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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47269-2019
Plaintiff-Respondent,	)	
	)	Cassia County Case No. CR28-19-4042
v.	)	
	)	
JORDAN AVERY ERICKSON	)	RESPONDENT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

Has Jordan Avery Erickson failed to show that the district court abused its discretion when it imposed concurrent, unified sentences of five years determinate for felony battery with intent to commit robbery and twenty years, with five years determinate for conspiracy to commit robbery, and by denying his Rule 35 motion?

ARGUMENT

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

A. Introduction

Kaitlyn Meyers testified to knowing Jordan Erickson through Nolan Mullen-Huber, a known drug dealer. (Tr., p.348, L.9 - p.349, L.15.) Meyers went to Mullen-Huber's residence to purchase marijuana the night of the instant offense. (Tr., p.353, Ls.20-24, p.356, L.21-p.357, L.1.)

She had plans with her friend, Alisa Felshaw, to meet Terrell Fruechtl. (Tr., p.353, L. 20 - p.354, L.5.) Meyers testified that she left Mullen-Huber's residence to meet with Terrell, but that Mullen-Huber wanted to follow the girls because he wanted to talk with Terrell to "sort some things out." (Tr., p.354, Ls.8-12.) Mullen-Huber borrowed his roommate's vehicle and brought Jordan Erickson and Nate Jones. (PSI, p.59 (page citations to electronic file named "Confidential Document Appeal Volume 1 10-8-2019 11.08.8 29286569 0336B53C-95E6-479F-BD8F-67B217D0AAEA.pdf"); Tr., p.354, Ls.16-21.) Meyers and Felshaw picked Terrell up at an Albertson's store, and drove to the Potlatch Hill Turnout, a secluded overlook of Coeur d'Alene. (PSI, p.27.) There, Meyers, Felshaw and Terrell exited Meyers' vehicle. (PSI, p.27.) Mullen-Huber, Erickson and Jones then pulled in behind Meyers' vehicle and exited their car. (PSI, p.27.) The three men were wearing masks and bandanas as they approached Terrell. (PSI, p.27.) They told Meyers and Felshaw to leave, and the two entered Meyer's vehicle and left Terrell behind. (PSI, p.27.) Mullen-Huber, Erickson, and Jones then attacked Terrell, punching and pistol-whipping him in the face. (PSI, p.27.) The three men took Terrell's keys and wallet, then forced him to undress down to his t-shirt and thermal underwear. (PSI, p.27.) The three then beat on Terrell more, threw him down a hill, and left him at the secluded location in the middle of winter. (PSI, p.59.)

Mullen-Huber, Erickson, and Jones returned to Mullen-Huber's residence where a roommate, Zachary Jay was awake. (PSI, p.59.) Mullen-Huber, Erickson, and Jones discussed the events of the attack with Jay, and he reported the information to authorities. (PSI, p.59.) Jay informed that he saw Terrell's wallet and clothes in the possession of Mullen-Huber at their residence. (PSI, p.59.) Jay testified that Jones disposed of Terrell's clothes in multiple dumpsters around their residence, and that Erickson gave five dollars from Terrell's wallet to Mullen-Huber,

then burnt the remaining contents in and of Terrell's wallet over their barbecue with a butane torch. (Tr., p.235, L.5 – p.238, L.6.)

Terrell's mother, Scarlet Kelso, informed authorities that Terrell was able to hide his phone in the snow as Mullen-Huber, Erickson, and Jones made him undress. (PSI, p.56.) She stated that Terrell called her to pick him up, and the two went to Albertson's to ensure his vehicle had not been stolen. (PSI, p.56.) Scarlet then drove Terrell to their residence and called police. (PSI, p.56.) Terrell informed authorities that he had met Meyers over Snapchat three to four weeks prior, but that night was the first time they had met in person. (PSI, p.56.) Terrell allowed an officer to look through his phone, but Meyers had already blocked him on Snapchat. (PSI, p.57.) Authorities then interviewed Felshaw and Meyers, and seized Meyers' cellphone as evidence. (PSI, p.58.) As an officer was typing their report of the events, Meyers' phone screen flashed white and began running through language options. (PSI, p.58.) Her phone was remotely reset, which often deletes data stored on the device. (PSI, p.58.)

The state charged Erickson with battery with the intent to commit robbery, and conspiracy to commit robbery. (R., pp.10-12.) A jury found Erickson guilty of both charges, and the district court sentenced him to five years for battery with the intent to commit robbery, and twenty years, with five years determinate for conspiracy to commit robbery, concurrent. (R., pp.177, 225-226.) Erickson filed a Motion for Modification of Sentence pursuant to I.C.R. 35(b), and the district court denied it. (Aug., pp.1-3, 7-12.)

