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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47120-2019
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-18-60657
	)	
SHAY RYAN ALEXANDER,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
	)	

ISSUE

Has Alexander failed to establish that the district court abused its discretion by imposing a unified sentence of 15 years, with four years fixed, upon his guilty plea to aggravated battery?

ARGUMENT

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

A. Introduction

On March 20, 2018, Alexander "hit and strangled" his girlfriend, Sara, while his 14-year-old son "was present and could hear the altercation." (PSI, pp. 103, 1072 (page citations to

electronic filed named "Conf.Docs.-Alex").) Sara reported that Alexander "came into the bedroom and punched her in the face," "kneed" her in the chest, and then held her down and "continued to hit her." (PSI, pp. 918, 1072.) He subsequently "strangled her approximately 4 times with both hands" while "telling her she was a whore and that was what whore's [sic] got." (PSI, p. 103.) He also "hit her with a vacuum at some point." (PSI, p. 103.) Sara told police that Alexander had battered her "three times before but this was the first time she reported the abuse." (PSI, p. 1072.) Officers noted that Sara "had redness to her neck and chest, bruises on both arms, and a broken finger nail on her right hand." (PSI, p. 1072.) Sara was treated at the hospital, where x-rays revealed that she had "[o]ld healing rib fractures" and what was suspected to be a "new nondisplaced sternal fracture." (PSI, p. 922.)

On August 6, 2018, Alexander "asked [Sara] for some drugs" and, when she told him she "didn't have access to any drugs," he "became very aggressive," "started yelling at her and eventually grabbed a large, thick wine bottle. He then came after her with it … and hit her over the head with it." (PSI, pp. 946-47.) Alexander "pushed her around as well and she received a small cut on her right hand as a result." (PSI, p. 947.) When officers responded, Sara told them that she "was in fear for her life and that she believed [Alexander] is going to kill her if he isn't stopped." (PSI, p. 946.)

On December 25, 2018, Alexander "punched [Sara] repeatedly in the left side while she was driving," "which caused her spleen to rupture." (PSI, p. 10-11.) He then "drove Sara home and dropped her off." (PSI, p. 12.) Sara subsequently contacted a friend, who took her to the hospital emergency room. (PSI, p. 12) Medical staff determined that Sara had massive internal bleeding with "class 4 hemorrhagic shock" and she required immediate surgery to stop the bleeding. (PSI, pp. 1010, 1072.) Sara received a blood transfusion and was "rushed into the

operating room," where she underwent an exploratory laparotomy and her spleen was removed. (PSI, pp. 12, 1261.) During her surgery, Sara developed "severe" hypothermia and "resultant coagulopathy"; consequently, her "abdomen was kept open" and she was "transported to the Surgical Intensive Care Unit in critical condition" for "rewarming and further resuscitation." (PSI, pp. 1012, 1261.) Sara "was rewarmed over the next day," after which she underwent a second surgery and "abdominal wound closure." (PSI, pp. 283-84, 1261-62.)

On December 26, 2018, officers located Alexander at a Motel 6. (PSI, p. 1072.) Alexander "attempted to elude police" and was apprehended after he "toss[ed] a backpack into the bed of a pickup truck" and "jumped from the motel window." (PSI, p. 1072.) Inside Alexander's motel room, officers observed an "empty Dr. Pepper 12 pack box with a plastic bag with white substance on the bottom, an orange glass pipe and 2 pieces of vinyl plastic tubing," and a "propane torch bottle." (PSI, pp. 24-25.) Upon searching Alexander's backpack, officers found glass "drug pipes with burned residue in them," a "safe with a four-digit roller combination," and "a small plastic baggy containing numerous white pill tablets with the number 85 stamped on them." (PSI, pp. 22-23.)

The state charged Alexander with "domestic violence in the presence of a child … or in the alternative aggravated battery," attempted strangulation, two counts of aggravated battery, possession of methamphetamine, possession of drug paraphernalia, and misdemeanor violation of a no contact order. (Aug., pp. 1-3.) Pursuant to a plea agreement, Alexander pled guilty to one count of aggravated battery, possession of methamphetamine, and violation of a no contact order, and the state dismissed the remaining charges. (R., p. 36.) The district court imposed concurrent unified sentences of 15 years, with four years fixed, for aggravated battery; five years, with two years fixed, for possession of methamphetamine; and 60 days of jail time, with

credit for 60 days "already served," for violation of a no contact order. (R., pp. 57-62.) Alexander filed a notice of appeal timely from the judgment of conviction. (R., pp. 64-66.)

Alexander asserts that the district court abused its discretion "when it imposed a unified sentence of fifteen years, with four years fixed, upon [him], following his guilty plea[s] to aggravated battery, possession of a controlled substance, and violation of a no contact order." (Appellant's brief, p. 3.) Because Alexander has already served his entire 60-day jail sentence for violation of a no contact order, any challenge to that sentence is moot. State v. Barclay, 149 Idaho 6, 8, 232 P.3d 327, 329 (2010) (quotations and citations omitted) ("An issue becomes moot if it does not present a real and substantial controversy that is capable of being concluded by judicial relief."). As such, Alexander may challenge only his sentences for aggravated battery and possession of methamphetamine. Alexander has failed to establish an abuse of discretion.

