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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 46904-2019 & 46917-2019
Plaintiff-Respondent,)	
)	Bannock County Case Nos.
v.)	CR03-18-11927 & CR-2018-9572
)	
EDWIN E. BEITZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Beitz failed to establish that the district court abused its discretion by imposing concurrent unified sentences of six years, with three years fixed, upon his guilty pleas to two counts of possession of methamphetamine?

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

In August 2018, officers arrested Beitz on an outstanding warrant and, upon conducting a search incident to arrest, the officers found a baggy containing methamphetamine, a baggy containing marijuana, and a syringe in Beitz's pocket. (46917 R., pp.13-14.) The state charged

Beitz with possession of methamphetamine, with a persistent violator enhancement, in docket number 46917. (46917 R., pp.50-53.) Pursuant to a plea agreement, Beitz pled guilty to possession of methamphetamine and the state withdrew the enhancement and also dismissed a second case in which Beitz was charged with possession of methamphetamine, with a persistent violator enhancement. (46917 R., pp.58, 64-67.) Beitz was released to Court Services Supervision pending sentencing. (46917 R., p.75.) Four days later, he violated the terms of his pre-trial release by being charged with using a vehicle without the owner's consent. (46917 R., p.75.) He subsequently failed to check in for drug/alcohol testing on five separate occasions over a two-week period, and the district court issued a bench warrant and order revoking Beitz's Court Services release. (46917 R., pp.75, 78.)

On October 8, 2018, officers arrested Beitz on the warrant and, while conducting a "pat down search," the officers located a used syringe and "multiple small clear zip-lock style baggies" containing methamphetamine in Beitz's pocket. (46904 R., pp.10-11; 46917 R., p.78.) The state charged Beitz with possession of methamphetamine, with a persistent violator enhancement, in docket number 46904. (46904 R., pp.42-45.) Pursuant to a plea agreement, Beitz pled guilty to possession of methamphetamine, the state dismissed the enhancement, and the parties stipulated to "dispose of both cases [docket numbers 46904 and 46917] to the Bannock County drug court." (12/3/18 Tr., p.4, Ls.8-22; 46904 R., pp.65, 71-73.) The cases were transferred to drug court on December 4, 2108. (46904 R., pp.71-73; 46917 R., pp.86-87.)

Approximately two months later, Beitz's probation officer filed a drug court report of probation violation alleging that Beitz had violated the conditions of drug court probation by being discharged as unsuccessful from drug court, failing to report for treatment, failing to report for drug testing on two occasions, and testing positive for or admitting to using a controlled

substance on two separate occasions. (46904 R., pp.89-90; 46917 R., pp.97-98.) Beitz admitted the allegations and, at the subsequent combined sentencing hearing for both cases, the district court imposed concurrent unified sentences of six years, with three years fixed, and retained jurisdiction. (46904 R., pp.91-93, 95-98; 46917 R., pp.7, 99-101, 103-06.) Beitz filed notices of appeal timely from the judgments of conviction. (46904 R., pp.99-102; 46917 R., pp.107-10.)

Beitz asserts his sentences are excessive in light of his substance abuse, willingness to participate in the S.H.A.R.E. program, and his statement that he “does ‘not ever want to be in this situation again.’” (Appellant’s brief, pp.4-6 (quoting PSI, p.6).) The record supports the sentences 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 one count possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed concurrent unified sentences of six years, with three years fixed, for Beitz’s two counts of possession of methamphetamine, which fall well within the statutory guidelines. (46904 R., pp.95-98; 46917 R., pp.7, 103-06.) On appeal, Beitz contends that his sentences are excessive in light of his substance abuse and willingness to participate in the S.H.A.R.E. program. (Appellant’s brief, p.5.) However, Beitz—who is now [REDACTED]—reported that he has been using illegal drugs for 40 years, and he has not been rehabilitated or deterred despite numerous prior legal sanctions and despite having previously participated in substance abuse treatment, both while in the community and while incarcerated. (PSI, pp.3, 6-10, 15, 19, 26.¹) Further, Beitz continued to use drugs after he committed the instant offenses, and he also failed to report for drug testing and failed to report for substance abuse treatment as required while he was in drug court in these cases, demonstrating his unwillingness to abide by the law or the terms of community supervision. (PSI, p.29; 46917 R., pp.89-90, 97-98; 46904 R., pp.75-78, 89-90.)

Additionally, Beitz’s sentences are appropriate in light of his lengthy criminal record, which includes numerous convictions for crimes that display his ingrained criminal thinking. The instant offenses are Beitz’s sixth and seventh felony convictions, as he has prior felony

convictions for transporting/selling narcotics/controlled substance, two convictions for receiving or transferring a stolen vehicle, and two prior convictions for possession of a controlled substance. (PSI, pp.6-15.) His record also contains at least 31 misdemeanor convictions, including convictions for battery (amended from assault-domestic violence), trespass, use of telephone to harass/intimidate/threaten, violation of a no contact order, carrying a concealed dangerous weapon, DUI, reckless driving (amended from DUI), resisting or obstructing officers, three convictions for willful concealment (two of which were amended from petit theft), five convictions for petit theft, five convictions for retail theft, two convictions for illegal possession/use of a controlled substance, possession of marijuana, two convictions for possession of narcotic equipment, possession of drug paraphernalia, driver's license violation (amended from DWP), invalid driver's license (amended from DWP), and three convictions for DWP. (PSI, pp.6-15.) Furthermore, the presentence investigator noted that Beitz "did not do well on probation" in the past, and that Beitz "did not appear remorseful for his actions, nor did he take responsibility for his crime." (PSI, pp.22-23.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Beitz's sentences. (2/19/19 Tr., p.7, L.3 – p.11, L.24.) The state submits that Beitz 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.)

