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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46947-2019
Plaintiff-Respondent,)	
)	Ada County Case No. CR01-2019-931
v.)	
)	
SEAN M. BEGIN,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Begin failed to show that the district court abused its sentencing discretion when it imposed a sentence of five years with two years determinate upon Begin's conviction for felony eluding?

ARGUMENT

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

A. Introduction

When officers followed Sean M. Begin after he left a house they were watching for suspicious activity, Begin attempted to elude them by driving at speeds in excess of 70 m.p.h. in a

35 m.p.h. zone and 50 m.p.h. in a residential area. (PSI, pp. 155-56.¹) Begin succeeded in eluding the officers for a time. (PSI, p. 156.) When officers found his car again, stopped in a dead end street, Begin fled on foot. (PSI, p. 156.) They learned that Begin was the driver of the vehicle because a passenger, Roberto Lopez, remained with the car. (PSI, p. 156.) Lopez told officers Begin fled because he thought he had outstanding parole warrants. (PSI, p. 156; see also PSI, pp. 157-59 (Begin's parole history).) Begin stated that he fled because Lopez had drugs on him. (PSI, p. 156.)

The state charged Begin with felony eluding for the car chase and misdemeanor resisting and obstructing for running on foot. (PSI, pp. 17-18.) Begin pled guilty to eluding as part of a plea agreement where the state would dismiss the resisting charge and recommend a sentence of five years with two years fixed to run concurrently with previously imposed sentences, executed because of the parole violation. (R., pp. 19-28.) Begin recommended retained jurisdiction "or in the alternative" a sentence of five years with one year determinate. (Tr., p. 21, Ls. 23-25.) The district court followed the state's recommendation and imposed a sentence of five years with two years determinate. (R., pp. 30-34; Tr., p. 25, Ls. 8-17.) Begin filed a timely notice of appeal. (R., pp. 35-37.)

On appeal Begin argues the district court abused its discretion by not following his recommendation and instead following the state's recommendation. (Appellant's brief, pp. 3-5.) Begin has failed to show that the district court erred by following the state's recommendation, a recommendation he obtained through the plea agreement.

¹ Citations to the "PSI" are to the electronic file "ConDocs_Begin.pdf," which contains the PSI and other sentencing documents.

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)).

Whether to retain jurisdiction is a matter within the sound discretion of the district court. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 596-97 (Ct. App.1990).

C. Begin 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 primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant's rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction. State v. Chapel, 107 Idaho 193, 687 P.2d 583 (Ct. App. 1984); State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). There can be no abuse of discretion in a trial court's refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. State v. Beebe, 113 Idaho 977, 979, 751 P.2d 673, 675 (Ct. App. 1988); Toohill, 103 Idaho at 567, 650 P.2d at 709.

The record supports the district court's exercise of sentencing discretion. This was not Begin's first flight from law enforcement. In 2015, while on probation for a prior grand theft conviction, Begin was driving a stolen truck. (PSI, pp. 275, 277, 284, 286.) He drove the truck very fast in icy conditions and crashed, injuring three passengers and killing one passenger. (PSI, pp. 275, 278.) He then fled the scene to avoid being arrested. (PSI, p. 275.) Begin was convicted for vehicular manslaughter, operating a vehicle without the owner's consent, and leaving the scene of an injury accident. (PSI, p. 274.) His prior probation was revoked, he began service of his sentences in July 2016, and was paroled in July of 2018. (PSI, pp. 157-58.) Begin violated his

parole in several ways and absconded from parole in late 2018, and then committed this offense on January 7, 2019. (PSI, pp. 155, 158, 174-77.)

In exercising its discretion, the district court found that Begin's crime was serious because it created a significant risk to others and was similar to past conduct that resulted in a death. (Tr., p. 23, Ls. 9-25; p. 24, L. 19 – p. 25, L. 9.) Thus, Begin's circumstances were different than someone who merely relapsed into using drugs. (Tr., p. 24, Ls. 1-6.) The district court also considered Begin's failed parole. (Tr., p. 24, Ls. 7-18.) Because the record amply supports the district court's conclusion that retained jurisdiction and a lesser sentence was not warranted or appropriate, the district court properly exercised its sentencing discretion.

Begin argues the district court abused its sentencing discretion "in light of the mitigating factors, including his mental health issues, acceptance of responsibility and remorse, and amenability to treatment." (Appellant's brief, pp. 4-5.) This argument lacks merit. First, the district court had sufficient information to conclude that Begin was not a suitable candidate for probation. He had already and recently failed on both probation and parole, both times committing new felonies. Second, the two-year fixed term was reasonable to protect the public from a man willing to put the public at significant risk rather than face the consequences of his parole violations, after having previously killed one person through similar behavior. The district court's analysis is supported by the record and the sentence is reasonable under the facts of the case.

CONCLUSION

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

DATED this 27th day of August, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
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/ Kenneth K. Jorgensen
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