

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

JOHN C. MCKINNEY
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,)	
)	No. 47172-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-18-59209
)	
SHANE ERNEST PEREZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

Has Perez failed to establish that the district court abused its discretion by imposing a sentence of 3 years, all fixed, upon his conviction by a jury felony domestic violence?

ARGUMENT

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

A. Introduction

According to a Meridian Police Department police report by Officer Andrew Herscowitz, the facts leading to Perez's felony domestic violence charge are as follows:

On 12/16/18 at approximately 1255 hours, I was dispatched to a domestic dispute at 11 E Washington Ave Meridian, ID. Jennifer Blewett reported this date her boyfriend, Shane Perez, whom she has been dating and living with for approximately 1 1/2 years physically grabbed her right arm and ripped off her sweater. Jennifer had red marks on her neck and right arm, and a bruise on her right arm. Shane Perez confirmed he did physically grab Jennifer, but claimed he only grabbed her wrists to restrain her from throwing objects. Due to the marks and bruising left on Jennifer; Shane was placed under arrest for Domestic Battery without traumatic injury.

(Full Review PSI, p.420.¹) The state charged Perez with felony domestic violence or battery based on having inflicted a traumatic injury on Ms. Blewett, or, alternatively, for committing battery upon her having been convicted of felony domestic violence or battery within the previous 15 years. (R., pp.30-31.)

At trial, Ms. Blewett testified that, after Perez made some exceptionally offensive remarks to her, she spat in his face and swiped everything off the bedroom dresser onto the floor. (Trial Tr., p.198, L.15 – p.201, L.17.²) Perez grabbed Ms. Blewett’s right forearm, swung her around, and, “grabbed the top of [her] sweatshirt, a hand on each side of where the zipper was[,]” then “[h]e crossed his hands, trying to choke [her] with [her] sweater.” (Trial Tr., p.205, L.10 – p.206, L.6; p.207, Ls.9-17; p.246, Ls.15-18.) A woman named Su-Ling, who lived in the shed/bedroom of the residence, came into to the house with her daughters and told Perez to get off of Ms. Blewett. (Trial Tr., p.207, Ls.15-17.) Ms. Blewett went with Su-Ling to the shed/bedroom and called the police to report the incident. (Trial Tr., p.208, L.16 – p.209, L.12.)

The jury convicted Perez of felony domestic violence based on the infliction of a traumatic injury upon Ms. Blewett. (R., p.154; Trial Tr., p.539, Ls.17-24.) The district court imposed a

¹ The Full Review PSI and 2014 PSI page numbers correspond with the page numbers of the electronic file “Conf.Docs.-Perez.pdf.”

² All transcripts are located in the electronic file “Trans.-Perez.pdf.” Citations are to the page numbers of the quad-pages, which are continuous through all of the proceedings transcribed.

sentence of three years, all fixed. (R., pp.165-168.) Perez filed a notice of appeal timely from the judgment of conviction. (R., pp.169-172.)

Perez asserts that, “[i]n light of the mitigating factors present in this case, Mr. Perez’s sentence is excessive considering any view of the facts.” (Appellant’s brief, p.4.) The record supports the sentence imposed.

B. Standard Of Review

“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. Schiermeier, 165 Idaho 447, 451, 447 P.3d 895, 899 (2019) (citations and quotations omitted). “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. Schiermeier, 165 Idaho at 454, 447 P.3d at 902. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing 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.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2019) (citation omitted). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion.” Schiermeier, 165 Idaho at 454, 447 P.3d at 902.

C. Perez 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. First, the district court applied the correct legal standards. (Sent. Tr., 560, L.22 – p.561, L.4.) The court acknowledged that Perez committed his current felony domestic violence while he was still on probation for committing the same type of offense in 2014, grabbing another woman around the throat and shoving her up against the outside shed (see 2014 PSI, pp.421-426), and focused on the fact that he had been given the benefits of probation, a rider, and domestic violence treatment, -- all of which failed to deter him from committing another act of domestic violence, to wit:

My recollection of the testimony is that there were things going on in the home that should have, in my view, been a red flag for your probation officer, you're exercising power and control over the other people in the house. I realize it's your house. You viewed yourself as the landlord, but for someone who's on probation for domestic violence, power and control issues are a red flag for a probation officer.

