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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46986-2019
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-19-2924
	)	
LYDIA PAIGE EVANS,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Evans failed to establish that the district court abused its discretion by imposing a unified sentence of four years, with three years fixed, upon her guilty plea to possession of methamphetamine?

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

Evans pled guilty to possession of methamphetamine and the district court imposed a unified sentence of four years, with three years fixed. (R., pp.31-34.) Evans filed a notice of

appeal timely from the judgment of conviction. (R., pp.42-44.) She also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.35, 38-41.)

Evans asserts her sentence is excessive in light of her substance abuse and motivation for treatment, her past mental health issues, and her purported disappointment in herself. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

“An appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion.” State v. Bonilla, 161 Idaho 902, 905, 392 P.3d 1243, 1246 (Ct. App. 2017). “To show an abuse of discretion, the defendant must show that in light of the governing criteria, the sentence was excessive, considering any view of the facts.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016). “A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case.” State v. Reed, 163 Idaho 681, 417 P.3d 1007, 1013 (Ct. App. 2018). The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. McIntosh, 160 Idaho 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)).

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of four years, with three years fixed, which falls well within the statutory guidelines. (R., pp.31-34.) Furthermore, Evans’ sentence is appropriate in light of Evans’ incessant substance abuse and criminal offending, her failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions, and the risk she poses to the community.

Evans has a long history of criminal behavior. Evans’ mother reported that Evans “was involved with Little River County Juvenile Probation from ages 10 until 18.” (PSI, p.78.<sup>1</sup>) Evans stated that she began using illegal drugs at age 12 and that she “sold drugs in the past ... in an effort to both support her habit and make a profit.” (PSI, pp.83-85.) Her criminal record includes convictions for domestic battery, violation of a no contact order, invalid driver’s license, misdemeanor possession of a controlled substance, possession of drug paraphernalia, and a prior conviction for felony possession of a controlled substance. (PSI, pp.2-3, 77-78.) Evans has been afforded multiple opportunities to rehabilitate in the community; however, she performed poorly while on community supervision and failed to demonstrate any rehabilitative progress. (PSI, pp.3-4, 26, 28-30, 77-79.) She was placed on misdemeanor probation in 2014, but ““did not complete anything ordered,”” absconded supervision, and committed several new drug crimes. (PSI, pp.77-79.) She was subsequently convicted of possession of methamphetamine and was placed on felony probation, but she again chose to violate her probation by absconding

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Evans 46986 psi.pdf.”

supervision. (PSI, pp.3, 75-76, 78.) Evans then completed the rider program and was reinstated on probation in July 2017; however, by August 2017, she had once again violated her probation by absconding supervision. (PSI, p.3.) Evans was placed in Drug Court in December 2017, but “[s]ubsequent compliance failures by Ms. Evans resulted in the revocation of her probation term and imposition of sentence in May 2018.” (PSI, p.3.) Evans was granted parole on December 4, 2018, and she “immediately failed to comply and absconded supervision” yet again. (PSI, pp.3-4.) She also violated her parole by continuing to use illegal drugs, failing to participate in substance abuse treatment, and committing the instant felony drug offense. (PSI, pp.3-4.)

On appeal, Evans argues that her sentence is excessive because she abuses illegal drugs and is motivated to participate in treatment. (Appellant’s brief, p.4.) However, as the district court noted, Evans has abused illegal drugs for more than half of her life, and she had “repeated opportunities to address her addictions outside the penal system” and “progressed through every available alternative to long-term incarceration, including probation, the rider program, and drug court”; nevertheless, her substance abuse, criminal offending, and absconding behaviors have continued unabated, “demonstrat[ing] her willingness to disregard the law to satisfy her addiction[ and] making it clear that [she] cannot resolve her substance abuse issues on supervised release.” (R., pp.38-40; see also PSI, pp.3-4, 6, 8 28-30.) The district court concluded, “Without significant intervention, [Evans] is extremely likely to continue using, putting both [Evans] and society at risk. [Evans’] best chance to address her addictions, avoid committing future crimes, and eventually reunite with her children is a lengthy term of incarceration.” (R., p.40.)

Evans also argues that her sentence is excessive because she has mental health issues. (Appellant’s brief, pp.4-5.) Although Evans reported – during her 2016 presentence interview – that she was diagnosed with “Bipolar Disorder, depression and anxiety *during her adolescence*,”

she indicated that these were “past” diagnoses and that she had “not had any mental health treatment since she was 18 years old.” (PSI, pp.82-83 (emphasis added).) Moreover, in Evans’ most recent mental health evaluation, completed in March 2019, the evaluator determined that Evans “does not present with SMI or other MH needs,” and “therefore there are no mental health treatment recommendations.” (PSI, p.21.) Evans did not object to the mental health evaluator’s conclusion or otherwise address any mental health issues or need for mental health treatment, though she was provided the opportunity to do so at the time of sentencing. (See generally Tr., pp. 20-29)

At sentencing, the district court articulated its reasons for imposing Evans’ sentence. (Tr., p.26, L.21 – p.29, L.11.) The state submits that Evans has failed to establish an abuse of discretion, for the reasons set forth above and 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 Evans’ conviction and sentence.