On appeal, Erickson argues that "the district court abused its discretion by imposing excessive sentences upon him," and that "the district court abused its discretion in denying his Rule 35 motion for a reduction of sentence." (Appellant's brief, pp.1, 6.) Erickson has failed to show that the district court abused its discretion by imposing concurrent, unified sentences of five

years determinate for felony battery with intent to commit robbery and twenty years, with five years determinate for conspiracy to commit robbery, and by denying his Rule 35 motion.

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) (internal quotations and 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. (internal quotations omitted). "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).

"If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion." State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In evaluating 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. Erickson Has Shown No Abuse Of The District Court's Discretion

The sentences imposed are within the statutory limits of I.C. § 18-6501 and 19-2513. Through sentencing, the district court thoroughly analyzed the nature of the instant offenses, and the state and character of Erickson. The district court told Erickson "You still haven't taken accountability. You still haven't stood up like a [redacted] and said this is what I did." (Tr., p.532, Ls.12-14.) The district court cited State v. Brown, 131 Idaho 61, 73, 951 P.2d 1288, 1300 (Ct. App. 1998), and stated "trial courts can consider a defendant's failure to accept responsibility in determining whether rehabilitation efforts would be fruitful when imposing sentence." (Tr., p.532, Ls.17-22.) The district court noted Erickson's PSI, specifically the "Defendant's version" portion where Erickson's remarks were simply, "Not guilty." (Tr., p.533, Ls.22-25.) The district court further analyzed Erickson's remarks throughout the PSI where he denied knowledge of, and involvement in, the instant offenses. (Tr., p.533, L.25 – p.534, L.25.) The district court stated "[Erickson's] never been a man to come out and say exactly what [he] did, and so, as our case law indicates, [he hasn't] taken the first step to proving that [he is] a good candidate for rehabilitation." (Tr., p.536, L.24 – p.537, L.3.) The district court stated "while [Erickson's] victim didn't die, [he] certainly left him in a situation where that could've occurred. [He had] left him with certainly permanent emotional scars if not physical scars," and that the district court's job is "protecting the public, which is what [it did] with this prison sentence." (Tr., p.537, Ls.4-5, 16-19.)

Erickson contends that the mitigating factors–criminal history, acceptance of responsibility, and youthful age–show an abuse of discretion. (Appellant's brief, pp.4-5.) Erickson's argument does not show an abuse of discretion. The instant offenses caused significant, visual harm to the victim. Terrell suffered severe injuries, showing the brutality and lack of empathy of Erickson's actions. (State's exhibits 2-7.) In state's exhibit number one, Terrell is

shown wearing slacks, a buttoned shirt, and a tie the night of the offense, as he assumed he was going on a date, but instead was beaten by three men, stripped down to his t-shirt and thermal underwear, and left on an overlook in the middle of winter. The aggression and viciousness of Erickson's acts alone merit the sentences imposed. Erickson asserted that Zachary Jay lied to law enforcement, and when shown images of Terrell, Erickson said he felt no guilt because he was not involved. (PSI, p.28.) Erickson's denial of responsibility and involvement in this case shows his lack of acceptance of accountability for his crimes, and further justifies the district court's sentences.

In Erickson's Rule 35 motion, he requests a grant for leniency due to "the collateral negative impact a sentence of the current nature places upon [Erickson] and his future," his remorse, his age, and a lack of felony convictions. (Aug., p.2.) He also compared his sentence to that of Mullen-Huber. (Aug., pp.2-3.) The district court stated "Erickson did not set forth any evidence that could be adduced. Erickson only provided argument in his motion," and that his Rule 35 motion "must be denied due to that failure." (Aug., p.9.) The district court also stated it "strongly felt the only way to keep the community safe (both from Erickson via incapacitation, and as a deterrence to others) was to impose those specific prison sentences. Nothing has changed since imposition of those sentences." (Aug., p.10.) The district court found that "Erickson's argument shows nothing has changed regarding lack of responsibility and accountability," because "Complaining about the consequences of his sentence is not taking responsibility. Claiming eleventh-hour remorse (even if an affidavit were submitted) is not taking responsibility. Comparing his sentences to the sentences other judges imposed on other co-defendants is not taking responsibility." (Aug., p.11.) The district court finally concluded that "imposition of

Erickson's prison sentences is necessary for the protection of society and the deterrence of Erickson and others." (Aug., p.11.)

Erickson's age, claims of acceptance of accountability, and short criminal history did not merit lesser sentences than those imposed. The physical harm caused by Erickson to the victim shows that imprisonment is an appropriate sentence to provide protection to the community, punishment and deterrence. Erickson's deportment throughout the presentence investigation shows that he is not amenable to treatment in the community, and he has failed to show that a lesser sentence than that imposed was the only reasonable option under the circumstances. Erickson 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 March, 2020.

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

ZACHARI S. HALLETT
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of March, 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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