

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

ANDREW V. WAKE
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 47078-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-18-48763
)	
VICTOR JESUS BRAN-NAVA,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Bran-Nava failed to show the district court abused its sentencing discretion by imposing a fixed sentence of eight years after Bran-Nava pled guilty to aggravated battery?

ARGUMENT

Bran-Nava Has Failed To Show The District Court Abused Its Sentencing Discretion

A. Introduction

According to police reports, on October 4, 2018, Victor Jesus Bran-Nava and a friend made plans to “beat up” another individual, the victim, who Bran-Nava believed had “molested”

his sister. (PSI, p.23.¹) Bran-Nava also had a “long-standing feud” with the victim and was recently charged with battery against the victim. (Id.) He reported to police that he “was upset” regarding that battery charge as well as about the victim allegedly “molesting” his sister, and so determined to kill the victim. (PSI, p.24.) Bran-Nava acknowledged that by killing the victim, “he knew he could solve his legal issues surrounding his battery case, as well as get vengeance for his sister.” (Id.) When they observed the victim sitting in his car, Bran-Nava and two of his friends confronted him, with Bran-Nava carrying a twenty-two caliber rifle. (Id.) As Bran-Nava’s friend physically attacked the victim, Bran-Nava shot into the car, accidentally striking his friend in the leg. (PSI, pp.24, 277.) The victim then attempted to run, at which point Bran-Nava fired at him three more times. (PSI, p.24.) The victim was struck once in the lower left abdomen. (PSI, p.253.)

The state charged Bran-Nava with the attempted murder of the victim, aggravated battery against his friend, and using a deadly weapon during the commission of both crimes. (R., pp.43-44.²) He accepted a plea agreement in which he agreed to plead guilty to aggravated battery against the victim, in exchange for which the state would dismiss the attempted murder charge and the enhancement for use of a deadly weapon, as well as a possession of a controlled substance charge pending in an unrelated matter. (R., pp.60-61 (second amended information), 62-73 (guilty plea advisory), 74 (settlement sheet).) Bran-Nava admitted to shooting the victim and the district court accepted his plea. (Tr., p.16, L.18 – p.18.³)

¹ References to ‘PSI’ are to the file titled ‘Conf. Docs. Rec.-Bran-Nava.pdf’ and page references are to the pagination of that entire file.

² The record on appeal includes a file titled ‘Appeal Clerks Record.pdf’ and a file titled ‘Appeal Amended Clerks Record.pdf’. The state will refer to the latter file with ‘R.’

³ References to “Tr.” are to the file titled ‘Appeal Transcript Record.pdf,’ which contains transcripts of the change of plea hearing, held April 16, 2019, and the sentencing hearing, held May 14, 2019. Those two transcripts are continuously paginated, but the lines are numbered only mid-way through page 17.

At sentencing, the prosecutor recommended a unified sentence of fifteen years with five years fixed. (Tr., pp.21-22.) Bran-Nava's counsel recommended a sentence of five years fixed. (Tr., p.25.) The district court imposed a sentence of eight years fixed. (Tr., p.34; R., pp.78-80.) Bran-Nava timely appealed. (R., pp.82-84.)

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)). 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)). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks "whether the trial 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." State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Bran-Nava Has Shown No Abuse Of The District Court's Sentencing Discretion

To bear the burden of demonstrating an abuse of discretion, 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 met this burden, the court considers the entire sentence but 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). “When reviewing the reasonableness of a sentence, this Court conducts an independent review of the record, giving consideration to the nature of the offense, the character of the offender and the protection of the public interest.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015). To establish that the sentence is excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2018) (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

The district court’s sentence of eight years fixed was well within the statutory limits: aggravated battery carries a maximum period of confinement of fifteen years, I.C. § 18-908. (See R., pp.78-81.) Thus, the sentence will not be considered an abuse of discretion unless Bran-Nava demonstrates that no reasonable mind could conclude the sentence was necessary to accomplish any of the objectives of sentencing. State v. Sheahan, 139 Idaho 267, 285, 77 P.3d 956, 974 (2003) (“The district court based its decision on the goals of punishment and deterrence. A sentence need not serve all sentencing goals; one may be sufficient.”). On appeal, his argument focuses on the district court’s alleged failure to adequately consider certain purportedly mitigating factors, including his youth, his allegedly emotional state when he committed the crime, his use of methamphetamine, his expression of remorse, and his “lack of a significant prior record.” (Appellant’s brief, pp.4-5.) His argument fails. The district court considered the allegedly mitigating considerations to which he points on appeal, articulated the reason for the sentence it imposed in light of the sentencing objectives, and abuse of discretion review “does not require (nor

indeed, does it permit) [this Court] to conduct [its] own evaluation of the weight to be given each of the sentencing considerations.” State v. Windom, 150 Idaho 873, 881, 253 P.3d 310, 318 (2011); State v. Struhs, 158 Idaho 262, 269, 346 P.3d 279, 286 (2015).

