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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46923-2019
Plaintiff-Respondent,	)	
	)	Kootenai County Case No. CR28-2019-
v.	)	14820
	)	
THERESA M. SHANHOLTZER,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Teresa M. Shanholtzer failed to show that the district court abused its sentencing discretion when it revoked Shanholtzer’s probation, imposed a sentence of five years with two years determinate for child custody interference, and retained jurisdiction?

ARGUMENT

Shanholtzer Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Shanholtzer’s [REDACTED] son was placed into shelter care “due to [a] lack of stable home environment.” (PSI, p. 15 (page citations to electronic file named “Confidential Documents”).) Approximately ten months later Shanholtzer did not return the child after an

unsupervised visit, but instead fled the state with him. (PSI, pp. 9-10.) An Amber Alert issued, and Shanholtzer was found in Washington. (PSI, pp. 9-10.)

The state charged Shanholtzer with second-degree kidnapping, and she pled guilty to a reduced charge of child custody interference. (R., pp. 62-63, 67-69.) The district court withheld judgment and placed Shanholtzer on probation for four years. (R., pp. 84-90.) One of the conditions of probation was that she “follow all directives” and “graduate from” mental health court. (R., p. 89.)

Within a month Shanholtzer violated the mental health court rules by moving without notifying her treatment provider. (PSI, p. 62.) She was shortly thereafter placed in “custody until stable.” (PSI, p. 63.) She refused to take her medications and refused further participation in drug court. (PSI, p. 64, 66; 3/6/19 Tr., p. 3, Ls. 6-20.) She was then arrested and arraigned for violating her probation. (R., p. 91; PSI, p. 67.)

At Shanholtzer’s request, the district court ordered a competency evaluation. (PSI, pp. 68-72; see also PSI, pp. 75-85.) The evaluator found her “**fit to proceed with her court process, as she does not display an impairment in her competency due to a serious mental illness or neurocognitive deficit.**” (PSI, p. 85 (bold and underline original).) Shanholtzer “**retain[ed] the capacity to make informed decisions about her mental health treatment, and “retain[ed] the capacity to make informed decisions about her substance use treatment needs.”** (PSI, p. 85 (bold original).) Instead of impaired, the evaluator found she was “**volitionally noncompliant.**” (PSI, p. 85 (bold original).)

Shanholtzer admitted violating her probation by leaving mental health court before completion. (R., pp. 92, 95-97; 3/6/19 Tr., p. 8, Ls. 9-12.) The district court imposed a sentence of five years with two years determinate and retained jurisdiction. (R., pp. 92-99; 3/6/19 Tr., p.

10, L. 18 – p. 14, L. 5.) Shanholtzer filed a notice of appeal timely from the judgment. (R., pp. 101-10.)

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)). The abuse of discretion test has three factors: ““(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the legal standards applicable; and (3) whether the trial court reached its decision by an exercise of reason.”” State v. Fisher, 162 Idaho 465, 398 P.3d 839, 842 (2017) (quoting State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011)).

“Once a probation violation has been proven, the decision of whether to revoke probation is within the sound discretion of the court.” State v. Le Veque, 164 Idaho 110, 113, 426 P.3d 461, 464 (2018).

C. Shanholtzer Has Shown No Abuse Of The District Court’s Discretion

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). In determining whether the appellant met this burden, the court considers the entire sentence but, because the decision to release the defendant on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). 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 State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

The district court found “the facts of this case as being a quite serious incident,” primarily because it involved crossing state lines. (3/6/19 Tr., p. 11, L. 17 – p. 12, L. 3.) It also found that Shanholtzer was “not a good candidate for probation at this time ... given the fact that [she had] chosen to not take medications and chosen to discontinue the mental health court program.” (3/6/19 Tr., p. 11, Ls. 7-10.) These findings support the district court’s exercise of discretion in both imposing a sentence of five years with two years determinate and in retaining jurisdiction instead of granting probation.

Shanholtzer argues the district court abused its discretion because she is a good candidate for probation, referencing several parts of the record that she believes support that contention. (Appellant’s brief, pp. 5-9.) In support of that argument she cites primarily to portions of the PSI that were before the district court at the time of the original sentencing, when the district court withheld jurisdiction, while largely ignoring or glossing over subsequent events leading to her

probation violation. (Appellant’s brief, pp. 5-9.) The district court properly concluded that the underlying crime was a serious incident, a finding Shanholtzer does not challenge. Shanholtzer apparently does challenge the factual finding that she was not taking her medication, but does so on the basis of evidence presented at the original sentencing, not the disposition hearing. (Appellant’s brief, p. 5 (claiming Shanholtzer was “taking her prescribed medication” (citing PSI, pp. 17-18).) However, the record shows she stopped taking her medication while on probation in drug court. (PSI, pp. 64, 66, 74.) She states later in the brief that she “struggled with the side effects of the new medications,” but the portions of the record cited in no way support that contention. (Appellant’s brief, p. 8 (citing PSI, pp. 58, 64, 66, 74 (stating that Shanholtzer was not taking medication, but not stating why)).) The record supports the district court’s finding, not Shanholtzer’s contrary claim.

The record does not indicate that Shanholtzer would be a good candidate for probation, much less that the district court abused its discretion in concluding the exact opposite. Nor does the record show that a lesser sentence was the only one reasonable under the circumstances. Shanholtzer has failed to show any abuse of sentencing discretion in the sentence of five years with two years determinate or the decision to retain jurisdiction rather than grant probation.

#### CONCLUSION

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

DATED this 12th day of November, 2019.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of November, 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/ Kenneth K. Jorgensen  
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