¹ PSI page numbers correspond with the page numbers of the electronic file "Appeal-Certificate of Exhibits PSI Volume 1.pdf."

Conclusion

The state respectfully requests this Court to affirm Beitz's convictions and sentences.

DATED this 31st day of October, 2019.

/s/
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of October, 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:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

/s/
KENNETH K. JORGENSEN
Deputy Attorney General

APPENDIX A

1 look through the presentence investigation report, it is
2 also recommending that.

3 We would like to ask this court for some
4 leniency today and ask you to put Mr. Beitz on probation
5 here in town. We think he could then complete a drug
6 program. And we would like to get him into the S.H.A.R.E.
7 program and then get him into after care.

8 Then while on probation he tells me he has an
9 apartment in town and he has a job waiting for him at the
10 SME plant in town.

11 He has talked to me about some of the skills
12 that he learned in the problem solving court. He wants to
13 continue some of those things by going to the Friendship
14 Club and self-help supportive meetings and other sobriety
15 programs that are offered in town.

16 With that, Your Honor, we know that he, you
17 know, didn't succeed in drug court. It isn't for everyone
18 and he does believe that he can be successful on
19 probation. He has the support and the resources in town
20 to get him through probation if he is successful. We do
21 think that completing the S.H.A.R.E. program first would
22 be a key part of that, Your Honor.

23 THE COURT: Thank you. Mr. Herzog.

24 MR. GODFREY: The state concurs with the
25 recommendation of the PSI and the probation officer for a

1 rider. The defendant has 31 misdemeanors, four felonies
2 in Utah. The PSI investigator didn't believe he was
3 remorseful and isn't taking accountability for his
4 actions. And he was terminated from drug court. I think
5 that it would be best for him to do a retained
6 jurisdiction program, then come back. And if he has good
7 support still, be placed on probation then.

8 THE COURT: Thank you. Mr. Beitz, anything you
9 want to say?

10 THE DEFENDANT: Your Honor, I came here in 2010 and
11 I had a wife who is deaf and legally blind. I came here
12 to be and with my parents because they were getting older.
13 Since then they both have passed away. I've been having
14 some problems here, but I'm really ready to get straight.
15 I would really appreciate probation because I didn't -- I
16 wasn't on probation prior to drug court. I went straight
17 into drug court. It just was overwhelming. I am wanting
18 to continue, you know, in a straight, clean life, and I
19 don't really think being in prison, any kind of prison,
20 will help out.

21 The S.H.A.R.E. program would be plenty and I
22 could get things going. I have an apartment that I've
23 lived in since 2010. I don't want to lose that and I
24 don't want to lose a lot other things. That's why I would
25 appreciate the chance of probation, with the S.H.A.R.E.,

1 after care, all of that. That's all I've got to say.
2 Thank you.

3 THE COURT: All right. Mr. Beitz, the challenge
4 here is that you committed this original crime. You were
5 applying to drug court and then got a second crime.
6 Despite getting a second felony crime, while your
7 application to drug court was pending, which was a request
8 you made. You wanted in the program.

9 THE DEFENDANT: Yeah.

10 THE COURT: So you could avoid going to prison.
11 That's why you wanted the program. When somebody gets an
12 opportunity to participate in these programs they have to
13 take advantage of it. Apparently you didn't do that.

14 Despite what were concerted efforts, I'm sure,
15 on the part of the drug court team, you didn't follow the
16 program. You didn't follow the rules, didn't do what you
17 were supposed to. Drug court is an opportunity to prove
18 that you can do well in supervision. It's a more
19 intensive probation than you'll ever get in the community.
20 You couldn't do it. And in the process of doing that, you
21 absconded, essentially, from supervision in that program.

22 THE DEFENDANT: Well, --

23 THE COURT: Let me finish. If you want to talk
24 again I'll give you another chance, but let me finish.

25 The bottom line here is that you didn't do

1 what you were supposed to do. Despite all -- and yes, I
2 understand your history. I've read the PSI. I know what
3 the circumstances were with you and your wife and some
4 complaints you had about somebody else and that whole
5 process. There's nothing I can do about that. What I can
6 do is I can deal with your two charges for possession of a
7 controlled substance, methamphetamine. One of them
8 occurred while you were still pending sentencing in the
9 first case. I can do something about that.

10 You were given -- Judge Naftz gave you
11 probably a better opportunity than he should have,
12 considering the fact that you got a second charge while
13 that whole thing was processing.

