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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47065-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-18-22397
)	
RAFAEL IVAN AVREU GARCIA,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

Has Garcia failed to establish that the district court abused its discretion by imposing concurrent unified sentences of 17 years, with five years fixed, for trafficking in heroin; 17 years, with five years fixed, for trafficking in methamphetamine; and five years fixed for unlawful possession of a firearm?

ARGUMENT

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

A. Introduction

On May 11, 2018, officers executed a search warrant on Garcia's home and found a case containing 10 grams of heroin, a microscope with "a brown tar substance" that tested

presumptive positive for heroin, a case containing 25 grams of methamphetamine, a baggie of 3.9 grams of methamphetamine, a baggie of 0.6 grams of cocaine, a total of 15 grams of marijuana, 24 Alprazolam pills, two packages of “new baggies,” a digital scale, a “[s]uspected drug ledger,” a .40 caliber handgun “with a chambered round and magazine holding ten additional rounds,” 29 additional .40 caliber bullets, five glass pipes, a “glass pipe with tube,” a spoon with residue, a plastic “snort tube,” several laptop computers, three cellular phones, \$315 cash in Garcia’s wallet, \$2,270 cash in Garcia’s shorts pocket, and \$26,319 cash “hidden inside the box spring underneath the mattress.” (PSI, pp. 3-4.¹)

A grand jury indicted Garcia for trafficking in seven grams or more of heroin, trafficking in 28 grams or more of methamphetamine, possession of cocaine, manufacture or possession of drug paraphernalia with intent to deliver, possession of marijuana, and possession of drug paraphernalia. (R., pp. 30-32.) The indictment was later amended to include a charge of unlawful possession of a firearm. (R., pp. 46-48.) Pursuant to a plea agreement, Garcia pled guilty to a reduced charge of trafficking in 2 grams or more of heroin, to trafficking in 28 grams or more of methamphetamine, and to unlawful possession of a firearm, and the state dismissed the remaining charges. (R., pp. 86, 95; 2/15/19 Tr., p. 15, L. 22 – p. 17, L. 8.) The district court imposed concurrent unified sentences of 17 years, with five years fixed, for trafficking in heroin; 17 years, with five years fixed, for trafficking in methamphetamine; and five years fixed for unlawful possession of a firearm. (R., pp. 117-20.) Garcia filed a notice of appeal timely from the judgment of conviction. (R., pp. 125-29.)

¹ PSI page numbers correspond with the page numbers of the electronic file “Garcia 47065 psi.pdf.”

Garcia asserts his sentences are excessive in light of his difficult childhood, substance abuse, mental health issues, willingness to participate in treatment, education and employment history, support from friends, and purported remorse. (Appellant’s brief, pp. 3-8.) The record supports the sentences imposed.

B. Standard Of Review

“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. “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” Id. 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)).

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

Garcia's trafficking convictions made him eligible for sentences on each count of up to life with a three-year mandatory minimum. I.C. § 37-2732B(a)(6)(A), 37-2732B(a)(4)(A). The district court applied the correct legal standards. (4/16/19 Tr., p. 32, Ls. 17-24; p. 34, Ls. 4-7.) The court found that Garcia was, "in a classical sense, a trafficker in drugs," and that he was "deeply engaged in drug trafficking," as opposed to "somebody who has a habit and sells a little bit or deals a little bit for just enough to get through." (4/16/19 Tr., p. 31, L. 25 – p. 32, L. 9.) The sentence was necessary to protect the public, to provide a punishment for Garcia's decision to engage in criminal activity despite having the "intellect" and "skills" to do otherwise, and to "send[] a message that this is serious criminal activity and will have consequences" and "[h]opefully, it will reflect on other people and maybe deter somebody else." (4/16/19 Tr., p. 32, Ls. 10-24; p. 34, Ls. 4-7.)

The record supports the district court's analysis. In this case, Garcia had 10 grams of heroin, 28.9 grams of methamphetamine, a loaded firearm, a total of \$28,904 in cash, a suspected drug ledger, and multiple other items indicative of the sale and distribution of drugs, in his possession. (PSI, pp. 3-4.) Although Garcia completed 110 college credits and owned his own business, he chose to obtain money by illegal means, as he "acknowledged a history of selling drugs" "for a couple times." (PSI, pp. 14, 17.) Additionally, his criminal record contains numerous drug-related offenses – in 1994, he received a withheld judgment for possession of cocaine and possession of cocaine with intent to sell and, in 2006 and again in 2007, he was convicted of possession of cocaine and possession of drug paraphernalia. (PSI, pp. 6-7.) Garcia's criminal record also includes withheld judgments for burglary, petit theft, malicious injury to property, and fighting, as well as criminal convictions for disturbing the peace,

malicious injury to property, disturbing the peace amended from malicious injury to property, and resisting officers. (PSI, pp. 5-8.) The presentence investigator determined that Garcia scored in the “‘High’ risk category” with respect to his risk of recidivism. (PSI, p. 20.) The presentence investigator further stated, “The nature of the instant offense(s) and his criminal record suggests Mr. Garcia presents an undue risk to the community,” and, “It appears that previously imposed sanctions have failed to satisfy the goals of deterrence and rehabilitation.” (PSI, p. 20.) The record supports the district court’s conclusion that the sentences imposed were necessary to satisfy the goals of protecting the public, punishment, and deterrence.

On appeal, Garcia argues that the district court “failed to give proper consideration” to his substance abuse, mental health issues, willingness to participate in treatment, difficult childhood, education and employment history, support from friends, and purported remorse. (Appellant’s brief, pp. 4-8.) Garcia is now [REDACTED] he has had plenty of time to reconcile issues stemming from his childhood, and he has previously been treated for his mental health issues. (PSI, pp. 1, 16.) He reported that he began abusing drugs at age 18 and that he has had several prolonged periods of sobriety, claiming that he previously maintained his sobriety for 15 years and that, most recently, he was sober for 10 years before he chose to resume his abuse of illegal drugs. (PSI, p. 17.) Garcia had an abundance of time to participate in substance abuse treatment in the community, but failed to do so. That he wishes to participate in treatment now that he is facing a prison sentence does not show that his sentence is excessive. While Garcia submitted letters of support from friends, the majority of the letters were from 2016. (PSI, pp. 516-27.) As such, it appears that Garcia had support from friends when he committed the instant offense, but that support did not preclude his substance abuse and criminal behavior. Garcia’s arguments do not establish an abuse of sentencing discretion.

Garcia's sentences are reasonable in light of the serious nature of the offenses, Garcia's ongoing criminal offending, his failure to rehabilitate or be deterred, and the risk he poses to society. Garcia has not demonstrated that the district court abused its discretion when it determined that the sentences imposed were necessary to meet the goals of sentencing.

CONCLUSION

The state respectfully requests this Court to affirm Garcia's convictions and sentences.

DATED this 26th day of December, 2019.

/s/ Kenneth K. Jorgensen
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Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th 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:

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