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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. CODY CLARK BAKER, Defendant-Appellant.	)	No. 47399-2019 Ada County Case No. CR01-19-11099 RESPONDENT'S BRIEF

Has Baker failed to show the district court abused its sentencing discretion by imposing a unified sentence of fifteen years with seven years fixed following his conviction for aiding and abetting aggravated battery?

ARGUMENT

Baker Has Failed To Show The District Court Abused Its Sentencing Discretion

A. Introduction

Along with three others, Cody Clark Baker helped plan and execute a vicious attack on

Sarita Alexis Morgan with the intention of killing her. (Tr., p.14, L.11 – p.16, L.20; PSI, pp.1-3.[1]) They picked her up; drove her to the foothills; attacked her with a knife, rock, and bottle; and left her there to die with serious injuries. (Tr., p.14, L.11 – p.16, L.20; PSI, pp.1-3.) Baker acknowledged that the plan was to kill Ms. Morgan; that he punched her; held her down so another person could repeatedly stab her with a knife and beer bottle in the throat, side, and abdomen; stomped her head; told her that this was "what she deserved for pissing him off"; and eventually left her where she was. (PSI, pp.126-29.) The attack ended, according to Baker, because he decided during the attack that Ms. Morgan "didn't need to die." (PSI, p.123.) Ms. Morgan required surgery for a lacerated liver, and was treated for serious bruises, scrapes, and multiple stab wounds. (PSI, pp.1, 278.) All of this was apparently a result of Baker and Ms. Morgan "need[ing] space" from a romantic relationship as a result of Baker's anger that "every time he wants to hang out with his family [Ms. Morgan] storms off." (PSI, p.128.) According to Baker, he had previously warned Ms. Morgan that, "You don't piss me off and I even told her when we first started dating, you don't wanna piss me off to where I'm seeing red. And that's what she's been doing so when I see that color, I can't stop." (PSI, p.127.) Baker stated, "I'm gonna get mad and then I'm gonna retaliate." (PSI, p.127.)

The state charged Baker with aiding and abetting an aggravated battery. (R., pp. 34-35.) Baker pled guilty and the state agreed not to pursue a persistent violator enhancement. (Tr., p.6, L.2 – p.17, L.5.) At sentencing, the state recommended an imposed sentence of fifteen years with nine years fixed. (Tr., p.21, L.22 – p.22, L.3.) Barker's counsel requested a period of supervised probation or retained jurisdiction. (Tr., p.30, L.24 – p.31, L.9.) The district court imposed a

[1] References to 'PSI' are to the file titled 'Baker 47399 psi.pdf' and page references are to the pagination of that entire file. Ms. Morgan is transgendered and her legal name is "Nicholas Travis Wurst." (PSI, pp.1-2, 45, 1212.)

unified sentence of fifteen years with seven years fixed. (Tr., p.40. L.23 – p.41, L.1; R., pp.51-53.) Baker timely appealed. (R., pp.54-55.)

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)). Likewise, whether to grant probation or retain jurisdiction is within the district court's discretion. State v. Wolfe, 124 Idaho 724, 727, 864 P.2d 170, 173 (Ct. App. 1993); State v. Allen, 98 Idaho 782, 784, 572 P.2d 885, 887 (1977). 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. Baker Has Shown No Abuse Of The District Court's Sentencing Discretion

The district court's sentence of seven years fixed was well within the statutory limits: aggravated battery carries a maximum period of confinement of fifteen years, I.C. § 18-908, and, as an aider and abettor, Baker is a principal in the crime of aggravated battery, I.C. § 18-204. Therefore, the sentence will not be considered an abuse of discretion unless Baker demonstrates that no reasonable mind could conclude the sentence was necessary to accomplish any of the

objectives of sentencing. State v. Sheahan, 139 Idaho 267, 285, 77 P.3d 956, 974 (2003); State v. Davis, 127 Idaho 62, 65, 896 P.2d 970, 973 (1995). "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) (quotation marks omitted). In determining whether the he has met that burden, this 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). "The objectives of criminal punishment are protection of society, deterrence of the individual and the public, possibility of rehabilitation, and punishment or retribution for wrongdoing, with the primary objective being the protection of society." State v. Dobbs, 166 Idaho 202, 457 P.3d 854, 856 (2020) (quotation marks omitted). "Moreover, it is clear, as a matter of policy in Idaho, that the primary consideration is the good order and protection of society. All other factors must be subservient to that end." Id. (quotation marks omitted). "The district court has the discretion to weigh these objectives and to give them the weight deemed appropriate." Id. "A sentence need not serve all sentencing goals; one may be sufficient." State v. Struhs, 158 Idaho 262, 268, 346 P.3d 279, 285 (2015) (quotation marks omitted).

