

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47390-2019
Plaintiff-Respondent,)	
)	Canyon County Case No.
v.)	CR14-18-20791
)	
ANTHONY AARON FRANCES,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

Has Frances failed to establish that the district court abused its discretion by imposing a unified sentence of five years, with one year fixed, upon his guilty plea to felony malicious injury to property?

ARGUMENT

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

A. Introduction

Frances “became angry” with his girlfriend, Melisa, “began yelling” at her, and then “used two closed fists and began striking Melisa in the face” while she was holding their [REDACTED]

██████████ child. (R., pp. 14-15.) Melisa “fell backwards toward the glass screen door,” after which she “crawled into a protective kneeling position in the corner of the dining room while [Frances] continued to strike her.” (R., p. 15.) She was eventually “able to get away from [Frances] and ran into her room,” “locked both the bedroom door and the bathroom door,” and “sat in the floor of the shower in the bathroom and called 911.” (Id.) Frances subsequently picked up the couple’s ██████████ ██████████ children and, while holding the two children, he “walked over to the bedroom door and kicked it down.” (R., p. 16.) He then “continued to the bathroom ... while still holding the children,” “kicked the bathroom door down,” and told Melisa that “he was going to kill her.” (R., pp. 15-16.)

When officers responded, they noted that “several of the blinds were broken” in the dining room where Melisa fell into the sliding glass door, the bedroom door was “on the ground several feet away from the door frame” and “the hinges were still attached to the frame along with the screws,” and the “bathroom door was resting against the sink in the bathroom with the front of the door broken further and partially showing the core of the door.” (R., p. 15.) The officers also noted that Melisa “appeared to be deeply frightened,” she “had a cut on the bridge of her nose and red marks on her face and the outside of her arms,” and she “indicated that she had soreness to the back of her head.” (R., p. 14.) Paramedics responded to assess Melisa and “advised her to go to a local hospital due to her head pain.” (PSI, p. 4.¹) Melisa subsequently went to a medical facility, where she was diagnosed with “Domestic violence of adult; contusion of left shoulder; strain of left wrist; and contusion of left hand, finger, and scalp.” (Id.)

¹ PSI page numbers correspond with the page numbers of the electronic file “Confidential Exhibits Appeal 47390-2019.pdf.”

The state charged Frances with domestic battery – traumatic injury, with a persistent violator enhancement, and misdemeanor malicious injury to property. (R., pp. 32-37.) Pursuant to a plea agreement, Frances pled guilty to amended charges of felony malicious injury to property and misdemeanor domestic assault, and the state dismissed the persistent violator enhancement and agreed to recommend a unified sentence of five years, with two years fixed, for the felony and “credit for time served, to run concurrently,” for the misdemeanor. (R., pp. 57-62.) The district court imposed a unified sentence of five years, with one year fixed, for felony malicious injury to property, and 13 days in jail, with credit for 13 days served, for domestic assault. (R., pp. 84, 88-89.) Frances filed a notice of appeal timely from the judgment of conviction. (R., pp. 90-92.)

Frances asserts his unified sentence of five years, with one year fixed, for felony malicious injury to property, is excessive in light of his abusive childhood, participation in domestic violence treatment, acceptance of responsibility, and purported remorse. (Appellant’s brief, pp. 2-4.) The record supports the sentence imposed.

B. Standard Of Review

Appellate review of a sentence is based on an abuse of discretion standard. State v. Dobbs, 166 Idaho 202, ___, 457 P.3d 854, 855 (2020) (citation omitted). “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, 454, 447 P.3d 895, 902 (2019) (citation omitted). “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. “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 the given case.” Id. (quoting State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982)). The district court has the discretion to weigh those objectives and to give them the weight deemed appropriate. Dobbs, 166 Idaho at ___, 457 P.3d at 856. “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Bodenbach, 165 Idaho 577, 591, 448 P.3d 1005, 1019 (2019) (citation omitted).

C. Frances 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. (8/26/19 Tr., p. 21, L. 23 – p. 22, L. 4.) It stated, “[O]ne of the things that obviously causes me concern in this case is the violent conduct that you did on this date that led to this charge but also your history.” (8/26/19 Tr., p. 20, Ls. 4-7.) The court concluded that “probation really did not deter you” and “you’ve been through treatment in the past and you’ve done a rider ... but your prior treatment, unfortunately, did not assist you in keeping calm, finding some other way to comport yourself. Instead, you acted violently against the victim.” (8/26/19 Tr., p. 21, Ls. 6-22.) The court noted, “This is not the first time that you’ve committed a violent act,” and advised, “I am concerned about community safety as it relates to you. You’ve had, like I said, several chances in other cases to do well ... but yet you’re here again on another very violent incident.” (8/26/19 Tr., p. 21, Ls. 11-18.) Accordingly, the district court imposed a unified sentence of five years, with one year fixed, stating, “I don’t know what it’s going to take to prevent you from committing violent acts in the future. But my hope is that ... protecting society by removing you from society for a period of time” and “also the punishment that will go along with a year of incarceration will impress upon you that violent conduct from you will not be viewed lightly by the courts and that