14 I'm not buying that all I need is another
15 chance for probation. I'm not buying that for a second.
16 I want you to understand that clearly.

17 I also want you to understand something else.
18 There is a disconnect in those that are involved in the
19 criminal justice system and sometimes there are families.
20 With what the purpose and justification and factors of the
21 criminal justice system are, people come and sit in that
22 chair and their defense attorney sits in that chair, and
23 I'm not blaming them for doing their job. And families
24 send me notes or letters or whatever, and there aren't
25 that many in your particular case, but it's a common

1 experience. And they say something like you said today.
 2 Prison will do me no good. This is what I need, this is
 3 what I need. The focus is on what the defendant needs.
 4 There's a challenge with that. I'm required
 5 to take into account multiple other factors besides just
 6 what you need. I have to take into account what protects
 7 this community. What do I need to do to make sure that
 8 this community is safe? I need to make sure that
 9 appropriate punishment is administered for violations of
 10 criminal law.
 11 I'm required to take into account what needs
 12 to be done to make sure that people are deterred from
 13 their conduct, and that others are deterred as well
 14 because the sentences that are imposed.
 15 So it isn't always just about you, Mr. Beitz.
 16 Do you hear what I'm saying?
 17 THE DEFENDANT: I understand, sir. I don't feel
 18 that I'm a detriment to society. I don't want to feel
 19 like I'm causing anybody problems. I'm not trying to
 20 cause anybody problems. I didn't come here to do that. I
 21 don't want to be made into some kind of thing where you
 22 have to protect society. I'm not hurting anyone.
 23 THE COURT: That's a very interesting statement.
 24 THE DEFENDANT: I don't believe I am.
 25 THE COURT: You don't think that possessing an

1 illegal substance in the community, and all of the
 2 attending circumstances that go with that, which is they
 3 have to be brought into the community, they have to be
 4 sold to you, or given to you in some fashion. There are
 5 multiple criminal acts that occur along the way for you to
 6 be in possession of an illegal substance. You don't think
 7 that hurts society?
 8 THE DEFENDANT: I understand that, sir. I don't
 9 want to be a part of that. I don't know why you think I
 10 might be.
 11 THE COURT: Because you got convicted of two
 12 felonies, that's why.
 13 THE DEFENDANT: Yeah. It's not easy to do, but
 14 I've been working at it a long time. I'm not trying to --
 15 I had almost empty baggies, a point tenth of a gram. I'm
 16 sure that doesn't make a lot of difference to you.
 17 THE COURT: It doesn't. It is not about quantity.
 18 THE DEFENDANT: If you're talking about protecting
 19 people you should be protecting people like me from the
 20 people that are bringing the drugs around. I'm not -- you
 21 think I'm some kind of a bad person.
 22 THE COURT: I think you're a person who committed
 23 two felony crimes and pled guilty to them. That's what I
 24 think you are. Whether that will impact your life for the
 25 rest of your life, that is up to you. Do I think that the

1 process and the system of drug peddling that occurs in
 2 this community damages this community? I do absolutely.
 3 THE DEFENDANT: I believe so.
 4 THE COURT: And you are part and parcel of it
 5 because you were in possession of it on at least two
 6 occasions. That's what I think. I'm not labeling you,
 7 not branding you, I'm addressing your behavior.
 8 THE DEFENDANT: I understand that, sir. That's why
 9 I'm -- I got to prove to you that I can.
 10 THE COURT: Exactly. I'm imposing a unified
 11 sentence in each case of six years. Three fixed and three
 12 indeterminate. I'm retaining jurisdiction for 365 days.
 13 I'm imposing court costs of \$285.50 in each case. A fine
 14 of \$500 in each case. Restitution of \$372.50 in the first
 15 case and \$160 in the second. Public defender fee of 375
 16 in each case. DNA sample, one sample, \$100. And 100
 17 hours of community service times two, so a hundred hours
 18 in each case, so a total of 200.
 19 I'm remanding you to the custody of the
 20 Department of Corrections for that retained jurisdiction
 21 program. I'll give you a warning, if you go on the rider
 22 with the same kind of attitude you have demonstrated
 23 today, they'll be recommending relinquishment and you'll
 24 serve the sentence out. You have 42 days to appeal.
 25 (Hearing concluded.)

REPORTER'S CERTIFICATE
 1 I, Rodney M. Felshaw, CSR No. SRT-299, Certified
 2 Shorthand Reporter, certify:
 3 That the foregoing proceedings were taken
 4 before me at the time and place therein set forth; that
 5 the proceedings were reported stenographically by me and
 6 transcribed by me; and that the foregoing is a true and
 7 correct record of all proceedings held to the best of my
 8 ability.
 9 I further certify that I am not a relative or
 10 employee of any attorney or party, nor am I financially
 11 interested in the action.
 12 IN WITNESS WHEREOF, I set my hand and seal this
 13 15th day of April, 2019.
 14
 15
 16
 17
 18 Rodney M. Felshaw, C.S.R.; R.P.R.
 19
 20
 21
 22 Notary Public
 23 My commission expires April 6, 2021.
 24
 25