The district court's thorough explanation of its reasoning demonstrates that it did not abuse its sentencing discretion, with the district court focusing primarily on the need to protect the public.

First, this "was an extraordinarily serious crime," a premeditated and "serious vicious attack on the victim" that easily "could have resulted in the victim's death," which was motivated by a "trivial irritation." (Tr., p.34, L.18 – p.35, L.1.) "The attack was initially intended to kill the victim," and while the court acknowledged that Baker backed off of that goal during the attack, he did so only after planning to kill the victim, putting that plan into motion, and helping to beat the

victim, stomp on her head, and hold her down so that one of his compatriots could stab her multiple times, all to "teach [her] a lesson." (Tr., p.39, Ls.4-14; PSI, pp.128-29.) The attack left Ms. Morgan seriously injured as Baker and his compatriots left her where she lay bleeding. (PSI, pp.1, 3.) See State v. Mitchell, 124 Idaho 374, 377, 859 P.2d 972, 975-96 (Ct. App. 1993) (district court did not abuse sentencing discretion where, in light of the serious, violent nature of the crime, it considered the sentence necessary for the protection of the public).

The court additionally emphasized Baker's apparent disregard for the law and his anger issues. The court noted that this was Baker's "fourth major felony." (Tr., p.36, Ls.1-3; PSI, pp.25-27.) While the court acknowledged that the previous convictions were not for violent offenses, they "do reveal a pretty consistent pattern of not caring in particular about the law[']s requirements," and a "strain of impulsive and regular criminal activity." (Tr., p.36, Ls.1-9.) That same pattern is reflected in a string of misdemeanor offenses (PSI, pp.25-27) as well as a string of disciplinary reports while incarcerated (PSI, pp.11-12). His last complete presentence report, issued in 2018 after his conviction for introducing contraband while incarcerated, reflected that he was a "high risk" to reoffend. (PSI, pp.33-34.) Sure enough, Baker committed the instant offense just over six months after being released from prison, having spent the last eight years incarcerated. (PSI, p.1.) And, as the district noted, Baker described himself as unable to control his anger and aggression. (Tr., p.38, Ls.8-14; PSI, p.127-28 (stating that he gets angry, starts "seeing red," "can't stop," is "gonna retaliate," and "is not coherent").) The court concluded, correctly, that Baker "has severe anger issues." (Tr., p.39, L.24 – p.40, L.1. See also PSI, p.4 (noting diagnoses of anger and aggression).) This crime clearly reflects Baker's self-described inability to control himself and the associated danger he represents to the public.

Next, the court noted that Baker had previously failed miserably on probation and had resolutely refused to complete treatment and educational opportunities while incarcerated. (Tr., p.37, L.17 – p.38, L.7.) Baker was granted probation after a conviction for grand theft in 2010, only to immediately abscond from supervision, after which he was arrested on a second grand theft charge. (PSI, p.28.) Then, when he was sentenced to a retained jurisdiction program, within a week he refused to participate in programming. (PSI, p.28.) Between 2010 and 2017, he began approximately sixty educational programs while incarcerated, but did not complete a single one. (PSI, p.30.) The court reasonably concluded that, despite opportunities, Baker has never "demonstrated that he would follow through with the type of programming that he would not to follow through to get into a place where he is not dangerous to other people." (Tr., p.38, Ls.15-23.)

Finally, the district court considered mitigating factors, including the fact that Baker somehow took himself to be defending his "makeshift family" (Tr., p.35, Ls.13-25), took responsibility for his conduct and had some role in ending the attack before he completed his plan to kill Ms. Morgan (Tr., p.40, Ls.13-17), had a difficult childhood that involved abuse (Tr., p.36, L.10 – p.37, L.3), and had mental health issues (Tr., p.37, Ls.4-11; p.40, Ls.1-3). But in the court's discretion and in light of the evidence discussed above, the district court reasonably concluded that Baker was not a candidate for probation or retained jurisdiction, that he represented a significant safety risk to the public, and the treatment and supervision he needed should be provided in a structured, institutional setting. (Tr., p.38, Ls.1-7; p.38, Ls.15-23; p.40, Ls.6-12; p.40, Ls.17-22.)

