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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47187-2019
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-18-52964
	)	
SHASHONNIE MOENAE BROWN,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
	)	

ISSUE

Has Brown failed to establish that the district court abused its discretion by imposing a unified sentence of four years, with one year fixed, upon her guilty plea to grand theft?

ARGUMENT

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

A. Introduction

Brown travelled from Las Vegas, Nevada to Boise, Idaho, where she entered a Walmart and asked a cashier to "load" her prepaid Walmart debit card with "$1000 in two separate

transactions of $500." (PSI, pp. 4, 15, 24.[1]) Brown "swiped" her prepaid Walmart debit card and "pull[ed] out a second card," which the cashier "thought [Brown swiped] for payment." (PSI, pp. 24, 27, 29.) Brown "told the cashier the code to enter on the register to accomplish [the] transaction." (PSI, p. 24.) The cashier, believing that Brown "must [have] been" a Walmart employee "due to how well she knew the system and verbiage," entered the code, and "it showed the transaction was paid for." (PSI, pp. 24, 27, 29.) However, Brown never actually provided payment, and she "left the store being successful with a $1,000 theft which was loaded onto [her] prepaid card." (PSI, p. 29.) She returned to the Walmart approximately 40 minutes later, went to the same cashier, and "completed another [$500] theft using the same method." (PSI, p. 27.) Brown then went to a different cashier and "attempted to load an additional $500" onto her prepaid card; however, "[t]his cashier did not fall for the scam and this transaction was declined." (PSI, p. 29.)

While Brown was in the Walmart, the store's loss prevention officer "received an anonymous call detailing Brown's theft scheme" and advising that Brown was "getting on a flight out of Boise at 5 PM to go back to Las Vegas." (PSI, pp. 27, 29.) The loss prevention officer "confirmed the theft and contacted law enforcement." (PSI, p. 27.) A short time later, officers located Brown at the Boise Airport and detained her. (PSI, pp. 27-28.) In Brown's purse, officers found "three receipts showing the fraudulent $500 transaction[s]," "several" prepaid cards – including the prepaid Walmart debit card, and a "US Bank receipt" showing that, "15 minutes after Brown's last attempted theft was denied," her Walmart debit card had "an

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[1] PSI page numbers correspond with the page numbers of the electronic file "Brown 47187 psi.pdf."

available balance of $1483.52." (PSI, pp. 29-30.) Brown's purse also contained "additional receipts of other cards being reloaded while in Boise." (PSI, p. 30.)

The state charged Brown with two counts of burglary and one count of grand theft. (R., pp. 35-36.) Pursuant to a plea agreement, Brown pled guilty to grand theft and the state dismissed the remaining charges. (R., p. 45.) At sentencing, Brown's counsel requested that the district court "impose an underlying sentence of one plus three, suspended." (Tr., p. 26, Ls. 6-8.) The district court imposed the requested "unified term of four years consisting of one year fixed follow[ed] by three years indeterminate," but declined to place Brown on probation and instead ordered her sentence into execution. (Tr., p. 32, Ls. 2-4, 10-12; R., pp. 59-62.) Brown filed a notice of appeal timely from the judgment of conviction. (R., pp. 63-65.)

Brown asserts that her sentence[2] is "excessive, and therefore unreasonable," in light of "the circumstances of her case." (Appellant's brief, p. 2.) Because Brown received a unified sentence of one year fixed, with three years indeterminate, as her counsel requested at sentencing, she cannot claim on appeal that the sentence is excessive, since such a claim is barred by the doctrine of invited error. State v. Castrejon, 163 Idaho 19, 21, 407 P.3d 606, 608 (Ct. App. 2017) (citations omitted) (a party is estopped, under the doctrine of invited error, from complaining that a ruling or action of the trial court that the party invited, consented to or acquiesced in was error). Thus, Brown may challenge only the district court's decision to order her sentence into execution rather than suspending the sentence and placing her on probation as

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[2] Brown erroneously states that the district court imposed a unified sentence of **five** years, with one year fixed. (Appellant's brief, pp. 1-4.) However, the record is clear that the district court imposed a unified sentence of only **four** years, with one year fixed. (Tr., p. 32, Ls. 2-4; R., pp. 6, 58, 60, 81.)

she requested. Brown has failed to establish that the district court abused its discretion by declining to place her on probation.

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. Schiermeier, 165 Idaho 447, ___, 447 P.3d 895, 899 (2019) (citations omitted). 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. Id. at ___, 447 P.3d at 902. "A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion." Id. "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).

The decision to place a defendant on probation is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Reed, 163 Idaho 681, 684, 417 P.3d 1007, 1010 (Ct. App. 2018) (citations omitted). Rehabilitation and public safety are dual goals of probation. State v. Le Veque, 164 Idaho 110, 114, 426 P.3d 461, 465 (2018). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)).

C. Brown 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. (Tr., p. 30, Ls. 2-4.) It found that Brown was not a suitable candidate for probation "given [her] history," as she has a history of failing to appear, she continued to commit crimes while previously on probation, and, in this case, she "made a special trip to this community for the purpose of stealing from people in this community. [She] planned it well ahead of time. [She] executed it fairly efficiently and then [she] denied having done it repeatedly." (Tr., p. 30, L. 20 – p. 32, L. 1.) The court stated, "The totality of what you have said in the presentence investigation and the narrative that you've created around your life by your actions suggest that you're not accountable, that you don't think about your criminal behavior and you don't answer for the mistakes that you've made." (Tr., p. 30, Ls. 13-19.) The court concluded that Brown had also failed to be deterred, despite "what [she told the court] about being the sole provider [for her] children." (Tr., p. 31, Ls. 7-11.) The court noted that its "first obligation is to protect the community," and advised, "I have … no confidence at all that you will follow any directions or any conditions that I place on you," and "given your history, it appears to me there is no reason to put you on probation or a retained jurisdiction in this case." (Tr., p. 31, L. 5 – p. 32, L. 1.) Accordingly, the district court imposed a unified sentence of four years, with one year fixed. (Tr., p. 32, Ls. 2-4.)

