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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46979-2019
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR10-18-12237
)	
ANDREW NEIL YON,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Yon failed to establish that the district court abused its discretion by declining to place him on probation upon imposing a unified sentence of five years, with one and one-half years fixed, for possession of methamphetamine?

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

On December 15, 2018, an officer arrested Yon on outstanding warrants for probation violations in two Bonneville County cases. (R., pp.8-9.) Prior to conducting a pat search, the officer asked Yon “if he had anything on him” that would poke, stick or hurt the officer, and Yon

replied that he had “a syringe in his left breast jacket pocket.” (R., p.9.) When asked “if it was loaded, [Yon] said it was.” (R., p.9.) The officer removed the syringe – which contained “a clear liquid substance” that later tested presumptive positive for methamphetamine – from Yon’s jacket pocket, “as well as a small Ziploc type bag containing a white, crystal like substance.” (R., p.9.) The officer inquired whether Yon had anything else on his person, and Yon responded that he “did not have any more syringes on him.” (R., p.9.) However, upon resuming the pat search, the officer discovered “a second syringe in [Yon’s] left front pants pocket,” and Yon subsequently told the officer that the syringe’s needle was “broken and in a cap inside his pocket.” (R., p.9.) The officer “removed part of the syringe but did not look for the needle in fear of being poked.” (R., p.9.) Officers transported Yon to the jail and notified jail staff that he may have a needle in his pocket, but “[j]ail staff was unable to locate a needle.” (R., p.9.)

The state charged Yon with possession of methamphetamine and possession of drug paraphernalia with intent to use. (R., pp.18-19.) Pursuant to a plea agreement, Yon pled guilty to possession of methamphetamine and the state dismissed the remaining charge. (R., pp.29-34, 58.) Yon was released to Pretrial Services pending sentencing, but he quickly violated the conditions of release by failing to sign up for pretrial release as ordered, failing to appear for an appointment he had scheduled with Pretrial Services, and “not showing up for testing.” (Tr., p.24, Ls.18-19; R., pp.35-36, 39.) The district court issued a warrant for his arrest and, after Yon was arrested on the warrant, he remained incarcerated in the county jail until sentencing. (R., p.4; Tr., p.24, L.15 – p.25, L.3.)

At sentencing, the state recommended a rider with a unified sentence of five years, with two years fixed. (Tr., p.26, Ls.8-15.) Yon requested that the district court place him on probation. (Tr., p.23, L.19.) In sentencing Yon, the district court advised, “The Court thinks that

you do need some help with substance abuse. I think that if I placed you on probation, I would be doing exactly [what] happened last time you were on probation, and you would probably go back fairly quickly to using drugs.” (Tr., p.31, L.22 – p.32, L.11.) The court imposed a unified sentence of five years, with one and one-half years fixed, and retained jurisdiction, stating that it hoped Yon would “get some help, get some treatment [while in the rider program], and get back out and be successful on probation in the future.” (Tr., p.32, Ls.2-12; p.33, Ls.14-16.) Yon, however, indicated that he “d[id]n’t want to do a rider” and, when the district court asked him if he would prefer to go to prison, Yon replied, “Yes.” (Tr., p.33, L.17 – p.34, L.6.) The district court subsequently “relinquish[ed its] jurisdiction” and “imposed the sentence that was given, based upon Mr. Yon’s request.” (Tr., p.34, Ls.8-10; R., pp.53-55.) Yon filed a notice of appeal timely from the judgment of conviction. (R., pp.63-66.)

Yon asserts that the district court abused its discretion by declining to place him on probation in light of his acceptance of responsibility and because he “told the district court during his sentencing hearing that he realizes that he has an addiction to methamphetamine and that he wants to get help.” (Appellant’s brief, pp.2-4.) Yon has failed to establish an abuse of discretion.

Sentencing decisions are reviewed for an abuse of discretion. State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)). 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. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016) (citations omitted). 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; Moore, 131 Idaho at 825, 965 P.2d at 185

(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)).