The district court focused its sentencing decision on the serious nature of the crime and the sentencing goals of punishment and deterrence. The court noted that this was “about as bad as aggravated battery gets,” with Bran-Nava making a premeditated decision that he was going to kill the victim, securing a weapon, attempting to complete the premeditated murder, and seriously injuring the victim and Bran-Nava’s friend in the process. (Tr., p.29) According to the court, probation or retained jurisdiction would “simply depreciate the seriousness” of the crime committed by Bran-Nava and neither the prosecutor nor Bran-Nava’s counsel asked the court to “do anything other” than send him to prison. (R., p.31.) While the court considered the possibility of rehabilitation through some form of community programming, Bran-Nava’s counsel represented that he would be unable to participate in any community programming as a result of an existing immigration hold that would result in his deportation when released from prison. (Tr., pp.25, 32-33.) The court thus determined that the eight year fixed sentence was necessary for punishment, as well as for deterrence of Bran-Nava and others from future crimes. (Tr., p.33-34.) It concluded, “That’s the minimum sentence that I think is appropriate, simply to punish you for a decision that could well have resulted in somebody else being dead.” (Tr., p.34.)

Contrary to Bran-Nava’s argument on appeal, the district court considered each of the purportedly mitigating factors to which he points. Recognizing that Bran-Nava allegedly committed the crime because he believed his sister had been sexually assaulted, and taking into consideration his age and “relative lack of a criminal history,” the district court noted that Bran-Nava had already “been given some consideration by the state” when it dropped the use of a deadly

weapon enhancement (Tr., pp.30-31), not to mention the attempted murder charge. While the court noted that Bran-Nava struggles with substance abuse and claimed that he was under the influence of methamphetamine when he committed the crime, it concluded that the nature of the crime nevertheless reflected on Bran-Nava's character and required significant punishment. (Tr., pp.31-33.) The court stated that, "Given your age, I don't think that the 15-year sentence recommended by the state, or even the 10-year sentence recommended by the state, is appropriate." (Tr., pp.33-34.) Far from failing to consider the mitigating factors to which Bran-Nava points, in imposing the eight year sentence that it did, and in light of the nature of the crime, the court expressed concern that it had given *too much* consideration to his age and expression of remorse. (R., p.34.)

In addition, the factors to which Bran-Nava points are not nearly as mitigating as he suggests. With respect to his "relative lack of criminal history," though this was his first adult felony conviction, he had an extensive juvenile criminal history. (PSI, pp.452-55.) Even while incarcerated prior to sentencing, Bran-Nava continued a pattern of misconduct and disciplinary issues. (Tr., p.24; PSI, pp.351-57, 483-87.) As to his claim that he was under the influence of methamphetamine and reacted emotionally because he believed his sister had been sexually assaulted, the battery of the victim was premeditated and planned, with Bran-Nava's friends driving over to assist, and was at least partially motivated by Bran-Nava's frustration and anger regarding an existing battery charge associated with a previous attack on the victim. (PSI, pp.23-24.) Finally, with respect to his expression of remorse, notably he says nothing at all about recognizing that what he did was wrong, or about regretting the harm caused to the victim. Though he says that he is "sorry" for his conduct, his "remorse" is entirely in terms of the effect that his

actions have had on him. (Tr., p.28-29 (“It’s like an impact on my life, that it impacted me like, really hard. Like, I don’t want to live in the prison system. I don’t want to go through all this.”)).

The district court considered the mitigating factors to which Bran-Nava points but determined that the sentence it imposed was necessary to serve the sentencing goals of punishment and deterrence. Bran-Nava has not shown that the district court abused its discretion.

CONCLUSION

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

DATED this 26th day of February, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of February, 2020, 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
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

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