On appeal, Baker's primary argument is simply a request for this Court to reweigh the mitigating and aggravating factors to arrive at a sentence other than the one the district court imposed. (Appellant's brief, pp.6-7 (pointing to Baker's difficult childhood and his taking of

responsibility as indicating the district court's sentence was excessive).) His argument fails. The district court considered the allegedly mitigating considerations to which he points on appeal and articulated the reasons for the sentence it imposed in light of the objectives of sentencing, and, in particular, the primary objective of the protection of society. Abuse of discretion review "does not require (nor indeed, does it permit) [this Court] to conduct [its] own evaluation of the weight to be given each of the sentencing considerations." State v. Windom, 150 Idaho 873, 881, 253 P.3d 310, 318 (2011); State v. Struhs, 158 Idaho 262, 269, 346 P.3d 279, 286 (2015).

Baker additionally points to an alleged error by the district court, claiming that the district court mistakenly believed that he was on parole at the time he participated in the attack on Ms. Morgan. (Appellant's brief, p.5.) According to Baker, that is important because the district court might have inferred that he was unlikely to succeed on probation if it believed he committed the instant crime on parole. (Appellant's brief, p.6.) The district court stated, "This offense also happens relatively quickly after he is placed on parole, so I think that needs to be factored in here." (Tr., p.40, Ls.4-6.) Baker is correct that he was not on parole when he committed the instant offense, but had instead just been released having served his full sentence on a prior conviction. The context of the district court's comment suggests that the court was only making the observation that Baker had almost immediately re-offended after being released into the community, suggesting the need for "treatment in a structured setting." (Tr., p.40, Ls.4-12.) Whether or not on parole, the fact that Baker reoffended, and in such violent and dramatic fashion, just six months after his release from nearly a decade in prison is surely probative of his risk to the community. The district court did draw the inference that Baker was not a good candidate for community supervision, but it did not rely on the misstatement that he was on parole at the time he committed this offense. As discussed above, this was Baker's fourth felony conviction and he

had previously failed immediately on both probation and a retained jurisdiction program. Baker himself declined to pursue parole during his previous incarceration, "citing concerns that he would be unable to comply with parole conditions." (PSI, p.4.) There was no shortage of evidence that Baker would have difficulty complying with community supervision and, particularly in light of the court's very reasonable concerns regarding his anger, violence, and the associated risk to the community, the court reasonably concluded he was not a good candidate for probation.

Finally, Baker argues that the district court erred by citing his previous failure to participate in programming when granted retained jurisdiction as a reason not to grant retained jurisdiction here. (Appellant's brief, pp.7-8.) Not surprisingly, Baker does not cite any case law suggesting that it is improper to consider a defendant's prior failure on retained jurisdiction when determining whether to retain jurisdiction again. But neither did the district court rely exclusively on that previous failure when it imposed the sentence here. Instead, it relied on all of the evidence and facts discussed above to determine that Baker was too great a risk to the public for community supervision. Baker suggests that the district court should nevertheless have given retained jurisdiction a chance because the court could always relinquish jurisdiction of Baker refused or failed to complete programming. (Appellant's brief, p.8.) But "[t]here can be no abuse of discretion in a trial court's refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation." State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Based upon the serious and violent nature of this crime, Baker's self-professed uncontrolled anger and mental health issues, his criminal history, his previous failures on probation and retained jurisdiction, and his failure to participate in programming and educational opportunities, the district court made a

reasonable determination, in the exercise of its discretion, that Baker was not a suitable candidate for probation. That finding is supported by sufficient evidence.

The district court considered the mitigating factors to which Baker points and reasonably determined that, in light of the facts before it, the sentence imposed was necessary to protect the public and ensure Baker received adequate supervision and treatment. Baker has not shown that the district court abused its discretion.

CONCLUSION

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

DATED this 23rd day of June, 2020.

/s/ Andrew V. Wake
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of June, 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:

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