.6.) Again, in response to Leonard’s requests for continued supervision in the community, the district court highlighted how Leonard had already failed to comply with probation conditions that were specifically designed to help him

address his substance abuse issues. (03/04/19 Tr., p.15, Ls.1-17.) The court further noted that it perceived Leonard as a “risk to other people,” bolstering its conclusion that he could not be managed in the community. (03/04/19 Tr., p.15, Ls.10-12.) Thus, despite considering alternatives to revoking Leonard’s probation, the court reasoned that “the only” appropriate consequence for resolution of Leonard’s violations was to revoke his probation and execute the underlying sentence. (03/04/19 Tr., p.15, Ls.20-22.)

In sum, the district court correctly perceived the issue as one of discretion; acted within the boundaries of such discretion; acted consistently with any legal standards applicable to the specific choices before it; and reached its decision by an exercise of reason. Accordingly, the district court did not abuse its discretion when it revoked Leonard’s probation and imposed sentence.

## II.

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

#### A. Introduction

In Leonard’s 2018 DUI case, the district court imposed a unified sentence of ten years, with three years determinate. Leonard asserts the district court abused its sentencing discretion. Leonard contends the district court “should have” followed his recommendation by imposing a unified sentence of ten years, with three years determinate, and either placing him on probation, or alternatively, by retaining jurisdiction so he could participate in the alternative practices program. (Appellant’s brief, p.9.) The record reveals the district court did not abuse its sentencing discretion.

#### B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201,

159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

C. The District Court Did Not Abuse Its Sentencing Discretion

The district court did not abuse its discretion when it imposed an aggregate unified ten-year sentence, with three years determinate and seven years indeterminate. Leonard's sentence is within the statutory limits. The statutory maximum for felony DUI is ten years. See I.C. §§ 18-8004; 18-8005(6); 18-8005(9). The district court imposed a unified sentence of ten years, with just three years being fixed. (R., p.211-14.) That leaves Leonard with the burden of proving that his sentence is excessive under any reasonable view of the facts. See State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015). He has failed to do so.

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). To establish that the sentence was excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution.

Farwell, 144 Idaho at 736, 170 P.3d at 401. 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.” Bailey, 161 Idaho at 895–96, 392 P.3d at 1236–37 (quoting McIntosh, 160 Idaho at 8, 368 P.3d at 628).

The district court considered all of the necessary sentencing factors but properly gave the most weight to the protection of society. (03/04/19 Tr., p.13, L.21 – p.15, L.22.) As the district court indicated, Leonard himself “ruled out all community options,” including a period of retained jurisdiction and probation, by his own behavior. (03/04/19 Tr., p.15, Ls.1-2.) The court based its determination on a number of factors: (1) Leonard’s poor performance on the rider in the 2017 case, (2) his blatant disregard to the specific conditions of his probation, (3) his refusal to participate in breath and blood alcohol testing, (4) his lies to arresting officers about his true identity, (5) his concerning criminal history of multiple prior DUI convictions in less than five years, and (6) the fact that some of his prior DUI’s also involved injury accidents. (03/04/19 Tr., p.13, L.21 – p.15, L.22.) Given these considerations, “the only thing” the court deemed appropriate was to impose a period of incarceration. (03/04/19 Tr., p.15, Ls.20-22.) The court acted well within the boundaries of its discretion when it did so.

The record belies Leonard’s contention that the district court did not adequately consider mitigating factors including his remorse, acceptance of responsibility, and desire for substance abuse treatment. The letter Leonard addressed to the district court wherein he apologized for his actions and asked for treatment was submitted to the court for its consideration approximately one month before the sentencing hearing, leaving ample time for the court to review and consider it. (PSI, pp.253, 492). Immediately before the court imposed sentence, the court heard Leonard echo the sentiments he had previously expressed in his letter. (03/04/19 Tr., p.12, L.25; p.13, Ls.5-16.)

He again apologized for his actions and acknowledged his alcohol addiction. (03/04/19 Tr., p.13, Ls.5-16.) Notwithstanding his repeated requests for leniency, the district court rejected Leonard's request for a rider stating, "I don't think an additional rider would serve any useful purpose." (03/04/19 Tr., p.15, Ls.19-20). The court likewise determined probation would be inappropriate. (03/04/19 Tr., p.15, Ls.11-18). Leonard's argument that the district court should have given more weight to certain factors shows no abuse of discretion in light of the record, which reveals that the district court considered and reasonably rejected his request for probation, or alternatively, retained jurisdiction.

Additionally, Leonard's appellate position is manifestly different from the position he took when he was before the district court for sentencing. On appeal, Leonard argues the district court "should have . . . either placed [him] on probation, or in the alternative, retained jurisdiction." (Appellant's brief, p.10.) However, before the district Leonard's trial counsel correctly conceded that "the Court would be well within its right to send him to prison for this type of conduct, particularly [in light of] what he is on supervision for." (03/04/19 Tr., p.12, Ls.7-10.) Accordingly, Leonard has failed to show an abuse of the court's sentencing discretion.

The district court acted reasonably when it imposed an aggregate unified sentence of three years determinate with seven years indeterminate after considering all of the relevant factors, including Leonard's remorse, acceptance of responsibility, request for treatment, and the possibility of community options like probation or a period of retained jurisdiction. Accordingly, the court did not abuse its sentencing discretion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 30th day of October, 2019.

/s/ \_\_\_\_\_  
JUSTIN R. PORTER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th 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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/s/ \_\_\_\_\_  
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