The district court's decision is supported by the record. Brown has a criminal record that includes prior convictions for petit larceny, "trespass not amounting to burglary," disorderly conduct-prostitution, and felony "threaten crime with intent to terrorize." (PSI, pp. 5-8.) Her record also contains a charge for "fighting" that was "handled informally," as well as charges in the State of California for fighting in a public place and disorderly conduct-prostitution, for

which the disposition was "not provided." (PSI, pp. 5-7.) Additionally, at the time of sentencing in this case, Brown had a charge pending in the State of Utah for sexual solicitation, and an outstanding warrant in the State of South Dakota for charges of false impersonation and petit theft. (PSI, pp. 6-7.) She also failed to appear before sentencing in this case on two separate occasions, resulting in warrants being issued for her arrest. (R., p. 2.)

In the instant offense, Brown travelled from Las Vegas, Nevada to Boise, Idaho, with the apparent "intent to commit the instant offense"; she entered the same Walmart store in Boise twice in one day, "each time ... to commit a theft." (PSI, pp. 15, 30.) She "trick[ed]" one cashier into loading funds onto her prepaid Walmart debit card in three separate $500-transactions, and then went to a different cashier and attempted to fraudulently obtain another $500. (PSI, p. 29.) Although the fourth transaction was declined, Brown successfully defrauded Walmart out of a total of $1,500 before she returned to the airport to catch a flight back to Las Vegas. (PSI, pp. 27, 29-30.) When officers located Brown at the Boise Airport, they found the prepaid Walmart debit card and "the three receipts showing the [three] fraudulent $500 transaction[s]" in her purse, as well as "several" other prepaid cards and "additional receipts of other cards being reloaded while in Boise." (PSI, pp. 29-30, 61-62.)

Brown repeatedly denied that she had committed any crime in this case. (PSI, pp. 4-5, 15, 29, 37.) She claimed that she loaded the $1,500 onto her prepaid Walmart debit card using funds from her "debit card" and/or "her son[']s Social Security Funds," and that she "'did not know it was not paid for when [she] left the store.'" (PSI, pp. 4-5, 29.) However, Brown was not permitted to enter the Walmart in the first instance, as she was "trespassed" from Walmart in 2015 and signed a form acknowledging that she was "no longer allowed on Walmart property or in any area subject to Walmart's control." (PSI, pp. 39-40.) Furthermore, the surveillance video

of the instant offense showed that, although Brown "did pull out a second card," which "the cashier thought was for payment," Brown never actually "swiped" the second card to provide a payment. (PSI, pp. 27, 29.) Additionally, while Brown was in the Walmart committing the instant offense, the store's loss prevention officer received a phone call from an individual who provided the officer with Brown's first and last name, advised that Brown "was going to steal $2000 from Walmart," and accurately "detail[ed] Brown's theft scheme." (PSI, pp. 27, 29.) Despite all of this, Brown continued to deny her culpability after she pled guilty in this case; during her presentence interview, she "said several times she did not believe she was guilty of the crime." (PSI, p. 15.)

The record supports the district court's determination that Brown is not an appropriate candidate for probation. Brown presents a risk to the community, as demonstrated by her ongoing criminal offending, her history of failing to appear and failing to fulfill her legal obligations in several other states, and her lack of accountability for her deliberate criminal actions.

On appeal, Brown argues that her "circumstances," "if properly considered, warranted a less severe sentence." (Appellant's brief, p. 4.) These "circumstances" include that she is a resident of the State of Nevada, she was purportedly "impacted by her family's struggle with financial problems" when she was a child, she has "employable skills" and has "worked steadily," and, she claims, she "understands she has made poor choices in her past but has learned her lesson the hard way from these events." (Appellant's brief, pp. 3-4.) That Brown has employable skills and a history of working steadily, and she and her family live in Nevada, did not preclude her from choosing to come to Idaho to fraudulently obtain money from Walmart. As the district court noted, Brown was not deterred by the fact that she was the sole

provider for her children, who were in Nevada. (Tr., p. 31, Ls. 7-11.) Brown's history indicates that she has a pattern of travelling to another state, committing crimes for her own financial gain, and then attempting to avoid accountability for her actions by leaving the state. (PSI, pp. 6-9, 27; Tr., p. 30, Ls. 13-19.) Furthermore, Brown's claim that she "understands she has made poor choices" but "has learned her lesson" (Appellant's brief, p. 4) is highly doubtful given her prior repeated statements that she "did not believe she was guilty of the crime" (PSI, p. 15). Brown has not shown that she was entitled to a lesser sentence.

The district court's decision to impose a unified sentence of four years, with one year fixed, without placing Brown on probation, was reasonable in light of Brown's continuing criminal offending, the deliberate nature of the offense and Brown's lack of accountability for her criminal behavior, her failure to be deterred, and the risk she presents to society. Brown has failed to establish an abuse of sentencing discretion.

CONCLUSION

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

DATED this 8th day of January, 2020.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of January, 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:

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_/s/ Kenneth K. Jorgensen_________
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