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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47198-2019
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-18-50542
	)	
SAMANTHA LEE DONICA,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

ISSUE

Has Donica failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with three and one-half years fixed, upon the jury's verdict finding her guilty of felony DUI?

ARGUMENT

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

A. Introduction

On October 18, 2018, police received a "report of a drunk driver" from Donica's roommate, who advised that Donica "had been drinking all day and may have had two bottles of

liquor,” that she “left to go purchase more liquor,” and that she “may go to the liquor store on S[.] Meridian road.” (R., p. 11.) An officer subsequently located Donica in the parking lot of the liquor store, “sitting in the driver[']s seat” of her vehicle. (Id.) The officer “could smell an odor of an alcoholic beverage coming from [Donica’s] person” and noted that Donica’s “speech was slow and slurred and her eyes were glassy and blood shot.” (Id.) Donica “admitted to driving to the liquor store by herself and having two beers before driving.” (Id.) When the officer asked Donica to exit her vehicle, she “leaned on it to keep her balance.” (Id.) Donica failed field sobriety tests, and subsequent breath testing yielded results of .325/.325 BrAC. (Id.)

The state charged Donica with felony DUI (prior felony DUI conviction within 15 years). (R., pp. 35-36.) The case proceeded to trial and a jury found Donica guilty as charged. (R., pp. 134-35.) The district court imposed a unified sentence of 10 years, with three and one-half years fixed, and ordered that the sentence run concurrently with Donica’s sentence for a prior felony DUI, for which she was on probation when she committed the instant offense. (R., pp. 140-43; PSI, pp. 5-6.<sup>1</sup>) Donica filed a notice of appeal timely from the judgment of conviction. (R., pp. 144-46.)

Donica asserts her sentence is excessive “because it is not necessary to achieve the goals of sentencing.” (Appellant’s brief, p. 3.) 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, \_\_\_, 447 P.3d 895, 899 (2019)

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Donica 47198 psi.pdf.”

(citations 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 \_\_\_, 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 \_\_\_, 447 P.3d at 902.

C. Donica 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. (6/20/19 Tr., p. 15, Ls. 16-20.) It found that Donica is “a multiple offender,” that she has failed to rehabilitate or be deterred from drinking and driving despite prior legal sanctions and treatment opportunities, that “any other sentence other than incarceration will depreciated the seriousness of this offense and the repeated nature of the offense,” and that correctional treatment “is most effectively provided in the institution,” as Donica had already “had the opportunity for rehabilitative treatment on probation” and “the opportunity of a rider, and [she] still engage[s] in the same conduct.” (6/20/19 Tr., p. 16, Ls. 4-11; p. 17, L. 23 – p. 18, L. 7.) The court noted that “drinking on

probation is very different than the decision to get behind the wheel and drive after you've been drinking," and advised, "The primary factor that I have to consider is protecting society. And when you get in a vehicle that's somewhere between one and two tons and elect to drive that vehicle in an impaired state, my primary concern is actually protecting society." (6/20/19 Tr., p. 16, Ls. 19-21; p. 17, Ls. 6-10.) The court found that Donica's driving under the influence "is a significant danger when it's coupled with the fact that you have a history of not just drinking. This is not just substance dependence. You have a history of coupling a car with that drinking behavior," and "significantly, there is a risk that you will commit another crime, which is drinking and driving." (6/20/19 Tr., p. 17, Ls. 18-22; p. 18, Ls. 2-4.) Accordingly, the district court imposed a unified sentence of 10 years, with three and one-half years fixed, and ordered that the sentence run concurrently with Donica's sentence for her prior felony DUI, for which she was on probation when she committed the instant offense. (6/20/19 Tr., p. 18, Ls. 8-16; PSI, pp. 5-6.)

The district court's analysis is supported by the record. Donica has repeatedly chosen to endanger others by driving while intoxicated. In 2005, she committed a DUI for which she was granted a withheld judgment and placed on probation until April 10, 2007. (PSI, p. 4.) In 2010, she committed a second DUI and was placed on supervised probation for two years. (PSI, pp. 4-5.) Donica committed a third, felony DUI in 2013; consequently, she completed a period of retained jurisdiction, after which she was placed on supervised probation for five years beginning in February 2015. (PSI, p. 5.) While on felony probation, she continued to consume alcohol and was sanctioned with discretionary jail time. (PSI, pp. 6, 8-10, 14-15.) She subsequently "reported attending Celebrate Recovery and said she did not have urges to consume alcohol"; however, she thereafter failed to report for an appointment with her probation officer, changed

residences without permission, and was charged with the new crime of disturbing the peace after police were “called” to her residence three times in one day “as she was very intoxicated and having a verbal dispute with the landlord.” (PSI, p. 6.) Donica’s probation officer ultimately filed a report of violation “as Ms. Donica was charged with a new misdemeanor, she was not attending treatment, continued to drink alcohol, and missed an appointment.” (Id.) Shortly thereafter, Donica committed the instant felony DUI offense. (Id.) Her probation officer recommended “imposition of sentence.” (Id.) The presentence investigator likewise recommended imprisonment, advising that Donica “appears to minimize her drinking,” she “does not feel she needs treatment,” she “has continued to put herself and the community as a whole at risk,” and she presents a “high risk to re-offend.” (PSI, pp. 18-19.)

On appeal, Donica argues that her sentence is excessive because she has health problems, she is willing to participate in alcohol treatment, she “accepted responsibility and expressed her remorse over this offense,” and “this offense took place during a very difficult, emotional, and exhausting period for [her].” (Appellant’s brief, pp. 4-6.) However, all of these factors were present when Donica committed her prior felony DUI in 2013, and none of them precluded her from once again choosing to endanger the community by driving while intoxicated in the instant offense, nor was she deterred by the fact that she was on supervised probation for a prior felony DUI. (PSI, pp. 209-10, 217-18.) Furthermore, Donica has previously participated in substance abuse classes, outpatient treatment, and the retained jurisdiction program, but she has failed to rehabilitate and her risk to reoffend has only increased. (PSI, pp. 17, 218-20.) Donica’s arguments do not show that the district court abused its discretion.

Donica’s sentence is appropriate in light of the seriousness of the offense, Donica’s ongoing decisions to endanger the community by driving while intoxicated, her failure to

rehabilitate or be deterred, and her high risk to reoffend. Donica has failed to establish an abuse of sentencing discretion.

CONCLUSION

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

DATED this 20th day of April, 2020.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

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

REED P. ANDERSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
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/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General