LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

ANDREW V. WAKE
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4115
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. LEO MICHAEL INWOOD, Defendant-Appellant.	)	NO. 46834-2019 Bonner County Case No. CR-2017-5238 RESPONDENT'S BRIEF

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

ARGUMENT

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

A. Introduction

On September 12, 2017, deputies in Priest River, Idaho were called to investigate a reported weapons violation. (PSI, p. 34.[1]) Two teenage boys, A.P. and D.J. were fishing along the Priest

[1] Citations to the "PSI" are to the electronic file "Appeal Vol 1 – Confidential Documents.pdf," which contains the PSI and other sentencing documents.

River when they were repeatedly fired on from across the river by two men. (PSI, p. 35.) A.P. was hit in the leg, after which the two escaped on their scooter parked nearby. (Id.) Police responded to the location from which the shots had been fired and discovered Eric Wood sleeping. (Id.) A neighbor stated that he heard approximately ten shots in rapid succession, followed by several more shots from a weapon firing a different caliber round. (Id.) The neighbor also stated that he saw a gray Dodge Dakota truck leave at a high rate of speed just after the firing ceased. (Id.) Mr. Wood stated that the truck belonged to Inwood. (Id.) After he was contacted by police, Inwood admitted that he removed the firearms from the scene of the shooting and the firearms were later recovered from his home. (Id.)

Inwood was charged with a felony violation of Idaho Code § 18-2603, unlawful concealment of evidence, by "willfully conceal[ing] a firearm knowing that [it] was about to be discovered in an investigation authorized by law and with intent to prevent it from being discovered," and with a misdemeanor violation of Idaho Code § 18-3306, injuring another by discharge of aimed firearms, by intentionally, but not maliciously, discharging a firearm aimed at A.P. and injuring him thereby. (R., pp. 117-18.) He pled not guilty to both charges. (R., p. 121.)

At trial, Mr. Wood testified that he and Inwood were drinking when they began firing a shotgun and a handgun at what he believed was a box across the river. (Trial Tr., p. 94, L. 6 – p. 95, L. 14; p. 104, L. 2 – p. 106, L. 1.[2]) He testified that they each fired from both firearms. (Id.) He testified that he believed that he took the last shot when they heard yelling from across the river where they had been shooting and they observed two kids jump on a scooter and drive away. (Trial

[2] The file titled "Appeal Vol 1 – Transcripts.pdf" contains both the transcript of the preliminary hearing and the transcript of the two-day jury trial. Those two transcripts are separately paginated. The transcript of the two-day jury trial begins at page 128 of the pdf. References to "Trial Tr." are to the transcript of the jury trial.

Tr., p. 106, L. 2 – p. 108, L. 4.) According to Mr. Wood, Inwood then immediately grabbed the handgun, began gathering up the shells, instructed Mr. Wood to get in the truck, and said, "'We've got to get out of here.'" (Trial Tr., p. 107, Ls. 9-11; p. 111, Ls. 1-11 (quoting Inwood).) Mr. Wood stated that he was "'not going anywhere'" and that he was "'staying here to take my medicine.'" (Trial Tr., p. 111, Ls. 11-16.) Inwood put both guns in his truck, as well as the spent casings and additional rounds, and left. (Trial Tr., p. 111, L. 13 – p. 112, L. 18.) Inwood later testified that he took the guns because Wood was inebriated, it "didn't feel safe leaving them there," and he did not realize anyone had been hit. (Trial Tr., p. 308, Ls. 8-25.)

After the state presented its case, Inwood moved to dismiss both counts under Idaho Criminal Rule 29. (Trial Tr., p. 276, L. 23 – p. 278, L. 18.) The district court granted the motion to dismiss the misdemeanor charge of injuring A.P. by discharging an aimed firearm, concluding that there was not sufficient evidence that Inwood had fired the shot that injured A.P., but denied the request to dismiss the charge of unlawful concealment of evidence. (Trial Tr., p. 279, L. 12 – p. 280, L. 10.)

Inwood was convicted by a jury of that charge. (R., p. 263.) At sentencing, the state recommended a unified sentence of five years with three years fixed. (Tr., p. 12, Ls. 2-6.[3]) Inwood requested a unified sentence of three years with one year fixed, and asked that the sentence be suspended and that he be placed on probation for two years. (Tr., p. 15, L. 20 – p. 16, L. 3.) The district court imposed a unified sentence of four years with two years fixed, suspended that sentence, placed Inwood on two years of probation, and required that he serve 120 days in jail as a condition of probation. (R., pp. 268-74.) Inwood timely filed a notice of appeal. (R., pp. 301-

[3] References to "Tr." are to the transcript of the sentencing hearing, held February 25, 2019, and contained in the file titled "Transcript – Sentencing held 02-25-2019 K Plizga.pdf."

03.)

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 looks to whether the district court: "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

C. Inwood Has Shown No Abuse Of The District Court's Discretion

Where a sentence is within statutory limits, 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 has met this burden, this 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 is excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate

to accomplish any of the sentencing goals of protecting society, deterrence, rehabilitation, or 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)).

Inwood acknowledges that his sentence is within statutory limits. (Appellant's brief, p. 4; see also I.C. § 18-2603 (providing for a maximum of five years in prison for the unlawful concealment of evidence).) Therefore, he must show that—although he recommended, and therefore presumably considered reasonable, a sentence of three years, with one year fixed, suspended in favor of two years of probation (Tr., p. 15, L. 20 – p. 16, L. 3)—no reasonable person could think that a sentence of four years with two years fixed, suspended in favor of two years of probation, was necessary to serve one of the sentencing goals. To try to make that case, he argues that the district court did not properly consider the letters of support submitted by family and friends, and did not properly consider his character as mitigating. (Appellant's brief, pp. 4-5.)

The district court considered both of the mitigating factors to which Inwood points and weighed them against other considerations to determine an appropriate sentence. The district court acknowledged the letters of support submitted by friends and family (Tr., p. 6, Ls. 14-22) and, looking to the PSI that discusses the alleged indications of his high character (PSI, pp. 40-41), concluded that it was not appropriate to send Inwood to prison (Tr., p. 17, L. 22 – p. 18, L.2). The district court also noted, however, that Inwood had "never really taken responsibility." (Tr., p. 17, Ls. 3-11.) He continued to deny responsibility in his interview with the presentence investigator, claiming that Mr. Wood had lied at trial and that he had taken the weapons from the scene for safety reasons and not, as the jury found, to conceal evidence. (PSI, p. 37.) The court also pointed

to the fact that this was Inwood's second felony conviction. (Tr., p. 17, Ls. 16-21; PSI, pp. 37-38 (reflecting a conviction for grand theft, as well as two misdemeanor DUI convictions).)

As the district court correctly stated, its "job is to balance everything in this case." (Tr., p. 16, L. 16 – p. 17, L. 2.) The district court properly did so and Inwood is simply asking this Court to reweigh the district court's sentencing determination, something it does not do. See State v. Windom, 150 Idaho 873, 879, 253 P.3d 310, 316 (where appellant claimed that the district court inadequately considered allegedly mitigating factors, holding that this Court's "role is not to reweigh the evidence considered by the district court"); State v. Thurlow, 152 Idaho 256, 261, 269 P.3d 813, 818 (Ct. App. 2011) ("Thurlow requests that this Court reweigh the evidence presented before the district court and arrive at a different conclusion. However, as mentioned above, to do so would be contrary to our established standards of review.").

CONCLUSION

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

DATED this 17th day of December, 2019.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of December, 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

__/s/ Andrew V. Wake__
ANDREW V. WAKE
Deputy Attorney General