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

Application of these legal standards to the facts of this case shows no abuse of discretion. At sentencing, the district court articulated the correct legal standards applicable to its decision. (Tr., p. 18, Ls. 6-14; p. 19, L. 20 – p. 20, L. 13.) The district court "t[ook] seriously the savage nature of this abuse," and "consider[ed] primarily the protection of the community, in particular the victim in this case or anybody with whom the defendant may be in a relationship." (Tr., p. 19, Ls. 12-16.) "This is, frankly, as bad a domestic violence case as I have seen in my years on the bench. The defendant brutalized the victim in this case. … [H]e beat her nearly to death. He did this more than once, on multiple occasions." (Tr., p. 18, L. 22 – p. 19, L. 1.) In considering whether Alexander posed an undue risk to reoffend if placed in the community, the district court stated, "I am concerned, significantly, particularly in light of the domestic violence evaluation that shows he's a high risk to commit this type of crime again." (Tr., p. 19, L. 22 – p. 20, L 1.) The district court also expressed concern "because this wasn't a one-time incident, this has been ongoing behavior. Brutalizing the victim to the point of hospitalization has not been enough to stop him." (Tr., p. 20, Ls. 2-4.) The district court concluded Alexander "clearly is in need of treatment … that can best be provided in an in-custody environment where he can focus solely on that and where he can't hurt anybody during that time of treatment." (Tr., p. 20, Ls. 5-9.) The court also found that "the lethality of these actions is overriding" (Tr., p. 19, Ls. 18-19), and

that "these crimes, frankly, given the damage inflicted, require a significant response in terms of punishment. I believe that anything other than a strong response would underscore, underplay or depreciate the seriousness of these crimes" (Tr., p. 20, Ls. 9-13).

The district court's analysis is supported by the record. Alexander's actions in the instant offense were truly egregious. He punched the victim repeatedly, "'so hard it shattered [her] spleen'" and she was "'bleeding to death.'" (PSI, pp. 12, 1304.) He then dropped her off at her home, and she had to call a friend to take her to the hospital. (PSI, p. 12.) Sara had "severe abdominal pain" (PSI, p. 1011) and she told hospital staff that she was "cold and felt like she was dying" (PSI, p. 1224). Hospital notes indicate that Sara was in critical condition, "with a high probability of imminent or life-threatening decompensation and deterioration." (PSI, pp. 1002-03.) Additionally, medical staff observed that Sara was "obviously cold, extremely pale, shaking with rigors," her abdomen was "rigid" and "distended," and she was "in obvious distress, in hemorrhagic shock" and "in extremis," or near death. (PSI, pp. 1224-25.)

Sara told the presentence investigator that, "[a]s a result of the surgery necessary to save her life, the last six months 'have been hell.' I have problems going to the bathroom and I can't eat normally.'" (PSI, p. 1073.) Sara stated that she "had financial problems because she was physically unable to work" and she "did not feel she could afford the medications she needed for daily functioning." (PSI, p. 1073.) She advised that she has had "'physical, emotional, and mental' issues since this assault and surgery" and that she now has "difficulty sleeping or feeling safe." (PSI, p. 1073.) Sara reported that she is "'extremely scared of [Alexander],'" that he had battered her on approximately seven prior occasions, and that he would also follow her, "'chase [her] down,'" and/or "'lock [her] in his house.'" (PSI, p. 1305.)

The presentence investigator reported that Alexander poses a “high risk” to reoffend and that he “was not considered an appropriate candidate for probation,” noting that Alexander “demonstrated a disturbing pattern of aggression and abuse” and “appeared to make no efforts to address substance abuse and anger problems on his own.” (PSI, p. 1089.) The domestic violence evaluator likewise determined that Alexander poses a high risk for future domestic violence, and that his “Predicted recidivism” rate is “74%.” (PSI, pp. 1299-1300.)

The record supports the district court’s conclusions that Alexander presents a danger to the community, that he has not previously been deterred from his ongoing violent behavior, that he needs treatment that will best be provided in a structured environment, and that the serious and potentially lethal nature of the offense required a significant response in terms of punishment.

On appeal, Alexander argues that “the district court abused its discretion by imposing an excessive aggregate sentence” because he abused drugs, was willing to participate in treatment, had support from his family, and stated “that he felt ‘horrible’ about hurting his ex-girlfriend.” (Appellant’s brief, pp. 3-8 (quoting PSI, pp. 1074, 1086).) Although Alexander claims that he “was under the influence of methamphetamine when he committed the aggravated battery” (Appellant’s brief, p. 5), he made conflicting statements during his domestic violence evaluation (PSI, p. 1297). He told the domestic violence evaluator that he knew he “‘wasn’t high’” on the day of the aggravated battery and that he “‘didn’t remember using meth the night before,’” either. (PSI, p. 1297.) Alexander further stated, “‘I don’t think the drug had anything to do with it,’” explaining that “‘it was more that we didn’t have it. … I was rock bottom, I had nothing. It was Christmas and I didn’t have a cent to my name,’” and “‘I think everything bunched up and I lashed out.’” (PSI, pp. 1297-98.) With respect to Alexander’s purported regret and acceptance

of responsibility, the domestic violence evaluator reported that Alexander minimized his violent actions when describing the offense, that his "description of prior violence to [Sara]" was also "significantly minimized," and his "statements of accountability are not comprehensive, making his remorse partial as well." (PSI, p. 1306.) Furthermore, when Alexander was asked whether he needed treatment for his domestic violence issues, his response was indifferent – he stated, "'I don't think it would hurt. I don't know … I am sober now. I don't think that way, I have purpose back in my life.'" (PSI, p. 1298.) Alexander's arguments do not establish an abuse of sentencing discretion.

Alexander's sentence is appropriate in light of the egregiousness of the offense, his repeated acts of violence toward the victim, and his high risk to reoffend. Alexander has not demonstrated that the district court abused its discretion when it determined that an aggregate unified sentence of 15 years, with four years fixed, was necessary to meet the goals of sentencing.

CONCLUSION

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

DATED this 10th day of December, 2019.

_/s/ Kenneth K. Jorgensen________
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th 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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_/s/ Kenneth K. Jorgensen_________
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