DATED this 11th day of October, 2019.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th 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:

ELIZABETH ANN ALLRED  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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

# APPENDIX A

1 given up hope. I would like to give her or see  
 2 her be given the opportunity that inspires hope  
 3 and sobriety in the future.  
 4 THE COURT: Ms. Evans, you don't have to say  
 5 anything. You have a right to remain silent, but  
 6 you also have a right to speak. If there's  
 7 anything you would like to say, this is your time.  
 8 Is there anything you would like to  
 9 say?  
 10 THE DEFENDANT: No.  
 11 THE COURT: Do you see hope in your future?  
 12 THE DEFENDANT: I don't know.  
 13 THE COURT: I'm glad that you're crying  
 14 because it's pretty sad.  
 15 Your attorney is pretty tough. I see  
 16 her week after week, for years. And to see her  
 17 stand there and I see her heartbroken for you, it  
 18 says something to me. So I'm glad that you  
 19 understand that you're worth saving.  
 20 THE DEFENDANT: Thank you.  
 21 THE COURT: I need to go through your  
 22 history. And the reason I have to do that is  
 23 because on paper, you are, quote/unquote, "a mere  
 24 drug offender." So I need to go through this  
 25 history.

1 refusing because you're mad at everybody, which I  
 2 don't blame you, or you're refusing because you're  
 3 using drugs, either way it's not great.  
 4 I have been doing this a long time, and  
 5 I see folks that come back. And I see you at age  
 6 63, having done prison on the installment plan.  
 7 And the defense attorney will stand up to me and  
 8 say, "Judge I wish somebody would have hit her  
 9 harder early on."  
 10 And that's the best thing that I can do  
 11 for you. So when I send you to prison as a,  
 12 quote/unquote, "mere drug offender," it's because  
 13 I believe that you're worth saving. I believe  
 14 this is your best chance to not do prison on the  
 15 installment plan, if you decide that's what you  
 16 want to do. You may decide that you want to spend  
 17 your life in prison. I hope you don't, but it's  
 18 your choice.  
 19 Based on your plea of guilty to  
 20 possession of a controlled substance, I'm imposing  
 21 a four-year sentence, consisting of three years  
 22 fixed, followed by one year indeterminate. That  
 23 is consecutive to Judge Southworth's sentence.  
 24 That is a long time in prison for a,  
 25 quote/unquote, "mere drug offense." I'm trying to

1 In 2015, you pled guilty before  
 2 Judge Southworth in Canyon County to possession of  
 3 a controlled substance. He issued an order  
 4 withholding judgment, placed you on probation, and  
 5 you absconded. In 2016, you went on a period of  
 6 retained jurisdiction. In 2017, July, you were  
 7 released from the Rider to probation. And then  
 8 within a month, on August 2017, you already had a  
 9 second probation violation again for absconding.  
 10 As you know, because you were living  
 11 this, you were then referred to Drug Court. You  
 12 flopped Drug Court. And they had no choice. They  
 13 had -- well, they had a choice, but they were  
 14 trying, probably, to save your life. So they  
 15 imposed sentence in May of 2018.  
 16 May of 2018 to December 4th of 2018,  
 17 you're sitting in custody. And December 4, 2018,  
 18 they parole you. Within a month and a half,  
 19 January 2019, you have got your first formal  
 20 parole violation filed. And then I have got you  
 21 in custody, refusing to submit to a UA. That was  
 22 February 26th of 2019. That makes me concerned  
 23 that you might be using drugs in custody. Either  
 24 way, even if you're clean, it's not a prosocial  
 25 thing to refuse to submit to a UA. So if you're

1 save your life.  
 2 Do you have any questions? I see you  
 3 shaking your head no.  
 4 THE DEFENDANT: No.  
 5 THE COURT: Court costs only, no public  
 6 defender reimbursement, no fine, and no  
 7 restitution. There's \$100 in labs that have been  
 8 requested, but I'm specifically declining to  
 9 order.  
 10 Mr. Clinger, is there anything I have  
 11 overlooked here at sentencing?  
 12 MR. CLINGER: I don't think so, Your Honor.  
 13 THE COURT: Ms. Comstock?  
 14 MS. COMSTOCK: No, Your Honor.  
 15 THE COURT: Take care of yourself.  
 16 (The proceedings concluded.)  
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