A trial court's decision regarding whether imprisonment or probation is appropriate is within its discretion. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citations omitted); I.C. § 19-2601(4). The goal of probation is to foster the probationer's rehabilitation while protecting public safety. State v. Cheatham, 159 Idaho 856, ___, 367 P.3d 251, 253 (Ct. App. 2016) (citations omitted). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. Id. (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)). Pursuant to I.C. § 19-2521(1):

The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

(a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(c) A lesser sentence will depreciate the seriousness of the defendant's crime; or

(d) Imprisonment will provide appropriate punishment and deterrent to the defendant; or

(e) Imprisonment will provide an appropriate deterrent for other persons in the community; or

(f) The defendant is a multiple offender or professional criminal.

I.C. § 19-2521(1).

The district court's determination that Yon was not an appropriate candidate for probation was reasonable in light of Yon's long history of substance abuse and criminal offending, his complete disregard for the conditions of community supervision, his belief that he does not need treatment, his failure to rehabilitate or be deterred, and his high risk to reoffend. Yon has a long history of disregarding the law and the terms of community supervision. He has been committing crimes and using illegal drugs for the past 20 years, and his criminal record includes at least 18 prior convictions and seven separate probation violations. (PSI, pp.2, 4-10, 15.¹) When he committed the instant offense in December 2018, Yon had outstanding warrants for probation violations in two different cases, one of which was for failing to even sign up for supervised probation the preceding summer, and, at the time that the presentence report was prepared in this case, he still had a probation violation pending, as well as a new charge for a drug-related offense. (R., p.9; Tr., p.9, Ls.6-13; PSI, pp.8-10, 18.)

Yon has previously participated in the retained jurisdiction program and served time in jail and in prison, but has nevertheless failed to rehabilitate or be deterred. (PSI, pp.4-10.) Despite reporting a two-decade history drug abuse and that he used methamphetamine intravenously "1-2 times daily" during the year preceding the instant offense, Yon he told both the presentence investigator and the substance abuse evaluator that he "does not believe that he is in need of a drug treatment program." (PSI, pp.15, 22.) He also stated that he has "never" participated in a substance abuse treatment program, claiming that 'it has never been a problem

¹ PSI page numbers correspond with the page numbers of the electronic file "Confidential Record Volume 1.pdf."

for [him] to just not use.” (PSI, p.15.) The presentence investigator determined that Yon presents a high risk to reoffend and advised, “His lack of insight into his addiction is considerable and does not bode well for his cooperation with treatment. ... I do not believe [Yon] can be successfully supervised in the community under standard supervision.” (PSI, pp.18-19.)

On appeal, Yon argues that the district court should have placed him on probation because he “told the district court during his sentencing hearing that he realizes that he has an addiction to methamphetamine and that he wants to get help.” (Appellant’s brief, p.3.) However, when the district court asked Yon how he planned to not possess methamphetamine in the future, Yon’s response only response was, “This is a chance for me to change my life. ... I don’t have any desire to use methamphetamine.” (Tr., p.16, L.7 – p.17, L.3.) Although Yon later claimed that he recognizes his addiction and wants treatment, he was unwilling to participate in treatment via a rider and informed the district court that he would rather be sent to prison. (Tr., p.28, Ls.14-15; p.32, Ls.2-7; p.33, L.17 – p.34, L.6.) By declining to participate in the retained jurisdiction program, Yon knowingly foreclosed the opportunity the district court afforded him to be considered for probation at the conclusion of the rider. (Tr., p.32, Ls.16-21; p.33. Ls.14-16.) Such a decision is not consistent with his claim that he wanted to participate in substance abuse treatment.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Yon’s sentence and declining to place him on probation. (Tr., p.29, L.13 – p.32, L.24.) The state submits that Yon 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.)

Conclusion

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

DATED this 8th day of November, 2019.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th 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:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

APPENDIX A

1 trying to run from it. I'm not trying to come in here
2 and make excuses or lie to anyone, you know. I just
3 want a chance on probation. I want a chance to do it
4 properly. You know, if given the chance, I won't let
5 you down. I will do it. That's all I have.

