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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. RODNEY MATTHEW BURKHEAD, Defendant-Appellant.	No. 47340-2019 Ada County Case No. CR01-19-6386 RESPONDENT'S BRIEF

ISSUES

I. Has Burkhead failed to show the district court abused its sentencing discretion?

II. Has Burkhead failed to show the district court abused its discretion by denying his Rule 35 motion?

STATEMENT OF THE CASE

The state charged Rodney Matthew Burkhead with domestic battery in the presence of a child and a persistent violator enhancement. (R., pp.23-24, 50-51.) At trial, Burkhead's girlfriend testified that she, her [redacted] and Burkhead were in her apartment during the 2019 Super

Bowl. (6/18/19 Tr., p.73, Ls.15-25, p.74, L.6 – p.75, L.20, p.79, Ls.20-25.) Burkhead and his girlfriend were both drinking beer. (6/18/19 Tr., p.76, L.4 – p.77, L.20.) Burkhead's girlfriend told the jury that she could not remember exactly what happened, but that she did remember she "was curled up in a fetal position and [Burkhead] was pounding on the back of [her] head." (6/18/19 Tr., p.78, Ls.11-14.) She testified that she "had a goose egg on [her] forehead," the "whole side of [her] face was swollen," she had "marks down [her] cheeks," her "left ear was bruised," and she "had rug burn on [her] elbow and . . . bruises on [her] forearms." (6/18/19 Tr., p.81, Ls.4-12.) The state showed the jury photographs of her injuries. (State's Exs. 1-3.) Burkhead's girlfriend testified that her son was present for the attack and called 911. (6/18/19 Tr., p.79, Ls.20-25.)

The jury found Burkhead guilty of domestic battery in the presence of a child, and he admitted to the persistent violator enhancement. (R., p.82; 6/18/19 Tr., p.157, Ls.3-7.) The district court imposed a sentence of ten years with three years fixed. (R., p.93.) Burkhead timely appealed. (R., pp.95-97.)

STANDARD OF REVIEW

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). "If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and [this Court] review[s] the denial of the motion for an abuse of discretion." State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

ARGUMENT

I.
Burkhead Has Failed To Show That The District Court Abused Its Sentencing Discretion

The district court did not abuse its discretion when it imposed a sentence of ten years with three years fixed. It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id.

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. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (holding district court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, "[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court." Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

Here, the imposed sentence fit within the statutory limit. The statutory maximum for domestic battery in the presence of a child with a persistent violator enhancement is life in prison,

see I.C. § 18-918(2); I.C. § 19-2514, and the district court imposed a sentence of ten years with three years fixed (R., pp.92-93). That leaves Burkhead the burden of proving that his sentence is excessive under any reasonable view of the facts. See McIntosh, 160 Idaho at 8, 368 P.3d at 628. He cannot do so.

Burkhead's sentence is reasonable. As the district court observed, this "was a serious matter, and it moved to a very dangerous and a very high level of violence." (8/26/19 Tr., p.26, L.24 – p.27, L.1.) And this being Burkhead's fifth felony "raises very serious questions about whether the defendant is a person who would commit himself to any meaningful change." (8/26/19 Tr., p.27, Ls.6-14.) Based on the seriousness of this offense and Burkhead's criminal history, the district court properly expressed a "legitimate and deep and profound concern that he represents an ongoing risk to the safety of others." (8/26/19 Tr., p.32, Ls.15-20.) Thus, the district court acted reasonably when it sentenced Burkhead to ten years with three years fixed.

Burkhead claims he was entitled to a lesser sentence because he had an addiction to alcohol and was willing to seek treatment. (Appellant's brief, p.4.) But as the district court recognized, Burkhead has had multiple run-ins with the criminal justice system based on his alcohol consumption, yet he refuses to make any changes. (8/26/19 Tr., p.27, Ls.6-14.) In fact, the treatment professional that tried to work with Burkhead in the past reported that "he was extremely resistant towards treatment, frequently cancelled appointments, [and] belittled staff." (8/26/19 Tr., p.31, Ls.12-17.) Moreover, based on Burkhead's experience in a supervised program in the past, the district court found he "is quickly triggered to angry responses" even in "situations where he is not under the influence of alcohol or any other illegal substance." (8/26/19 Tr., p.28, L.17 – p.29, L.14.) Given Burkhead's refusal to change his relationship with alcohol and the danger he

poses even without alcohol, his addiction to alcohol and professed willingness to accept treatment did not require a lesser sentence than the sentence imposed.

Burkhead also claims that family support entitled him to a lesser sentence. (Appellant's brief, p.4.) He points to a letter of support written by his mother. (Appellant's brief, p.4.) But, according to Burkhead, his mother has always supported him, yet that did not stop him from committing this crime. (PSI, p.12.) Regardless of Burkhead's support from his mother, he still refuses "to accept responsibility for both the serious nature of his alcohol abuse and for, frankly, his inability to take responsibility and make changes on his own angry and aggressive responses to situations in life." (8/26/19 Tr., p.32, Ls.8-14.) His mother's support did not require the district court to impose a lesser sentence than the sentence imposed.

II.
Burkhead Has Failed To Show That The District Court Abused Its Discretion By Denying His Rule 35 Motion

Burkhead next asserts that the district court abused its discretion by denying his Rule 35 motion. (Appellant's brief, p.5.) Burkhead has failed to establish an abuse of discretion. To prevail on appeal, Burkhead must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Huffman, 144 Idaho at 203, 159 P.3d at 840. Burkhead claims that he presented the district court the necessary new information when he informed the district court that "he had 'completed several programs while being incarcerated and he has learn[ed] much regarding how to control his aggressive behavior when in a relationship with someone else.'" (Appellant's brief, p.5 (quoting R., p.103).) But the district court is not required to reduce a sentence based on good behavior in prison, which is, after all, the expectation. See State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010) ("[T]he district court did not abuse its discretion in giving little or no

weight to Cobler's good behavior while in prison."); State v. Copenhaver, 129 Idaho 494, 496, 927 P.2d 884, 886 (1996) ("The district court further did not abuse its discretion in refusing to view Copenhaver's good behavior in prison between his sentencing and the Rule 35 hearing as a mitigating factor."). Burkhead's potential reward for good behavior in prison is parole, not a reduction in his sentence.

As the district court found, "[n]o information has been submitted which warrants changing the sentence." (R., p.109.) The district court explained its reasons for the sentence imposed at the sentencing hearing and, even after the Rule 35 motion, "[a]ll of those reasons remain valid." (R., p.109.) Thus, the district court did not abuse its discretion when it denied Burkhead's Rule 35 motion.

CONCLUSION

The state respectfully requests this Court affirm the district court's judgment of conviction.

DATED this 6th day of August, 2020.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of August, 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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