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IN THE SUPREME COURT OF THE STATE OF IDAHO

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|--------------------------|---|-------------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 47639-2019 |
| Plaintiff-Respondent, |) | |
| |) | Cassia County Case No. CR16-19-2742 |
| v. |) | |
| |) | |
| MICHAEL WAYNE CARPENTER, |) | RESPONDENT’S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

Has Carpenter failed to show that the district court abused its sentencing discretion when it imposed a sentence of five years with two years determinate and retained jurisdiction upon Carpenter’s conviction for possession of a stolen vehicle?

ARGUMENT

Carpenter Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Police found Michael Wayne Carpenter in possession of a stolen Jeep. (R., p. 11.)
Carpenter claimed he did not have identification and provided false identifying information. (R.,

p. 11.) In the Jeep police found a methamphetamine smoking pipe with methamphetamine residue on it. (R., pp. 11-12.)

The state charged Carpenter with possession of stolen vehicle, possession of a controlled substance, and providing false information to an officer. (R., pp. 22-23.) Carpenter pled guilty to possession of a stolen vehicle in a plea agreement whereby the state agreed to dismiss the other charges and recommend a sentence of five years with two years determinate with retained jurisdiction. (R., pp. 43-45, 56-57; 8/20/19 Tr., p. 4, L. 3 – p. 14, L. 23.) Carpenter failed to appear at sentencing. (R., p. 61.) Despite Carpenter's breach of the terms of the plea agreement by failing to appear at sentencing, the prosecution made the recommendation of a five years sentence with two years determinate and retained jurisdiction as agreed in the plea agreement. (10/29/19 Tr., p. 7, Ls. 2-10; p. 8, Ls. 1-9.)

The defense also recommended a sentence of five years with two years determinate, but asked for probation. (10/29/19 Tr., p. 8, L. 24 – p. 9, L. 3.) In the alternative, if the district court did not grant probation, Carpenter requested a sentence of "one to three [years] imposed." (10/29/19 Tr., p. 9, L. 22 – p. 10, L. 2.) This latter recommendation was based on a belief that parole would be preferable to probation. (10/29/19 Tr., p. 11, L. 12 – p. 12, L. 3.)

The district court imposed a sentence of five years with two years determinate and retained jurisdiction. (R., pp. 69-71; 10/29/19 Tr., p. 15, Ls. 4-24.) Carpenter filed a timely notice of appeal. (R., pp. 80-81.)

On appeal Carpenter argues that his sentence of five years with two years determinate is excessive because of mitigating circumstances. (Appellant's brief, pp. 3-5.) He has failed to show an abuse of discretion because the record supports the sentence imposed.

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)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). 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)). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks "whether the 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. Carpenter Has Shown No Abuse Of The District Court's Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met this burden, the court considers the entire sentence but, because the decision to release the defendant on parole is exclusively the province of the executive branch, 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) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive,

the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. 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.” Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016)).

In imposing the sentence of five years with two years determinate and retaining jurisdiction the district court considered the sentencing materials and the arguments, and applied the correct legal standards. (10/29/19 Tr., p. 12, Ls. 8-25.) The district court found Carpenter was not an appropriate candidate for probation at least in part because of his failure to abide by the terms of his pre-sentencing releases in two cases. (10/29/19 Tr., p. 13, L. 23 – p. 14, L. 14.) The district court considered Carpenter’s age which, at 25, the court considered “young.” (10/29/19 Tr., p. 14, Ls. 2-4.) It also considered Carpenter’s “substance abuse issues.” (10/29/19 Tr., p. 14, L. 18.) The district court then imposed its sentence of five years with two years determinate and retained jurisdiction. (R., pp. 69-71; 10/29/19 Tr., p. 15, Ls. 4-24.)

The record supports the direct court’s sentence. Carpenter’s record contains ten misdemeanor convictions and four probation violations since 2012. (PSI, pp. 5-9.) An additional felony sentencing for possession of a controlled substance was pending in a different county. (PSI, p. 8.) Carpenter failed to appear for his initial sentencing date. (R., p. 61.) He was determined to be a moderate risk of re-offense. (PSI, p. 18.) The district court’s conclusion that Carpenter merited a sentence of five years with two years determinate with retained jurisdiction for his second felony, a theft-related crime, is supported by the record.

Carpenter argues his sentence is excessive in “light of the mitigating factors.” (Appellant’s brief, p. 4.) Those mitigating factors are, according to Carpenter, a “turbulent childhood,” a lack of “difficulty obtaining or holding employment,” and his “expressed remorse” and acceptance of responsibility. (Appellant’s brief, pp. 4-5.) These factors, to the extent they are mitigating, do not show an abuse of discretion.

Carpenter points out that he had an absentee father, a mother who died of a heroin overdose when he was young, and that he was in foster care until his adoption at age 12. (Appellant’s brief p. 4 (citing PSI, p. 10).) Carpenter does not articulate how this information is mitigating. (Appellant’s brief, p. 4.) While presenting him sympathetically, this information does not make him less of a risk to society, more amenable to rehabilitation, less deserving of punishment, or not in need of deterrence.

Carpenter next contends he does not have difficulty finding or maintaining employment. (Appellant’s brief, p. 4 (citing PSI, p. 13).) The cited portion of the PSI shows that in the four years and ten months from January, 2015, until October, 2019, Carpenter was employed in two different jobs for a total of two years and five months. (PSI, p. 13.) Being employed half the time over the last few years is of little, if any, mitigating value.

Finally, Carpenter relies upon his expressions of remorse and acceptance of responsibility. (Appellant’s brief, p. 5 (citing 8/20/19 Tr., p. 4, L. 6 – p. 5, L. 16; p. 11, L. 25 – p. 12, L. 2; PSI, p. 19).) The only cited expression of remorse relates to another crime. (Appellant’s brief, p. 5 (citing PSI, p. 19 (statement accepting responsibility for possession of controlled substance case from other county).) It is unclear how entering the plea agreement and a guilty plea (without even an acknowledgement of guilt) is an expression of remorse or acceptance of responsibility. (Appellant’s brief, p. 5 (citing 8/20/19 Tr., p. 4, L. 6 - p. 5, L. 16; p. 11, L. 25 - p. 12, L. 2).)

Carpenter did not express remorse or accept responsibility in the allocution in this case. (10/29/19 Tr., p. 10, L. 24 – p. 11, L. 11.) Carpenter has failed to show that he in fact accepted responsibility or showed remorse for the crime at issue in this case.

Because Carpenter’s record supports the sentence imposed, the district court did not abuse its discretion. Carpenter’s arguments that the sentence is excessive are unpersuasive. He has failed to show any abuse of discretion.

CONCLUSION

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

DATED this 27th day of April, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of April, 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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