Electronically Filed
5/22/2020 12:23 PM
Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

KENNETH K. JORGENSEN
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 Plaintiff-Respondent, v. THOMAS UMBERTO BANFIELD, Defendant-Appellant.	)	NO. 47123-2019 Ada County Case No. CR01-18-45883 RESPONDENT'S BRIEF

Has Thomas Umberto Banfield failed to show that the district court abused its sentencing discretion when it imposed a sentence of ten years with two years determinate upon his conviction for domestic violence, and then relinquished jurisdiction?

ARGUMENT

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

A. Introduction

Banfield punched, choked and bit his girlfriend in the presence of her children. (PSI, p. 3.) The state charged him with domestic violence, attempted strangulation, and two counts of violation of a no contact order. (R., pp. 50-52.) Banfield pled guilty to domestic violence and the two no

contact order violations and the state dismissed the other count and charges in a different case. (R., p. 54; 10/22/18 Tr., p. 10, L. 13 – p. 27, L. 13.) The district court imposed sentences of ten years with two fixed for domestic violence and concurrent terms of six months in jail for the two no contact order violations, and retained jurisdiction. (R., pp. 80-82.)

The district court later relinquished jurisdiction based on the recommendation of the Idaho Department of Correction. (R., pp. 88-89; PSI, p. 704.) Banfield filed a notice of appeal timely from the relinquishment of jurisdiction. (R., pp. 91-92.)

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)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (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 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)).

"The decision to relinquish jurisdiction or grant probation is committed to the district judge's discretion." State v. Le Veque, 164 Idaho 110, 113, 426 P.3d 461, 464 (2018) (quotation marks omitted). The district court's decision to relinquish jurisdiction "will not be overturned on appeal absent an abuse of that discretion." State v. Pelland, 159 Idaho 870, 874, 367 P.3d 265, 269 (Ct. App. 2016).

In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks "whether the 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. Banfield Has Shown No Abuse Of The District Court's 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, because the decision to release the defendant on parole is exclusively the province of the executive branch, 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). To establish that the sentence was 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. 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.'" Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

In imposing sentence, the district court found that Banfield has "a considerable and concerning record" starting in 1983 and including multiple prior felony convictions. (12/17/18 Tr., p. 51, Ls. 1-24.) After he was arrested he violated no contact orders several times in an effort to get the victim to recant. (12/17/18 Tr., p. 51, L. 25 – p. 52, L. 9.) After getting out of jail he was arrest for drug trafficking, with the victim again in violation of the no contact orders.

(12/17/18 Tr., p. 52, Ls. 10-18.) Thus, Banfield's criminal behavior did not stop with his arrest, but instead escalated. (12/17/18 Tr., p. 52, Ls. 19-21.) The victim suffered extensive bruising form Banfield's abuse, and the district court also found that the domestic violence had a negative effect on her children. (12/17/18 Tr., p. 53, L. 11 – p. 54, L. 12.) The district court based its findings of fact related to the crime on what the victim and her children reported at the time, before Banfield applied "extensive pressure" for them to change their stories. (12/17/18 Tr., p. 54, L. 13 – p. 58, L. 14.) The district court found, based on the domestic violence evaluation, that Banfield "presents a high risk to re-offend," is "controlling," "uses verbal and physical intimidation and violence," and "does not accept responsibility, minimizes and justifies." (12/17/18 Tr., p. 62, Ls. 12-18.)

The district court concluded that Banfield has a "very low potential for rehabilitation." (12/17/18 Tr., p. 62, Ls. 19-21.) He was "deeply mired in the thought patterns that are likely to lead to continued domestic violence." (12/17/18 Tr., p. 62, Ls. 21-24.) Banfield's acceptance of responsibility was mitigating, leaving open some hope of change, but given Banfield's attitudes in the domestic violence evaluation the court still had "grave concerns." (12/17/18 Tr., p. 63, Ls. 7-19.) The district court concluded that a rider was appropriate, "[b]ut at this point I would have to say the attitude shown in the domestic violence evaluation is so concerning that this is a rider for evaluation." (12/17/18 Tr., p. 65, Ls. 2-5.) The court concluded, "I'm going to have to see real and genuine progress before I'm going to back off in your significant sentence." (12/17/18 Tr., p. 67, Ls. 8-11.) The district court's factual findings support its exercise of sentencing discretion,

Banfield did not show genuine progress (or any progress) during his rider. He did not complete his programming, was a disciplinary problem, and was "not taking the program seriously." (PSI, pp. 705-06, 708.) He spent a great deal of effort trying to get around the no

contact order so he could communicate with the victim. (PSI, p. 708.) The district court concluded Banfield had amassed a "record of significant failure," "a record of significant concern." (6/17/19 Tr., p. 10, Ls. 15-19.) Again, the district court's discretion is supported by the record.

Banfield contends on appeal that the district court "did not give sufficient weight to mitigating factors such as the support of his family, his employability and willingness to financially care for his family, his acceptance of responsibility and remorse for his actions, and his amenability to treatment." (Appellant's brief, pp. 6-7.) His argument is unsupported by the record.

Banfield's family support was not mitigating. The district court specifically found that Banfield exerted "extensive pressure" for the victim and her children to change their stories. (12/17/18 Tr., p. 54, L. 13 – p. 58, L. 14.) Perhaps Banfield should be grateful that the district court did not put more weight on the victim's "support," given that it seemed to arise out of his domination of her and was not likely to facilitate rehabilitation. (See 12/17/18 Tr., p. 61, Ls. 13-18 (home environment not conducive to rehabilitation and likely to result in harm to children); p. 63, Ls. 13-19 (Banfield's and victim's attitudes cause the court "grave concern" about rehabilitation); p. 64, Ls. 19-21 (environment between Banfield and victim "very unhealthy"); p. 66, Ls. 8-14 (victim's attitude directed to Banfield not conducive to rehabilitation).)

As for employability and willingness to financially support his family, the district court specifically found that Banfield was unemployed when he committed these crimes. (12/17/18 Tr., p. 54, L. 16.)

Finally, as for acceptance of responsibility, remorse, and amenability to treatment, the district court specifically weighed those things and found Banfield's rehabilitation potential to be low. (12/17/18 Tr., p. 63, Ls. 7-19.) Again, "more weight" on this factor is not in Banfield's favor. Banfield has shown no abuse of sentencing discretion.

Banfield next argues that the district court abused its discretion by relinquishing jurisdiction rather than allowing him to "complete the training he started" on the rider program. (Appellant's brief, pp. 8-9.) The record, however, provides more than ample support for the district court's conclusion that Banfield's record was not one of progress or significant probability of rehabilitation. He has therefore failed to show an abuse of discretion.

CONCLUSION

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

DATED this 22nd day of May, 2020.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of May, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

R. JONATHAN SHIRTS
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General