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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. CHANCE TYLER WYNACHT, Defendant-Appellant.	)	NO. 46871-2019 Kootenai County Case No. CR28-18-17828 RESPONDENT'S BRIEF

Issue

Has Wynacht failed to establish that the district court abused its discretion when it sentenced him to a unified term of ten years with five years fixed after he pled guilty to attempting to strangle his pregnant girlfriend?

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

On October 27, 2018, Dakota Bassett was in her apartment in Coeur d'Alene, Idaho, when, Chance Tyler Wynacht, someone with whom she had a romantic relationship for roughly a

month, texted her from a bar. (Tr., p. 4, L. 5 – p. 6, L. 18.[1]) Though Ms. Bassett instructed him not to come over, he and a friend did anyway. (Id.) After Wynacht's friend left about half an hour later, Wynacht began to argue with Ms. Bassett as she tried to get him to go to sleep. (Tr., p. 7, Ls. 12-23.) As they argued, Wynacht threatened to strangle Ms. Bassett and then made good on that threat. (Tr., p. 7, L. 24 – p. 8, L. 19.) Ms. Bassett lost consciousness. (Id.) When she regained consciousness, she again tried to persuade Wynacht to leave, to which he responded by calling her vulgar names and threatening to kill her and the baby with which she was pregnant, which was his. (Tr., p. 9, L. 12 – p. 10, L. 7; p. 17, Ls. 13-17; PSI, p. 25.) Wynacht choked Ms. Bassett at least four more times that evening, causing her to lose consciousness each time. (Tr., p. 10, Ls. 19-23; p. 32, L. 22 – p.33, L. 2.) He also punched Ms. Bassett around her head, arms, and legs, and threatened to rape her. (Tr., p. 11, L. 10 – p. 13, L. 1.) When Wynacht left the bedroom at one point, Ms. Bassett closed and locked her door and attempted to call for help, but Wynacht returned too quickly, broke open the locked door, and walked toward her with a knife. (Tr., p. 13, Ls. 2-23.) He later threateningly rubbed the knife up and down Ms. Bassett's leg. (Tr., p. 14, Ls. 18-20.) When Wynacht left the room a second time, Ms. Bassett was able to call for help. (Tr., p. 15, Ls. 8-24.) That was at approximately seven a.m., about six hours after Wynacht arrived at Ms. Bassett's apartment. (Id.) When Ms. Bassett was taken to the hospital, she had bruising around her neck, face, arms, and legs. (Tr., p. 18, Ls. 4-20.) Wynacht initially "denied all allegations of a physical dispute" (PSI, pp. 17, 52), but later claimed that he "blacked out" and does not remember what happened. (PSI, p. 18.)

Wynacht was charged with five counts of attempted strangulation, burglary for breaking into Ms. Bassett's room with the intent to commit a felony, and aggravated assault. (R., pp. 62-

[1] Citations to the transcript correspond with the pages in the electronic file.

66.) A persistent violator enhancement was charged for each of the counts, and a use of a deadly weapon in the commission of a felony enhancement was charged for the burglary and aggravated battery counts. (Id.) Wynacht agreed to enter an Alford[2] plea to the first count of attempted strangulation and the state agreed to move to dismiss the remaining counts. (Tr., p. 43, Ls. 10-23.) Wynacht entered and the district court accepted that plea. (Tr., p. 47, Ls. 3-20.) The state moved to dismiss the remaining counts and the enhancements, which the district court granted. (Tr., p. 48, Ls. 14-23; R., pp. 74-75.) The district court sentenced Wynacht to a unified term of ten years with five years fixed and declined to retain jurisdiction. (Tr., p. 58, L. 12 – p. 61, L. 21; R., pp. 84-89.) Wynacht timely appealed. (R., pp. 90-94.)

Wynacht argues on appeal that "his sentence is excessive considering any view of the facts, and there is insufficient information in the record to determine that a suspended sentence and probation would be inappropriate, because the district court did not adequately consider mitigating factors." (Appellant's brief, p. 5.) Specifically, Wynacht points to his "remorse and acceptance of responsibility," his "support from his family," and his alleged "issues with mental health and substance abuse." (Appellant's brief, pp. 5-7.) But the record and applicable law show that the district court did not abuse its discretion.

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). For purposes of evaluating whether that sentence is excessive, this Court "presume[s] 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 387, 391 (2007). Where "a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion by

[2] North Carolina v. Alford, 400 U.S. 25 (1970).

the court imposing the sentence." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (internal quotation marks 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 State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)). "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)).