....

That said, you've got to learn that you can't behave this way. As you've just told me, you know you should have just walked away, and yet this is the second time that you haven't, and, ultimately, I'm trying to get it through to you that you just have to walk away. When you get angry with people, you can't lay hands on them. It's as easy as that.

And so I have to consider how likely it is that I think you are to do this again. Certainly that's greater than the norm because, 1, you did it once, and, then, 2, you were told that if you did it again you were likely going to prison for 10 years, and you did it again.

And you were told that, well, maybe, you shouldn't drink alcohol because maybe that will make it less likely that you won't do it again, and you went and drank alcohol too, and so the idea that Judge Moody's sentence deterred you from doing this, clearly, isn't true. I'm not sure how much of a sentence I would have to impose to be any more of a deterrent effect than what she did. She tried to give you that message. You spent a long time in jail, and then you got out, and you didn't do well, and then you went to prison. You did a rider in that case.

And so I just tell you, Mr. Perez, I don't know that I can deter you while you're in the community. I don't know that the threat of future incarceration is going to have much effect on you because Judge Moody's didn't. I will say in my

judgment, what Judge Moody's indeterminate sentence, will satisfy that concern. If she decides to send you to prison and parole decides to let you out on or 10-year sentence, then, that 10-year sentence is, in my view, a sufficient deterrent to you. I'm not going to add on to her sentence like the state has recommended.

And so for similar reasons, I'm devaluing rehabilitation. One, because it didn't work when Judge Moody tried it; 2, because I'm not sure that your alcohol use was a significant factor in this event; and, 3, you've been through domestic-violence treatment. You kind of had the rehabilitation that's available. You're either going to learn that you can't put your hands on people or you won't, and so in my view, this is mostly about what the appropriate punishment, in some extent message, of deterrence I send to you.

(Sent. Tr., p.561, L.15 – p.564, L.3.)

The district court's analysis is supported by the record. After Perez was convicted of choking/battering a woman in his 2014 case, he choked and bruised Ms. Blewett in 2018 despite having been given the rehabilitative opportunities of being placed on probation, then a rider, and probation again, and undergoing one year of domestic violence treatment. (Full Review PSI, pp.420-422.) The court reasonably concluded that, having burned those deterrent bridges, in order to protect society, placing Perez in the community was not a viable possibility.

On appeal, Perez contends that the district court failed to sufficiently consider the mitigating factors that he had a good work history and the support of family and friends.³ (Appellant's brief, pp.4-5.) Although those dynamics are laudable, they have obviously not been enough to keep Perez from committing domestic violence – even while on probation for the same crime. (See PSI, p.421 (showing conviction for second offense DUI in 2015).) Perez add that the court failed to adequately factor into its sentencing decision that he is remorseful and accepted responsibility for his crime. (Appellant's brief, pp.5-6.) Although Perez's comments during the

³ Because "Mr. Perez politely declined to participate in the PSI and the Global Appraisal of Individual Needs (GAIN) substance use assessment processes[,]" no potential mitigation factors from those evaluations are available. (Full Review PSI, p.420.)

sentencing hearing show that he regretted not walking away from Ms. Blewett, they do not reveal a whole-hearted apology for his violent behavior toward her. (See Trial Tr., p.560, Ls.4-11.)

Perez's sentence is appropriate in light of the nature of the offense, his character, and his ongoing criminal conduct despite many squandered opportunities for rehabilitation. Perez has not demonstrated that the district court abused its discretion when it determined that a three year sentence, all fixed, was necessary to meet the goals of sentencing.

CONCLUSION

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

DATED this 26th day of May, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th 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:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

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