

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

4-29-2020

### State v. Apodaca Appellant's Brief Dckt. 47453

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Apodaca Appellant's Brief Dckt. 47453" (2020). *Not Reported*. 6360.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/6360](https://digitalcommons.law.uidaho.edu/not_reported/6360)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

JUSTIN M. CURTIS  
Deputy State Appellate Public Defender  
I.S.B. #6406  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47453-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-19-1770
v.	)	
	)	
BRANDON LEE APODACA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Brandon Lee Apodaca appeals from his judgment of conviction for forgery. Mr. Apodaca pleaded guilty, and the district court imposed a unified sentence of six years, with two years determinate, and the court retained jurisdiction. Mr. Apodaca appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

## Statement of the Facts & Course of Proceedings

Play It Again Sports in Boise reported that it had purchased two pieces of used sporting gear from Mr. Apodaca in the amount of \$38.00. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) Washington Trust Bank, however, reported that Mr. Apodaca had altered the check in the amount of \$3,800.00. (PSI, p.3.)

Mr. Apodaca was charged with grand theft and forgery. (R., p.17.) He pleaded guilty to forgery and the district court imposed a unified sentence of six years, with two years determinate, and the court retained jurisdiction. (R., pp.31, 43.) Mr. Apodaca appealed. (R., p.52.) He asserts that the district court abused its discretion by imposing an excessive sentence.

## ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of six years, with two years fixed, upon Mr. Apodaca following his plea of guilty to forgery?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Six Years, With Two Years Fixed, Upon Mr. Apodaca Following His Plea Of Guilty To Forgery

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Apodaca’s sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Apodaca “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

*Stevens*, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

In this case, Mr. Apodaca admitted responsibility and expressed remorse for his actions. When asked about the instant offense, Mr. Apodaca stated, “I change the amount of a check. I did this around Christ time of 2019. I don’t know why, it was a mistake that I regret entirely! I’m so sorry to have made this mistake!” (PSI, p.4.) Mr. Apodaca reported that he got behind on his bills and was waiting to get paid for a construction job; he took items to Play It Again Sports hoping to get “a couple hundred” dollars but only received \$38.00. (PSI, p.4.) Looking back on the offense, Mr. Apodaca stated, “I feel awful and wish I could turn back time to have not done it.” (PSI, p.5.)

Further, Mr. Apodaca addressed the court at the sentencing hearing. He stated, “Your Honor, I’d just like to say that I’m sorry for the forgery itself and the other crimes that have followed up to that point. I might not have been convicted of a crime, but that I was leading up to the point of the forgery is understandable in my case. I know that I can get back out there and make a stable presence in the community as long as I’m given the chance.” (Tr., p.18, Ls.1-8.)

Counsel for Mr. Apodaca requested that the court imposed a sentence of five years, with one year determinate, and that the court place him on probation “primarily because [Mr. Apodaca] does not have any felony history.” (Tr., p.15, Ls.20-23.) Further, he had admitted the forgery charge “right away” and was [REDACTED] with no felony history. (Tr., p.16, Ls.12-22.) Counsel did not believe that “it would be equitable at this point to send him on a rider directly on a first felony conviction without really giving him a chance to prove himself.” (Tr., p.16, Ls.18-23.) Finally, to the extent that Mr. Apodaca needed treatment, “the probation office is appropriate at this point to discuss those issues with [Mr. Apodaca] and kind of sort those things out with him while he’s out of custody.” (Tr., p.17, Ls.6-11.)

Mr. Apodaca was skilled in construction work and could work while he was out of custody. (Tr., p.17, Ls.12-14.) He wanted a chance to be on probation so he could prove himself to the court and could comply with any treatment that his probation officer would deem necessary. (Tr., p.17, Ls.16-21.)

Considering that this case is Mr. Apodaca’s first felony conviction, that he quickly accepted responsibility, expressed remorse, would comply with treatment, and had employment while out of custody, Mr. Apodaca submits that the district court abused its discretion by imposing an excessive sentence in this case, as opposed to suspending the sentence and placing him on probation.

CONCLUSION

Mr. Apodaca respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 29<sup>th</sup> day of April, 2020.

/s/ Justin M. Curtis  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of April, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

JMC/eas