6 THE COURT: All right. Thank you. Are you
7 satisfied with the representation your attorney has
8 provided you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Counsel, is there any legal reason
11 why I should not sentence the defendant today?

12 THE DEFENDANT: Not that I know of, Your Honor.

13 THE COURT: Mr. Yon, based upon your plea of
14 guilty, it is the judgment of this Court that you are
15 guilty of the crime of possession of a controlled
16 substance, methamphetamine. Give me just a second to go
17 back to where -- I had gone back and looked at the
18 Pretrial Services sheet.

19 The Court has the obligation to review this
20 sentence in light of the objectives of criminal
21 sentencing adopted by the Idaho Supreme Court. Those
22 are protection of society, deterrence of you and of
23 others, the possibility of rehabilitation, and
24 punishment or retribution for wrongdoing.

25 I have listened to your statement. I appreciate

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1 that. I have listened to the argument of your counsel,
2 as well as to the argument of the State. And I have
3 also reviewed, as indicated, the Presentence
4 Investigation Report.

5 In this case, the official version and your
6 version are fairly straightforward. You were sitting
7 out at McDonald's at Walmart. They -- you were
8 approached by deputies. You had a warrant. And you had
9 methamphetamine in your pocket.

10 The problem with that is that you were on
11 probation when that occurred, so you were currently on
12 misdemeanor probation for two different cases. Under
13 "Prior Record Comments" on page 9, it talks about how
14 you have been -- you indicate you have been on
15 supervised probation at least three times. The record
16 shows you have been on probation at least seven times,
17 with mixed results.

18 THE DEFENDANT: If I may, Your Honor --

19 THE COURT: Occasionally, you have been
20 successful on probation; other times, you have not been.
21 And in this case, like I said, you were on probation
22 when this crime occurred. The -- when you met with the
23 presentence investigation reporters, it says you were in
24 jail, you were 13 days in max, so you were clearly
25 having some problems in the jail too.

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1 I understand that you applied for a problem
2 solving court, and I think that's good. Unfortunately,
3 you were not accepted due to the fact they were full.
4 So now the choice that I have are either I place you on
5 probation or confine you to prison under Idaho Code
6 19-2521.

7 The summary of this report indicates -- this is
8 on page 17 -- says you acknowledge using methamphetamine
9 daily for the last year. Indicates you failed to see a
10 need for substance abuse treatment and claims he has no
11 problems, you were just using. You indicated that
12 that's not true, you do want treatment. They talk about
13 you have a lack of insight. That's kind of a mixed
14 thing.

15 Then, ultimately, the recommendation of the
16 presentence investigator is that if you could get into a
17 problem solving court, to give you a chance at
18 probation. If not, they recommended a rider. You have
19 already done a rider previously on a previous felony, as
20 well as ultimately did the time in prison after that
21 rider.

22 The Court thinks that you do need some help with
23 substance abuse. I think that if I placed you on
24 probation, I would be doing exactly happened last time
25 you were on probation, and you would probably go back

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1 fairly quickly to using drugs.

2 So based upon all these factors, it's going to be
3 the judgment of this Court that you be sentenced to the
4 custody of the Idaho Department of Correction as
5 follows: For a minimum term of one and a half years,
6 followed by an indeterminate term of three and a half
7 years for a total of five years.

8 I will order a fine in this case of \$1000;
9 standard court costs and payments to the Victims Relief
10 Fund. I will retain jurisdiction in this matter for up
11 to 365 days, place you on rider program. I'm hopeful
12 that you get treatment and some help there. I will
13 order restitution in this case as requested in the
14 amount of \$445.03.

15 You will be taken -- give you credit for time
16 served so far. You'll be taken on a rider program. I
17 know you've done that. However, they have new programs.
18 Hopefully, it will be helpful. I will receive a report
19 about a month before you are done with that rider. If
20 you have done well, I will consider bringing you back
21 and placing you on probation. If you have not done
22 well, if there are issues in the rider program, I will
23 relinquish my jurisdiction and have you do the remainder
24 of your time.

25 Let me advise you you have the right to appeal to

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