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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47428-2019
Plaintiff-Respondent,)	
)	Cassia County Case No. CR42-17-1855
v.)	
)	
MANUEL JOHN GARCIA, JR,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Manuel John Garcia, Jr failed to show that the district court abused its discretion when it imposed consecutive, unified sentences of seven years, with two years determinate for felony possession of a controlled substance, and three years, with one year determinate for possession and/or introduction of certain articles into correctional facilities?

ARGUMENT

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

A. Introduction

An officer observed a vehicle with an expired temporary registration tag and conducted a traffic stop. (PSI, p.4 (page citations to electronic file named “Supreme Court No. 47428-2019 Garcia Jr. Confidential Exhibits.pdf”).) The officer approached Manuel John Garcia in the vehicle

and smelled the odor of marijuana coming from the vehicle. (PSI, p.4.) The officer asked Garcia about his marijuana use and Garcia stated he had used on his lunch break, but that there was nothing else in the car. (PSI, p.4.) Garcia appeared nervous and fidgety while officers spoke to him, so they asked him again if there was anything illegal in the vehicle and Garcia gave them a blue, vape-like butane pipe. (PSI, p.4.) Officers searched the vehicle and located a jar of a green leafy substance. (PSI, p.4.) Officers arrested Garcia for possession of marijuana, and transported him to the jail. (PSI, p.4.) While en route to the jail, Garcia received a phone call from Colby Cook, who was recently arrested for possession of methamphetamine. (PSI, p.4.) At the jail, authorities began conducting a pat down search and Garcia collapsed, holding his stomach area saying he had a hernia and needed to urinate. (PSI, p.4.) Authorities watched Garcia as he used the restroom and observed him remove a plastic baggie from inside the crotch of his pants. (PSI, pp.4-5.) Garcia informed authorities that the white, crystal substance inside the baggie was methamphetamine. (PSI, p.5.) The white, crystal substance tested positive for methamphetamine, and the green leafy substance was marijuana. (PSI, p.5.)

The state charged Garcia with felony possession of a controlled substance and felony possession and/or introduction of certain articles into correctional facilities, with a persistent violator enhancement. (R., pp.10-11, 53-57.) Garcia pleaded guilty to the felony counts and the state agreed to dismiss the persistent violator enhancement. (R., pp.74, 77-78, 87.) The district court accepted his plea and imposed consecutive sentences of seven years, with two years determinate for possession of a controlled substance, and three years, with one year determinate for possession and/or introduction of certain articles into correctional facilities. (R., pp.92-98.) The district court re-entered the judgement of conviction pursuant to an order in a post-conviction

relief case. (R., pp.106-112.) Garcia then filed a timely notice of appeal from the new judgement of conviction. (R., pp.116-117.)

On appeal, Garcia argues that “the district court abused its discretion by imposing excessive sentences.” (Appellant’s brief, p.1.) Garcia has failed to show that the district court abused its discretion by imposing consecutive sentences of seven years, with two years determinate for possession of a controlled substance, and three years, with one year determinate for possession and/or introduction of certain articles into correctional facilities.

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).

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

The sentences imposed are within the statutory limits of I.C. § 18-2510(3) and 37-2732(c)(1). The district court “objectively” considered the “nature of [Garcia’s] history as an

individual, and the nature of the crime, coupled then with the other factors . . . under 19-2521 of the Idaho code.” (Tr., p.30, Ls.17-22.) The district court credited Garcia for staying “clean on court compliance from meth,” but noted a “new crime with a gun . . . over in Minidoka county that [he is] now facing a felony with a gun charge over there while pending this case.” (Tr., p.31, Ls.6-12.) The district court determined that probation, or retained jurisdiction, are “not an appropriate choice.” (Tr., p.31, Ls.13-15.) The district court stated “the good order and protection of society . . . weighs heavily in favor of an imposition sentence.” (Tr., p.31, Ls.19-23.)

Garcia contends that “the district court failed to exercise reason when it imposed a sentence without adequately considering mitigating factors including Mr. Garcia’s desire for treatment.” (Appellant’s brief, p.3.) Garcia’s argument does not show an abuse of discretion. Garcia’s extensive criminal history shows his inability to successfully apply court ordered treatment. Prior to the instant offenses, Garcia had been charged six times with possession of a controlled substance, and had been placed on probation for three of those charges, and retained jurisdiction on a fourth charge. (PSI, pp.8-11.) His LSI score is twenty-seven, placing him in the moderate risk category to reoffend. (PSI, p.20.) The presentence investigator stated “Based on the defendant’s prior record, his serious current offenses, and continued criminal behavior, it is respectfully recommended Manuel Garcia be sentenced to the physical custody of the Idaho Department of Correction.” (PSI, p.23.)

Garcia’s substance abuse issues and desire for treatment did not merit lesser sentences than those imposed. Garcia’s resistance to prior treatment in the community for drug related offenses shows that imprisonment is an appropriate sentence to provide protection to the community, punishment and deterrence. He has expended the district court’s options for alternative treatment,

and failed to show that a lesser sentence than that imposed was the only reasonable option under the circumstances. Garcia 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 18th day of March, 2020.

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

ZACHARI S. HALLETT
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th 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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