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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47192-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-16640
v.)	
)	APPELLANT'S BRIEF
FRANKLIN JOHN FORMELLA,)	
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Franklin John Formella appeals from his judgment of conviction for possession of a controlled substance. Mr. Formella pleaded guilty and the district court imposed a unified sentence of five years, with one year determinate. Mr. Formella appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

Statement of the Facts & Course of Proceedings

On April 25, 2019, an officer with the Boise Police Department assisted several probation and parole officers in locating Alexandria Gomez and the Wyndham Garden Motel in Boise.

(Presentence Investigation Report (*hereinafter*, PSI), p.1.) Mr. Formella was found in the room with her. (PSI, p.1.) As the officers gave Mr. Formella verbal commands, he reached into his pocket, pulled out a small baggie, and tossed it on the bed. (PSI, p.1.) The substance in the baggie tested presumptive positive for heroin. (PSI, p.1.) Mr. Formella was searched and officers found two syringes in his pockets. (PSI, p.1.) Mr. Formella admitted ownership of the baggie. (PSI, p.1.)

Mr. Formella was charged with possession of a controlled substance. (R., p.25.) He pleaded guilty and the district court imposed a sentence of five years, with one year determinate. (R., p.42.) Mr. Formella appealed. (R., p.45.) He asserts that the district court abused its discretion by imposing an excessive sentence.

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of five years, with one year determinate, upon Mr. Formella following his plea of guilty to possession of a controlled substance?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With One Year Fixed, Upon Mr. Formella Following His Plea Of Guilty To Possession Of A Controlled Substance

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Formella’s sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Formella “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Mr. Formella addressed the district court at the sentencing hearing. He stated,

Your Honor, I apologize. I’ll try not to stumble over my words. I kinda wanted this to come from the heart, so I didn’t write anything down.

The last thing I wanted to do was to come into your courtroom and give you a bunch of excuses on why I made the mistakes that I’ve made in the past. What I do want you to know is that, number one, I’m a fighter. I’m not willing to quit on being a dad. I have four small children. I want to do the right thing. I’ve always wanted to do the right thing.

I don’t believe anybody here believes I’m a bad person; however, I do have a drug addiction. I’ve been fighting my addiction for over 20 years, and I’ve never given up. And I’ve had way more good years than bad years.

I can’t guarantee, Your Honor, that I won’t make a mistake again. I think that my past proves that, but what I can guarantee you is that I won’t give up. I don’t know who to give up on being a dad and being a good person because that’s ultimately who I am. I don’t think my addiction defines me. I just think it’s – it’s something that I have to deal with for the rest of my life.

And I would just ask that you would not give up on me as well, consider AP rider or drug court or even both. I have the ability to program and make the changes that I need to change, but I feel that a little more supervision in the community would help.

Even this last time, I was only out for 55 days. The State is correct. But I was in contact and asking my PO the whole time for help. I never met my PO. And so I

think I have the ability to be productive in the community with a little more support. So I appreciate your time.

(5/20/19 Tr., p.24, L.4 -p.25, L.16.)

Counsel for Mr. Formella noted that, during his most recent rider program, Mr. Formella was “was an asset to other individuals in the program. He resided in the honors dorm.” (5/20/19 Tr., p.21, Ls.17-22.) Further, Mr. Formella was employed prior to the arrest in this case and this employer had reached out to his probation officer with concerns about his substance abuse issues. (5/20/19 Tr., p.21, L.22 – p.22, L.2.) Counsel noted that this meant that Mr. Formella “has significant support in the community, both through the civility of work and an employer who sees him as a valued enough employee to try to help to get him on track. (5/20/19 Tr., p.22, Ls.2-6.) Further, Mr. Formella had treatment through Rising Sun that he could return to. (5/20/19 Tr., p.22, Ls.7-10.)

Counsel believed that Mr. Formella does well in programming, “he just struggles with a drug addiction once he returns back to the community.” (5/20/19 Tr., p.22, Ls.11-15.) Counsel therefore requested that the court send him back into an AP rider for more programming because, while he did well with prior programs, “it wasn’t long enough for what he need to address his addiction issues.” (5/20/19 Tr., p.22, Ls.16-21.) Counsel emphasized that Mr. Formella had not absconded or was “disappearing from his probation officer.” (5/20/19 Tr., p.23, Ls.3-6.) He had been in contact with his probation officer, and regular check-ins were the type of thing he needed to be successful in the community. (5/20/19 Tr., p.23, Ls.3-8.)

Considering that Mr. Formella had support in the community through his employer, that he recognized his substance abuse addiction, had taken steps to confront it but recognized that he needed more treatment, and that he would maintain contact with his probation officer and would

have employment after another rider, Mr. Formella submits that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Formella respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 28th day of January, 2020.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of January, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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