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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46903-2019
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2016-13731
)	
CASEY ERIC DALAGER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Dalager failed to establish that the district court abused its discretion by relinquishing jurisdiction and imposing a unified sentence of three years, with one and a half years fixed, on an underlying conviction for possession of a controlled substance?

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

Casey Eric Dalager was charged with possession of methamphetamine and driving with a suspended license. (R., pp. 47-48.) He accepted a plea agreement (R., p. 57), pled guilty to possession of methamphetamine, and the state dismissed the charge of driving with a suspended

license (R., p. 58; Tr., p. 7, L. 23 – p. 9, L. 2). The district court withheld judgment and placed Dalager on probation for two years. (R., pp. 60-64; Tr., p. 17, L. 16 – p. 18, L. 16.) Approximately a year later, the prosecutor informed the district court of six violations of Dalager’s probation conditions. (R., pp. 71-77.) Though Dalager initially admitted to some of the violations and denied others (Tr., p. 23, L. 16 – p. 27, L. 18), he later admitted all six violations (Tr., p. 32, Ls. 2-14). The district court imposed a unified sentence of three years, with one and a half years fixed, but retained jurisdiction. (R., pp. 111-13; Tr., p. 35, L. 2 – p. 37, L. 3.) Approximately two months later, the district court received a letter from the Idaho Department of Correction stating that Dalager was removed from the rider program as a security risk after he instigated a physical fight and then attempted to hide the altercation from staff. (Aug. R., p. 4.) At a jurisdictional review hearing, the district court then relinquished jurisdiction and imposed the underlying sentence of three years with one and a half years fixed. (R., pp. 115-19; Tr., p. 42, L. 16 – p. 44, L. 8.) Dalager timely appealed. (R., pp. 123-26.¹)

Dalager contends that the district court abused its discretion because it should have either “sentenced him to a lesser term of imprisonment or continued him on the rider in light of the mitigating factors, including young age, minor criminal history, substance abuse issues, acceptance of responsibility, and family support.” (Appellant’s brief, p. 4.) The record and applicable law show that the district court’s determination to relinquish jurisdiction and impose the underlying sentence was not an abuse of 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

¹ Dalager also filed a motion under Idaho Criminal Rule 35(b) requesting that his sentence be reduced (R., pp. 120-22), which motion the district court denied (R., pp. 139-40). That denial is not at issue on appeal. (Appellant’s brief, p. 3 n. 1.)

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 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, “[p]robation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). “The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion.” State v. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013) (citing State v. Hood, 102 Idaho 711, 712, 639 P.2d

9, 10 (1981); State v. Lee, 117 Idaho 203, 205–06, 786 P.2d 594, 596–97 (Ct.App.1990)). “A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate.” Id. (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

The maximum prison sentence for possession of a controlled substance (methamphetamine) is seven years. I.C. § 37-2732(c)(1). Though the district court relinquished jurisdiction and imposed a unified sentence of three years with just one and a half years fixed (R., pp. 115-19; Tr., p. 42, L. 16 – p. 44, L. 4), it did so only after providing Dalager with opportunities to participate in both probation and a rider program, which opportunities Dalager used to commit probation violations and additional criminal conduct. As to the former, Dalager acknowledged that he understood that if he failed to successfully complete probation he could be sentenced to up to seven years in prison. (Tr., p. 17, L. 16 – p. 18, L. 10.) He then admitted to six probation violations, including a conviction for driving without a license, failure to report to his probation officer, use of methamphetamine, refusal to submit to drug testing, failure to complete drug treatment programs, and absconding. (R., pp. 73-77; Tr., p. 32, Ls. 2-14.) The district court provided Dalager another opportunity to “focus on [his] mental health issues” and his “substance abuse issues in a secure environment without distraction” by retaining jurisdiction and permitting him to participate in the rider program. (Tr., p. 35, L. 2 – p. 37, L. 3.) After considering the sentencing goals, the court imposed an underlying sentence of three years with a year and a half fixed but retained jurisdiction. (Id.) It again warned Dalager that “if you don’t do well, if you don’t follow the rules and don’t participate as you should, you’ll wind up serving that sentence,” and Dalager responded, “Yes, sir.” (Tr., p. 36, L. 22 – p. 37, L. 3.) Dalager responded to that second opportunity by committing an assault against another inmate,

attempting to choke him in a fight that Dalager instigated, and then lying to prison officials regarding what had happened. (Aug. R., p. 4.) Dalager was removed from the rider program as a “security risk” and the Idaho Department of Correction recommended that the district court relinquish jurisdiction and impose the underlying sentence. (Id.) Dalager’s only explanation was that he “let [his] emotions build to a certain extent.” (Tr., p. 42, Ls. 10-12.)

Only then—after the district court twice provided alternative sentences, after Dalager twice acknowledged that the failure to abide by the relevant rules would result in imposition of the underlying sentence, and after he twice failed to abide by those rules—did the district court relinquish jurisdiction and impose the underlying sentence. The record does not reflect that the district court failed to consider mitigating circumstances or that its determination was excessive under any reasonable view of the facts. Instead, it determined that Dalager demonstrated he was unable to succeed on probation (Tr., p. 36, Ls. 9-15), and was a security risk in a rider program (Tr., p. 43, Ls. 11-18). The unified sentence of three years with one and a half years fixed, the latter of which this Court presumes is the probable term of confinement, Oliver, 144 Idaho at 726, 170 P.3d at 391, is far below the maximum of seven years to which Dalager might have been sentenced. Particularly in light of Dalager’s failures with both probation and retained jurisdiction, which both included additional criminal conduct, Dalager has not shown that the district court abused its discretion by relinquishing jurisdiction or that his sentence is excessive under any reasonable view of the facts.

Conclusion

The state respectfully requests this Court to affirm Dalager's conviction and sentence and the district court's order relinquishing jurisdiction.

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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