Likewise, "[t]he Legislature has explicitly provided that the decision whether to retain jurisdiction and place the defendant on probation or relinquish jurisdiction to the Department of Corrections is a matter of discretion." State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013) (quoting State v. Latneau, 154 Idaho 165, 166, 296 P.3d 371, 372 (2013)). "'Refusal to retain jurisdiction will not be deemed a 'clear abuse of discretion' if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under [I.C. § 19–2521].'" Id. (alteration in original) (quoting State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

The district court sentenced Wynacht to a unified term of ten years with five years fixed (R., pp. 84-89), well below the fifteen years to which he could have been sentenced under the applicable statute, I.C. § 18-923. It explicitly acknowledged the Toohill[3] factors. (Tr., p. 58, Ls. 12-18.) It then acknowledged the letters of support from Wynacht's sister and grandmother and stated that it read the pre-sentence reports (Tr., p. 59, L. 16 – p. 60, L. 6), which discussed Wynacht's alleged substance abuse and mental health issues (PSI, pp. 23-25 (noting that Wynacht "'does not appear to have elevated risk related to mental health issues'")). The district court also independently acknowledged during the sentencing hearing that Wynacht's criminal conduct was frequently associated with alcohol consumption. (Tr., p. 59, Ls. 16-23.[4])

With respect to its determination not to retain jurisdiction, the district court pointed out that Wynacht had two prior felonies, had previously received retained jurisdiction, and had violated his probation. (Tr., p. 59, Ls. 8-15; PSI, pp. 18-20.) Wynacht was "on probation for Burglary for a little over a year when he committed the new crime of Aggravated Battery. He was sentenced to the CAPP program. He was released to probation a second time and was about [sic] for seven months when he committed the instant offense." (PSI, p. 26.[5]) The instant offense was another violation of his probation. (PSI, p. 19.) The district court concluded that in light of Wynacht's demonstrated inability to succeed on probation it would not be appropriate to retain jurisdiction again. (Tr., p. 60, Ls. 20-25.) See State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013) (holding that district court did not clearly abuse its discretion where it refused to retain jurisdiction in part based on previous failed probation stints).

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[3] State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

[4] Though, Wynacht's first felony conviction was for burglary (PSI, p. 18) and there is no indication that alcohol had anything to do with that conviction.

[5] The first quoted sentence apparently contains a typographical error. 'Aggravated Battery' should be 'Aggravated DUI'. (PSI, p. 19; Tr., p. 52, Ls. 12-19.)

The district court then noted that Wynacht's crime had "endangered another person over a prolonged period of time with threats and physical acts of strangulation." (Tr., p. 60, Ls. 17-20.) As discussed above, that description significantly understates the violent nature of Wynacht's conduct. According to the court, and in light of the nature of that conduct as well as Wynacht's previous failures on probation, the unified ten year term of imprisonment with five years fixed was necessary to serve the sentencing goals of deterrence and protecting society. (Tr., p. 61, Ls. 1-9.) That determination was not unreasonable under any view of the facts and did not constitute a clear abuse of discretion. See State v. Mitchell, 124 Idaho 374, 377, 859 P.2d 972, 975 (Ct. App. 1993) (holding that sentence was not an abuse of discretion, notwithstanding the fact that it was the defender's first offense, in light of violent nature of offense and because the need to protect society is the primary consideration in sentencing); State v. Hayes, 138 Idaho 761, 767, 69 P.3d 181, 187 (Ct. App. 2003) (holding that determinate ten year sentence for armed robbery was not an abuse of discretion—even in light of supposed mitigating factors like mental dysfunction, rehabilitative potential, substance abuse issues, and family support—in light of the district court's finding that the term was necessary to protect society and the failure of previous probation to deter additional criminal conduct). The district court considered the allegedly mitigating factors to which Wynacht points and its refusal to give them more weight than the need to deter additional criminal conduct and protect society does not constitute an abuse of discretion. See State v. Felder, 150 Idaho 269, 276–77, 245 P.3d 1021, 1028–29 (Ct. App. 2010) ("That the court did not elevate the mitigating factors Felder cites over the need to protect society does not establish an abuse of discretion, and we conclude that taking into account the entirety of the record, the sentence imposed was reasonable.").

Conclusion

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

DATED this 27th day of August, 2019.

___/s/ Andrew V. Wake_____
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of August, 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/ Andrew V. Wake_____
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