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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 47202-2019
Plaintiff-Respondent,)	
)	Ada County Case No. CR01-18-48985
v.)	
)	
JOE ANTHONY SANTIAGO,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Santiago failed to show that the district court abused its discretion by imposing concurrent sentences of two years fixed, with eight years indeterminate, on his convictions for two counts of felony possession of a controlled substance?

ARGUMENT

Santiago Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

In October 2018, law enforcement officers were patrolling through a high crime and narcotic area around Travelers Motel, when they observed Joe Anthony Santiago’s vehicle. (PSI, p. 6.) A plate search revealed that Santiago had an active warrant for a probation violation. (PSI,

p. 6.) Officers made contact with Santiago and arrested him on the warrant. (PSI, pp. 6-7.) At the time of his arrest, Santiago removed a jacket he was wearing and placed it on the ground. (PSI, p. 7.) Law enforcement searched the jacket and found two syringes, one loaded with heroin and the other loaded with methamphetamine. (PSI, p. 7.)

The state charged Santiago with felony possession of heroin, felony possession of methamphetamine, and misdemeanor possession of paraphernalia. (R., pp. 29-30.) The state also sought a persistent violator enhancement. (R., pp. 56-57.) Santiago was convicted on all three counts following a jury trial. (See R., p. 107.) The court then found Santiago to be a persistent violator. (See 5/9/2019 Tr., p. 250, Ls. 10-11; see also R., p. 147.) The district court sentenced Santiago to concurrent sentences of two years fixed with eight years indeterminate on each felony possession charge, and 180 days of credit time served on the misdemeanor.¹ (R., pp. 147-49.) Santiago filed a timely notice of appeal. (R., pp. 154-55, 169-72.)

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). In evaluating

¹ The district court initially sentenced Santiago on June 10, 2019. (See 6/10/2019 Tr., p. 31, Ls. 9-21.) However, the court withdrew that sentence and continued the hearing to allow Santiago more time to review the PSI. (See 6/10/2019 Tr., p. 40, Ls. 1-10.) Santiago was finally sentenced on June 19, 2019, where the district court imposed the same sentence it announced on June 10. (6/19/2019 Tr., p. 55, L. 5 – p. 57, L. 3.)

whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

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

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met this burden, the court considers the entire sentence but presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). “When reviewing the reasonableness of a sentence, this Court conducts an independent review of the record, giving consideration to the nature of the offense, the character of the offender and the protection of the public interest.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015). To establish that the sentence was excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. ““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 (2018) (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

Santiago concedes that the sentence imposed does not exceed the statutory limits. (Appellant's brief, p. 3.) Thus, the sentence will not be considered an abuse of discretion unless Santiago demonstrates that no reasonable mind could conclude it was necessary to accomplish the objectives of sentencing. Santiago has failed to do so.

The sentence imposed is reasonable in light of Santiago's pattern of criminal behavior and substance abuse. Santiago's relevant criminal record includes misdemeanor possession of a controlled substance in 1985, felony possession of a controlled substance with the intent to deliver in 1987 (on which Santiago was sentenced to a rider), felony grand theft and burglary in 1989 (which Santiago conceded he committed to support his substance abuse habit), misdemeanor possession of paraphernalia in 2001, felony possession of a controlled substance in 2001 (on which Santiago was sentenced to prison), and felony possession of a controlled substance in 2017 (for which Santiago was on probation at the time of his possession in this case). (PSI, pp. 24-27; 6/10/2019 Tr., p. 19, Ls. 6-8.) As the district court noted, Santiago has a clear substance abuse issue that began at a very young age and has continued for decades. (6/10/2019 Tr., p. 19, L. 23 – p. 20, L. 3.) Santiago began using marijuana at the ██████ and alcohol at the ██████; he progressed to heroin and cocaine in his teens and was using methamphetamine by ██████. (PSI, pp. 33-34.) Santiago acknowledged that he has been unsuccessful in his attempts to stop using drugs because of “a relapse that occurs during certain situations that may arise during my time of being out in society that brings the availability to me.” (6/10/2019 Tr., p. 20, L. 25 – p. 21, L. 4.) Santiago conceded that he had no problems being incarcerated without drugs. (6/10/2019 Tr., p. 21, Ls. 5-13.)

The district court properly concluded that a period of incarceration, rather than a rider or probation, was necessary to further the objectives of sentencing. The court expressed sympathy

for Santiago's substance abuse issues but also recognized that, based on his persistent use and criminal history, Santiago is "just not getting it." (6/10/2019 Tr., p. 21, Ls. 14-18.) "You've had a pattern of long-term felony convictions; primarily substance abuse related and it's just going to continue." (6/10/2019 Tr., p. 22, Ls. 5-7.) Santiago was sentenced to a rider in the past and he was not compliant on probation in his most recent felony possession of a controlled substance case. (See PSI, pp. 6-7, 25.) In his previous case, Santiago was removed from pretrial release due to missed UAs, positive drug tests, and failing to appear for court. (6/10/2019 Tr., p. 8, Ls. 21-25; PSI, p. 28.) Thereafter, he absconded from probation, failing to ever check in, and was arrested on a warrant while in possession of both heroin and methamphetamine in the incident that gave rise to this present case. (6/10/2019 Tr., p. 9, Ls. 3-13.) The PSI rated Santiago as a high risk for recidivism. (PSI, pp. 38-39.) As the district court recognized, Santiago has "had the benefit of the rider program . . . [and] treatment programs . . . yet it would appear that arguably that all the money that the taxpayers have spent trying to help you rehabilitate has not been successful." (6/10/2019 Tr., p. 22, Ls. 7-11.) The district court's decision to impose a period of incarceration, rather than a rider or probation which have proved unsuccessful, was necessary to further the objectives of sentencing. The district court did not abuse its discretion when it imposed concurrent sentences of two years fixed with eight years indeterminate.

Santiago argues that the sentence "was not reasonable considering his character." (Appellant's brief, pp. 4-5.) However, the district court considered Santiago's character and circumstances, recognizing that Santiago was "likely a good person" but nonetheless engaging in an ongoing pattern of substance abuse and related criminal behavior. (6/19/2019 Tr., p. 54, Ls. 10-23.) At sentencing, Santiago told the court about his circumstances, including his substance abuse problems, health, difficult childhood, and family support. (See 6/10/2019 Tr., p. 11, L. 16 –

p. 13, L. 4.) The district court acknowledged that Santiago received an associate's degree, and that his recent crimes were nonviolent. (6/10/2019 Tr., p. 19, Ls. 1-5.) The district court also acknowledged that Santiago appeared to be a hard worker. (6/19/2019 Tr., p. 54, Ls. 13-17.) However, the district court could not overlook Santiago's continuing drug use and criminal activity, his failure to rehabilitate in the past, or the persistent violator enhancement. The district court did not abuse its discretion when it imposed the reasonable concurrent sentence of two years fixed with eight years indeterminate on each felony possession charge.

CONCLUSION

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

DATED this 22nd day of April, 2020.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of April, 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:

JUSTIN M. CURTIS
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/s/ Kacey L. Jones
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