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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 47017-2019
Plaintiff-Respondent,)	
)	Bannock Co. Case No.
v.)	CR-2017-9259
)	
ANTONIO J. GALVAN,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

Issue

Has Galvan failed to establish the district court abused its discretion by imposing a unified 10-year sentence with five years fixed, and retaining jurisdiction, upon Galvan’s guilty plea to aggravated driving under the influence?

Galvan Has Failed To Establish The District Court Abused Its Sentencing Discretion

Galvan, while driving under the influence of Xanax, struck a car from behind, seriously injuring the driver, Douglas Stander. (12/17/18 Tr., p.9, L.17 – p. 10, L.6; PSI, pp.1, 4.) According to the presentence report, Mr. Stander “was treated at the hospital for a fractured sternum, a bruised heart, as well as several lacerations and abrasions.” (PSI, p.3.) The state charged Galvan with

aggravated driving under the influence. (R., pp.52-54.) Galvan pled guilty and the district court imposed a unified 10-year sentence with five years fixed, and retained jurisdiction for one year. (R., pp.269-270, 285-288.) Galvan filed a timely notice of appeal from the judgment. (R., pp.291-303.)

On appeal, Galvan asserts his sentence is excessive. (Appellant's Brief, pp.3-6.) In support of his argument, Galvan cites, as mitigating factors, (1) this is his first felony conviction, (2) his acceptance of responsibility for, and remorse over, the accident and the victim's injuries, (3) his agreement to pay restitution, and (4) his struggles with severe mental health problems (major depressive disorder, anxiety disorder, ADHD disorder, and bipolar disorder). (Id., pp.4-5.) Despite such mitigating factors, the record supports the sentence imposed.

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 the fixed portion of the sentence will be the defendant's probable term of confinement. Oliver, 144 Idaho at 726, 170 P.3d at 391 (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 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)). To demonstrate a clear abuse of discretion, the appellant must show the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id. The protection of society is, and must always be, the ultimate goal of any sentence. State v. Moore, 78

Idaho 359, 363, 304 P.2d 1101, 1103 (1956). Accordingly, appellate courts must take into account “the nature of the offense, the character of the offender, and the protection of the public interest.” State v. Hopper, 119 Idaho 606, 608, 809 P.2d 467, 469 (1991); see also I.C. §19-2521.

The maximum penalty for aggravated driving under the influence is 15 years. I.C. § 18-8006. The district court imposed an underlying unified sentence of 10 years with five years fixed, which falls well within the statutory guidelines. (R., pp.285-288.) At the sentencing hearing, Mr. Stander outlined the injuries (and the attendant medical issues) he suffered as a result of Galvan’s offense: five broken ribs, a concussion, bleeding inside his chest, severe contusions and swelling on his lungs, a buckled sternum that was broken in two places, a dislocated shoulder, a shredded shoulder tendon that had to be removed, severe bruising all over his body, numerous teeth that were broken and chipped, and glass that was embedded in his hand. (*See generally* 4/1/19 Tr., p.11, L.16 – p.23, L.6.)

After Mr. Stander made his statement, the district court applied the four sentencing factors and sentenced Galvan as follows:

The number one factor I'm required to take into account is the protection of the community. And Mr. Galvan, the reality here is that you do have some mental health issues, you have some substance abuse issues, but you tend to self-medicate your problems with illegal drugs. You were on Xanax that day unprescribed, and as a result of that you were impaired, and as a result of that you caused this serious accident. And that's a serious event that caused significant injuries and damages. And my job – one of my jobs is to do what I can to protect the community from that happening again. And related to that particular issue is the question of deterrence. That is, what sentence should I impose that sends a message, not only to you, but to anybody else in similar circumstances? Should I -- what should I do relative to that?

And then, of course, there is a punishment factor. Crimes are crimes. They're crimes against society, and there's a punishment element that has to be taken into account. . . .

. . .

Ultimately we have a serious crime with significant resulting injuries. It's an aggravated DUI. . . .

But it is a serious crime, and there are serious consequences to be experienced. And I appreciate the fact, Mr. Galvan, that you are expressing remorse and some accountability for that. That doesn't always happen, so I do appreciate the fact that you've done that today. That means something. I don't know if it means anything to Mr. Stander yet, but ultimately it means something in terms of my analysis.

. . .

. . . So this is what I'm going to do. I'm going to impose a unified sentence of ten years with five fixed and five indeterminate. However, I'm going to retain jurisdiction for 365 days. I'm going to send you on a rider which, over the course of the next six or seven months, will impose some treatment while in prison, and then I'll get a report and they'll tell me what they think should happen relative to you.

To be honest with you, I'll give you a – I'll be as candid as I can, Mr. Galvan. I seriously considered just putting you in prison. This is a serious case. But I'm going to do a rider because you're a young man. You've got some problems. These behaviors are serious, but by the same token, the rider will give me a better assessment as to what I should really do with you going forward.

(4/1/19 Tr., p.27, L.24 – p.33, L.2.)

Based on the above, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Galvan's sentence. The state submits that Galvan has failed to establish an abuse of discretion.

CONCLUSION

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

DATED this 2nd day of December, 2019.

/s/ John C. McKinney
JOHN C. MCKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd 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:

REED P. ANDERSON
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/s/ John C. McKinney
JOHN C. MCKINNEY
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