you will have serious consequences for them.” (8/26/19 Tr., p. 22, Ls. 5-17.) The court advised that, “because of that violent history, I think this sentence is appropriate.” (8/26/19 Tr., p. 22, Ls. 20-21.)

The district court’s decision is supported by the record. Frances has a long history of committing crimes that victimize and/or endanger the well-being of others. He admitted, “I have been in several altercations in my life where I have hit people.” (PSI, p. 10.) At age 15, Frances was charged with battery, resisting/obstructing officers, and assault or battery upon certain personnel. (PSI, p. 6.) He “pleaded true” to resisting/obstructing officers and was “placed on an Informal Adjustment.” (PSI, pp. 6, 9.) He was later convicted of inattentive/careless driving, for which he was placed on probation. (PSI, pp. 6-7.) Frances was charged with fourth degree assault in 2005 and with DUI in 2006; however, no disposition is listed for those crimes. (PSI, p. 7) In 2007, he was charged with battery and malicious injury to property; he pled guilty to a reduced charge of disturbing the peace and was again placed on probation. (Id.)

In 2008, Frances was convicted of aggravated assault on a law enforcement officer after he was observed “breaking the windows out of a 2005 Honda Civic, registered to [Frances’s] wife (Stephanie Cleland)” and, when he saw a law enforcement officer, he “grabbed a claw hammer, and ran towards [the officer] swinging the hammer at him.” (PSI, pp. 9-10 (parenthetical notation original).) Frances was placed on felony probation, but violated his probation when he “was arrested for Attempted Strangulation” after he “placed his arms around his ex-wife’s, Stephanie[’s], throat, struck her in the head, threw her to the ground, and chased her in his vehicle when she fled.” (Id.) Frances admitted to officers that he “hit his wife, grabbed her, and pulled her hair.” (PSI, p. 10.) Subsequently, while Frances was in the county

jail, he was charged with the new crime of intimidating a witness after deputies intercepted a note that “‘contained information on trying to get [Stephanie] not to show up for court or take calls/mail from the prosecutor’s office, etc.’” (Id.) Frances was ultimately convicted of felony domestic violence in the presence of children (amended from attempted strangulation) and was placed in the retained jurisdiction program, after which he was again placed on probation. (Id.)

Thereafter, while on probation, Frances was convicted of harassment and of DUI. (PSI, pp. 8-9.) He completed domestic violence treatment at Family Services Counseling Center and Advocates Against Family Violence, and he also completed Moral Reconciliation Therapy; he nevertheless committed the instant offense just three months after he was discharged from probation in his prior felony domestic violence case. (PSI, pp. 8-10, 17-18.) The presentence investigator concluded that “prior periods of supervision and a rider did not work as deterrents,” as Frances “has continued to exhibit violent behavior.” (PSI, p. 21.) The district court did not abuse its discretion when it determined that a unified sentence of five years, with one year fixed, was necessary to satisfy the goals of sentencing in this case, particularly in light of Frances’s ongoing violence toward others and failure to rehabilitate or be deterred.

On appeal, Frances argues that his sentence is excessive because he was abused as a child, he was again participating in domestic violence treatment, and he accepted responsibility and apologized for the instant offense. (Appellant’s brief, pp. 3-4.) However, as set forth above and as noted by the district court at sentencing, Frances has already completed domestic violence treatment – during which he should have addressed any violence-related issues stemming from his childhood – and he nevertheless continued to commit crimes of violence. (PSI, pp. 8-9, 17; 8/26/19 Tr., p. 21, Ls. 6-18.) Additionally, while it is laudable that Frances accepted responsibility and apologized for the instant offense, his regret for once again choosing to

victimize others is outweighed by his failure to be deterred from his violent criminal behavior. Frances's arguments do not show that the district court abused its discretion.

Frances's sentence is appropriate in light of the serious nature of the offense, the harm done to the victim, Frances's failure to rehabilitate or be deterred despite prior treatment opportunities and legal sanctions, and the danger he poses to society. Frances has failed to establish an abuse of sentencing discretion.

CONCLUSION

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

DATED this 14th day of May, 2020.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of May, 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
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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