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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47192-2019
Plaintiff-Respondent,)	
)	Ada County Case No. CR01-19-16640
v.)	
)	
FRANKLIN JOHN FORMELLA)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Franklin John Formella failed to show that the district court abused its discretion when it imposed a unified sentences of five years, with one year determinate for possession of a controlled substance?

ARGUMENT

Formella Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

Police and probation officers encountered Franklin Formella in the hotel room of another probationer. (PSI, p.1.) During the encounter they found Formella in possession of heroin. (PSI, p.1.) The state charged Formella with felony possession of controlled substance. (R., pp.25-26.)

He pleaded guilty to the offense, and the district court sentenced him to five years, with one year determinate and credit for seventy-five days. (R., pp.28-34, 42-43.)

On appeal, Formella contends that “the district court abused its discretion by imposing an excessive sentence.” (Appellant’s brief, pp.1, 5.) Formella has failed to show that the district court abused its discretion when it sentenced him to five years, with one year determinate and credit for seventy-five days.

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).

C. Formella Has Shown No Abuse Of The District Court’s Discretion

The sentence of five years with one year determinate is within the statutory limits of up to seven years. I.C. § 37-2732(c)(1). In imposing the sentence the district court considered the nature of the instant offense and Formella’s criminal history, character and condition. (Tr., p. 25, L. 21 – p. 28, L. 20.) The district court stated that Formella had a “very serious addiction” that Formella

had failed to adequately address despite “two different riders, each of which have big components dealing with substance abuse.” (Tr., p.26, Ls.5-10.) The district court reasoned that “a longer period of sobriety” would make it “more possible” for Formella “to gain a higher level of control so that the pull of the addiction is not quite as strong as it was.” (Tr., p.26, Ls.15-19.) The district court was “just not convinced that there are a lot of good choices” given how “quickly” Formella resumed using heroin after his rider. (Tr., p. 26, Ls. 22-25.)

The record supports the district court’s analysis. This was Formella’s fourth felony. (PSI, pp. 2-3.) He had a long and extremely poor record on probation. (PSI, pp. 3-5.) In less than two months after his release on probation after his second rider, Formella dropped out of his aftercare program and committed the instant offense. (PSI, 2-5.)

Formella contends his sentence is excessive in light of his community support, acknowledgment of substance abuse issues, stated desire for treatment, promise he would maintain contact with his probation officer, and arrangements of employment. (Appellant’s brief, pp.4-5.) Formella’s argument does not show an abuse of discretion. All of these things were in place when he was released from his last rider, but Formella did nothing to cooperate in his own rehabilitation, immediately absconded from supervision, and committed this new crime. (PSI, pp. 2-5.) The accumulation of Formella’s offenses, and lack of success on community supervision, even after riders, merited the sentence imposed by the district court. Formella has failed to show that the district court abused its discretion.

CONCLUSION

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

DATED this 20th day of February, 2020.

/s/ Kenneth K. Jorgensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of February, 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:

JUSTIN M. CURTIS
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/s/ Kenneth K. Jorgensen
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