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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 46734-2019
Plaintiff-Respondent,	)	
	)	Bonner County Case No.
v.	)	CR-2017-3263
	)	
STEVEN RONALD ENNIS, JR.,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
	)	

ISSUE

Has Ennis failed to show the district court abused its sentencing discretion?

STATEMENT OF THE CASE

The state charged Steven Ronald Ennis, Jr., with lewd conduct with a minor child under sixteen, two counts of sexual abuse of a minor under sixteen, a persistent violator sentencing enhancement, and a repeat sexual offender sentencing enhancement. (R., pp.114-17.) At trial, the alleged victim testified that Ennis sexually abused her when she was in sixth or seventh grade.

(Tr., p.442, L.8 – p.456, L.18.[1]) Specifically, she testified that Ennis would routinely have her join him on a bed, either with or without her clothes on, and watch pornography with him while he masturbated. (Tr., p.442, L.20 – p.443, L.4.) She testified that sometimes he touched her breasts, thighs, and vagina, and sometimes she would touch his penis. (Tr., p.449, L.25 – p.450, L.24.) She told the jury she knew it was wrong but she did not tell her mom because she "felt so scared to express what was happening." (Tr., p.451, Ls.18-23.) She eventually told her friend, which led to Ennis's arrest. (Tr., p.453, Ls.8-13.) The jury convicted Ennis on all counts. (R., pp.318-19.)

Ennis chose not to participate in any of the presentence evaluations to prepare for sentencing. (Tr., p.233, L.11 – p.234, L.4, p.242, L.23 – p.243, L.5.) He also refused to attend the sentencing hearing. (Tr., p.241, L.10 – p.242, L.5.) The district court imposed an aggregate sentence of life in prison with twenty years fixed. (Tr., p.251, L.18 – p.252, L.7; R., pp.361-64.) Ennis timely appealed. (R., pp.367-70.)

STANDARD OF REVIEW

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).

ARGUMENT

Ennis Has Failed To Show That The District Court Abused Its Sentencing Discretion

The district court did not abuse its discretion when it imposed an aggregate sentence of life in prison with twenty years fixed. It is presumed that the fixed portion of the sentence will be the

[1] For all transcript citations, the page number refers to the PDF pagination of the transcript file that contains all of the transcripts.

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) (holding district 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)).

Here, the imposed sentences fit within the statutory limits. For count one, the statutory maximum for lewd conduct with a child is life in prison, see I.C. § 18-1508, and the district court imposed a sentence of life with twenty years fixed (R., p.361). For counts two and three, the statutory maximum for sexual abuse is twenty-five years, see I.C. § 18-1506, and the district court imposed concurrent sentences of twenty-five years with twenty years fixed (R., p.361). That

leaves Ennis the burden of proving that his sentence is excessive under any reasonable view of the facts. See McIntosh, 160 Idaho at 8, 368 P.3d at 628. He cannot do so.

Ennis's sentences are reasonable. The district court expressly stated that it considered the protection of society, deterrence, rehabilitation, and retribution in fashioning Ennis's sentences. (Tr., p.251, Ls.11-17.) As the district court observed, "Ennis had at least five prior felony convictions," he "[w]as sophisticated enough to use other people's identities to commit crimes," and "really [fit] the definition of a career criminal." (Tr., p.250, L.23 – p.251, L.9.) The district court found that Ennis "hasn't taken any responsibility for his actions, he hasn't shown any kind of remorse." (Tr., p.251, Ls.9-10.) And the district court found that Ennis could not be rehabilitated and would continue to pose a risk to society even after the fixed term of his sentence: "I think it's unlikely that Mr. Ennis would ever be released from custody. But if he were, if he, after 20 years, then he needs to be monitored because he is such a risk given his past history." (Tr., p.251, L.23 – p.252, L.2.) Thus, the district court did not abuse its discretion when it imposed an aggregate sentence of life with twenty years fixed.

Ennis erroneously argues that the district court abused its discretion because it did not adequately consider his poor physical health and advanced age. (Appellant's brief, pp.5-6.) As a preliminary matter, the state notes that the record is unclear as to Ennis's exact health issues because Ennis refused to participate in the pretrial evaluations or attend the sentencing hearing. The district court had little evidence to consider with respect to Ennis's health other than Ennis's own self-serving "complain[ts]." (Tr., p.242, Ls.16-22; see Appellant's brief, p.6 (reciting health issues conveyed by Ennis at trial).)

But, even assuming Ennis suffers from all of the health problems he described to the jury, those health problems and his age did not require the district court to impose a lesser sentence.

See, e.g., State v. Turner, 136 Idaho 629, 636, 38 P.3d 1285, 1292 (Ct. App. 2001) (holding life in prison with thirty years fixed was "not unreasonable or excessive" where defendant had "poor health" because "a lengthy period of incarceration was necessary . . . to adequately protect society"); State v. Larsen, 123 Idaho 456, 461-62, 849 P.2d 129, 134-35 (Ct. App. 1993) (holding "poor health" of defendant convicted of lewd conduct did not require a different sentence); State v. Johnston, 123 Idaho 222, 226-27, 846 P.2d 224, 228-29 (Ct. App. 1993) (affirming district court's refusal to modify sentence based, in part, on defendant "suffering from poor health" because "the district court was concerned with arriving at a sentence which would serve the primary goal of protecting society"); State v. Howard, 119 Idaho 100, 102-03, 803 P.2d 1006, 1008-09 (Ct. App. 1990) (affirming district court's rejection of defendant's argument that he deserved lesser sentence because he "was [redacted] and . . . not in good health" even where he "introduced medical reports showing his poor health"); State v. Rankin, 115 Idaho 728, 730, 769 P.2d 605, 607 (Ct. App. 1989) (giving "physical ailments" little weight where "there is no assurance that they would prevent commission of another violent crime in the future"); accord State v. Gutierrez, No. 40651, 2013 WL 6869861, at *1 (Idaho Ct. App. Dec. 31, 2013) (affirming fixed life sentence for lewd conduct despite defendant's "advanced age and poor physical health" because the district court was concerned he "was still creating victims"). The district court heard Ennis's counsel's argument that Ennis would not pose a risk to society in fifteen years because of his health and age (Tr., p.249, L.22 – p.250, L.2); it simply rejected it.

The district court properly found that, even at an old age, Ennis would still pose a risk to society: "I think it's unlikely that Mr. Ennis would ever be released from custody. But if he were, if he, after 20 years, *then he needs to be monitored because he is such a risk given his past history*." (Tr., p.251, L.23 – p.252, L.2 (emphasis added).) As the victim's testimony at trial in this case

illustrated, Ennis does not need physical strength or good health to prey on children. (See, e.g., Tr., p.448, Ls.2-9 (explaining she went along with the abuse because Ennis "would just talk trash about my mom and how I was going to get in trouble, how my mom would get in trouble for what he's doing").) Because the district court properly found that Ennis would still pose a risk to society even after his fixed prison term, Ennis's poor health and advanced age did not require a lesser sentence than the sentence imposed—especially in light of Ennis's complete lack of remorse and lack of potential for rehabilitation.

CONCLUSION

The state respectfully requests this Court affirm the district court's judgment of conviction.

DATED this 15th day of January, 2020.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of January, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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