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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47528-2019
Plaintiff-Respondent,)	
)	
v.)	Kootenai County Case No.
)	CR28-18-12541
)	
RAYMOND FONTNO, JR.,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Raymond Fontno, Jr. failed to show that the district court abused its discretion by not granting probation?

ARGUMENT

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

A. Introduction

In 2018, Probation and Parole Officer, Christine Juvan, executed a residence check on Raymond Fontno, Jr. and located drugs and paraphernalia. (R., p. 15.) Officers went to Fontno’s bedroom, which he shared with his girlfriend, Samantha Muller, and located a back pack. (R., p.

15.) Inside the backpack, there were multiple rubber containers and a black pouch. (R., p. 15.) Authorities located a scale with brown residue on the scale, inside the black pouch, and a brown powder inside the rubber containers. (R., p. 15.) Burnt, and unburnt pieces of tinfoil, tweezers with burnt residue, a pen tube with burnt residue on the inside, and a small paperclip used for scraping pipes were located on the bed as well. (R., p. 15.) Authorities also found a plastic baggy containing a brown, sticky substance inside a pack of Marlboro Black cigarettes on the bed. (R., p. 15.)

Samantha informed authorities that she had been using heroin for approximately one month, and that she was aware of Fontno's use and dealing of the drug. (R., p. 15.) Samantha disclosed that she had sold heroin for Fontno on about three occasions when he was unavailable to sell the narcotic. (R., p. 15.) Samantha stated that she did smoke cigarettes, but did not like Marlboros, and that the pack on the bed belonged to Fontno. (R., p. 15.) Samantha denied knowledge of the heroin in the cigarette pack, and stated that the back pack on the bed was hers, but the contents within the pack belonged to Fontno. (R., p. 15.) She claimed that she asked Fontno to use his own back pack, but that the two had not switched yet. (R., p. 15.)

Fontno did not want to speak with the officers on scene, and authorities placed Fontno under arrest for possession of a controlled substance with the intent to distribute. (R., p. 16.) The state charged Fontno with one count of possession with intent to deliver a controlled substance, but pursuant to a plea agreement, the state amended the charge to possession of a controlled substance, which he pleaded guilty to. (R., pp. 30-32, 35-37.) The district court sentenced Fontno to seven years determinate to run consecutive with the sentence in CRF 2015 17268, and retained jurisdiction. (R., pp. 38-40.) The following year, the district court relinquished jurisdiction and executed the imposed sentence of seven years determinate to run consecutive with the sentence in

CRF 2015 17268. (R., pp. 53-54.) Fontno filed a Motion for Modification of Sentence Pursuant to I.C.R. 35(b) and Memorandum in Support, which the district court partially denied by not placing Fontno on probation, and partially granted by reducing Fontno’s determinate period of incarceration from seven years to five years. (R., pp. 56-58, 79.)

On appeal, Fontno argues that “the district court abused its discretion by relinquishing jurisdiction and not placing him on probation,” and when “it denied his Rule 35 motion and did not place him on probation.” (Appellant’s brief, pp. 6, 8.) Fontno has failed to show that the district court abused its discretion by relinquishing jurisdiction and partially denying his Rule 35 motion.

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, 451, 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 454, 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).

The decision to place a defendant on probation is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v.

Reed, 163 Idaho 681, 684, 417 P.3d 1007, 1010 (Ct. App. 2018) (citations omitted). Rehabilitation and public safety are dual goals of probation. State v. Le Veque, 164 Idaho 110, 114, 426 P.3d 461, 465 (2018). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)).

“If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). 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. Fontno Has Shown No Abuse Of The District Court’s Discretion

The sentence imposed is within the statutory limits of I.C. § 37-2732(c)(1). The record shows the district court perceived its discretion, employed the correct legal standards to the issue before it, and acted reasonably and within the scope of its discretion.

At the final retained jurisdiction disposition hearing, the district court noted Fontno’s “performance and failure to abide by the rules as indicated in that progress report dated August 19th, 2019.” (Tr., p. 54, Ls. 7-15.) The district court acknowledge Ms. Laurino’s remarks regarding Fontno’s rider, quoting, ““Mr. Fontno did do better in programming performance. He

did not appear to be using his skills outside of the classroom. He also continued blaming shifting and not taking accountability for his choices,” and that he “doesn’t have an approved plan because he did not follow through with directions given to him by the Court and by his case manager. Based on his performance, I’m not changing the recommendation from relinquish jurisdiction.” (Tr., p. 54, L. 21 – p. 55, L. 4 (quoting PSI, p. 13).)

On appeal, Fontno argues that the mitigating factors—acknowledgment of need for treatment, acceptance into residential treatment, completion of programming, voluntary attendance of a mental health group, employment, and acceptance into the Honors Program—show an abuse of discretion. (Appellant’s brief, pp. 6-7.) Fontno’s argument does not show an abuse of discretion. His case manager stated that Fontno “continues to struggle with justifying his behavior and aggressively standing behind his justifications,” and that “he was given feedback by his peers that he needed to own his behavior rather than blame shift to the officer and escalate a situation that was a minor rule violation turning it into a major conflict..” (PSI, p. 16.) Numerous corrective actions were documented throughout Fontno’s period of retained jurisdiction. (PSI, p. 9-10, 12-18.)

Fontno’s failure on his probation for his 2015 case and his insubordinate behavior throughout his period of retained jurisdiction shows that alternative treatment is not a viable option for Fontno, and that he is not a suitable candidate for probation. The instant offense is serious, and the circumstances present a risk to the community. Fontno subjected his [REDACTED] girlfriend to heroine and was distributing to others. The district court reduced the determinate period by two years because of Fontno’s progress in retained jurisdiction, but reasonably found that Fontno was not yet a suitable candidate for community supervision. The imposition of the sentence provides proper deterrence to Fontno’s criminal behavior, and provides appropriate

protection to the public. Fontno has failed to show that the district court abused its discretion by relinquishing jurisdiction and partially denied his Rule 35 motion, requesting to be placed on probation.

CONCLUSION

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

DATED this 5th day of August, 2020.

/s/ Kenneth K. Jorgensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of August, 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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