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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 46945-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2018-1179
)	
CANDACE JOY BARNES,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

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

STATEMENT OF THE CASE

On January 28, 2018, officers stopped a car that had been reported stolen. (PSI, p.3.) Candace Joy Barnes was the driver of the vehicle, and dispatch informed the officers that she had three warrants for failure to appear. (PSI, p.3.) A drug dog alerted on the car, and a search of the car produced “a loaded syringe with a clear liquid that tested positive for methamphetamine.”

(PSI, p.3.) The state charged Barnes with possession of methamphetamine, possession of drug paraphernalia, and possession of stolen property. (R., pp.28-29.)

As the result of a plea agreement, Barnes pled guilty to possession of methamphetamine and the state dismissed the two misdemeanor charges. (R., pp.51-58.) The district court initially released Barnes on bond but revoked the bond at a bond revocation hearing after Barnes failed to appear for her PSI appointments. (R., p.65.) When the district court revoked Barnes's bond, Barnes "ran out of the courtroom." (R., p.65.) "A member of the public assisted in trying to stop her in the courthouse stairwell." (PSI, p.46.) Barnes kicked and bit the marshal, escaped, and hid in another courtroom until she was found. (PSI, p.46.)

The district court imposed a sentence of seven years with a fixed term of two and one half years. (R., p.73.) Barnes timely appealed. (R., pp.75-77.)

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

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

The district court did not abuse its discretion when it imposed a sentence of seven years with a fixed term of two and one half years. It is presumed that the fixed portion of the sentence will be the 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)).

The imposed sentence fits within the statutory limit. The statutory maximum for possession of methamphetamine is seven years, see I.C. § 37-2732(c), and the district court imposed a sentence of seven years with a fixed term of two and one half years. That leaves Barnes 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. She cannot do so.

The length of Barnes’s sentence is reasonable. As the district court observed, Barnes has a lengthy criminal history, which includes four prior felonies. (Tr., p.44, Ls.11-12; see PSI, pp.4-7.) And, while the district court recognized Barnes has a substance abuse problem, it also properly

found that Barnes has failed to take advantage of the many opportunities she has been given for treatment:

I note that in the past you had been given supervised release, which you violated. You violated on your burglary charge by using methamphetamine. You got a rider. You got released, and then you didn't follow through with your treatment. You were paroled again. You kept using. Eventually, you absconded.

I see a pattern of efforts, short-term efforts, and then using again, absconding again, taking off again. I see situations where you were given opportunities at both a rider and at extensive programming. And so far, what I see is a lot of bad judgment.

(Tr., p.44, L.18 – p.45, L.5.) The district court also noted that Barnes's behavior at the bond revocation hearing, running from the courtroom and fighting with a marshal, further illustrated Barnes's poor judgment in dealing with her criminal and substance abuse problems. (Tr., p.45, Ls.6-19.)

Despite stating the issue on appeal as whether the district court imposed an "excessive sentence" (Appellant's brief, p.3), Barnes does not argue in her opening brief how the sentence imposed was excessive (Appellant's brief, pp.3-6.) Instead, Barnes argues only that "the district court abused its discretion by not retaining jurisdiction." (Appellant's brief, pp.4-5.) He is wrong.

Retaining jurisdiction is simply "a means of extending the time to evaluate a defendant's suitability for probation." State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). Thus, "[t]here 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. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005).

The information presented to the district court proved that Barnes was not a suitable candidate for probation. In addition to her lengthy criminal history, Barnes tested positive for methamphetamine "steadily" while on pretrial release, including "November 4, November 6, November 18th, November 28th" and "December 1st." (Tr., p.44, Ls.12-17.) She had previously

violated the terms of supervised release by using methamphetamine. (Tr., p.44, Ls.18-21.) She failed to follow through on multiple treatment opportunities. (Tr., p.44, Ls.21-23; PSI, p.7.) And she absconded while her parole officer was trying to help her. (Tr., p.46, Ls.1-6.) Furthermore, she repeatedly exercised “terrible judgment” in trying to deal with her problems, including when she ran from the courtroom and attacked a marshal during her bond revocation hearing. (Tr., p.45, Ls.6-19.) As the district court explained to Barnes:

I think you need time. I also think you need to work on your skills, and I don't see that as happening in any other setting than a structured setting. Because, you know, had it just stayed at the level of using and us having a lot of proof of using, that might have been a somewhat different picture.

But, you know, by the time you get to where it's five felonies, almost any judge who looks at it is going to say whatever we did before wasn't enough because it's— while it's always a good idea to try treatment if people are willing to work at it, there's a point where if a person is not willing to work, that is kind of the end of the line on ideas that we have.

(Tr., p.46, L.16 – p.47, L.5.) Given Barnes's extensive criminal history, her squandered treatment opportunities, and her poor judgment in dealing with her legal and substance abuse problems, the district court did not abuse its discretion by refusing to retain jurisdiction.

For the first time on appeal, Barnes argues that her mental health issues caused her to run out of the courtroom at her bond revocation hearing and to attack the marshal. (Appellant's brief, p.5.) She made no mention of her mental health issues when apologizing to the district court for running out of the courtroom. (Tr., p.41, L.10 – p.42, L.8.) And her new cause and effect argument finds no support in the record. Barnes cites only page eleven of the PSI, which is presumably a reference to her statement to the presentence investigator that she stopped taking her medications in 2015—more than three years before the bail revocation hearing. (PSI, p.11.) It is quite a stretch to suggest that because Barnes stopped taking her medication in 2015, all of her actions since that time were the result of her mental health issues. Moreover, nothing in the record suggests that it

was anything but Barnes’s own choices that caused her to stop taking her medication. (See Tr., p.42, Ls.2-5 (“I’m not blaming any of my actions on my drug use because it’s been my lack of actions in my life that have allowed me to stop being a responsible person.”). In any event, Barnes’s behavior on the day of her bond revocation hearing was not the only basis for the district court’s refusal to retain jurisdiction. (See Tr., p.44, L.11 – p.48, L.6 (emphasizing, in addition to Barnes’s behavior at the bond revocation hearing, Barnes’s extensive criminal history, refusal to receive treatment, decision to abscond from a parole officer trying to help her, and positive tests for methamphetamine during pretrial release). The district court did not abuse its sentencing discretion.¹

CONCLUSION

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

DATED this 2nd day of January, 2020.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

¹ Barnes cites a news article for the proposition that Idaho has since abandoned one of the treatment programs offered to Barnes “because it was not effective.” (Appellant’s brief, p.5 n.3.) This Court should not consider the news article in reviewing the district court’s sentencing decision because the news article was not presented to the district court and this Court cannot take judicial notice of the news article given that the efficacy of a specific treatment program is “subject to reasonable dispute.” I.R.E. 201; see State v. Hansen, 156 Idaho 169, 176, 321 P.3d 719, 726 (2014) (explaining appellate court reviewing sentence “conducts an independent review of the record *based on the information known to the sentencing court* at the time the sentence was imposed” (emphasis added)).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of January, 2019, 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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/s/ Jeff Nye
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