

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

JUSTIN R. PORTER
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

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|-----------------------|---|------------------------------|
| STATE OF IDAHO, |) | |
| |) | NOS. 47601-2019 & 47641-2019 |
| Plaintiff-Respondent, |) | |
| |) | Boundary County Case Nos. |
| v. |) | CR11-19-0735 & CR11-19-0039 |
| |) | |
| DAIN LANDON BELL, |) | |
| |) | RESPONDENT’S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

Has Bell failed to show that the district court abused its sentencing discretion when it imposed concurrent sentences of seven years, with three years fixed, upon his convictions for possession of methamphetamine?

ARGUMENT

Bell Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Police officers conducted a traffic stop on the car Bell was driving. (PSI, p.3.) Upon making contact with Bell, one officer recognized the smell of both fresh and burnt marijuana coming from the car and another officer observed marijuana in plain view in Bell’s jacket pocket.

(PSI, p.4.) The officers arrested Bell. In a search subsequent to his arrest, the officers discovered more marijuana, several smoking devices, two spoons with methamphetamine residue on them, and five syringes. (PSI, p.4.) A search of Bell's car uncovered additional marijuana, rolling paper, a used syringe, drug packaging items like a plastic bottle and baggies, and a plastic baggie that contained a crystalline substance. (PSI, p.4.)

In case no. CR11-19-39, the state charged Bell with possession of methamphetamine, possession of marijuana, possession of paraphernalia, and a persistent violator enhancement. (47641 R., pp.29-33.) Pursuant to a plea agreement, Bell pled guilty to possession of methamphetamine, and the state dismissed the remaining charges and the persistent violator enhancement. (47641 R., pp.38-49.)

Just five days after entering a guilty plea in case no. CR11-19-39, Bell was arrested and charged in case no. CR11-19-735 with possession of methamphetamine, possession of marijuana, possession of drug paraphernalia, and a persistent violator enhancement. (47601 R., pp.28-32; Tr., p.13, L.24 – p.14, L.1.) Bell pled guilty to possession of methamphetamine, possession of marijuana, and possession of paraphernalia. (47601 R., pp.38-48; Tr., p.5, L.3 – p.9, L.20.) The state dismissed the persistent violator enhancement. (47601 R., p.55; Tr., p.12, Ls.4-7.)

During sentencing, the state recommended consecutive sentences of two years fixed in case no. CR11-19-39 and seven years, with two years fixed, in case no. CR11-19-735. (Tr., p.14, L.24 – p.15, L.6.) Alternatively, if the court were to impose concurrent sentences the state recommended unified sentences of seven years, with four years fixed. (Tr., p.15, Ls.8-10.) Bell recommended probation. (Tr., p.17, Ls.5-9; p.18, Ls.1-3.) Alternatively, Bell requested to be placed on a rider. (Tr., p.20, Ls.1-6.) The court imposed concurrent unified sentences of seven

years with three years determinate. (47641 R., pp.71-74; 47601 R., pp.49-52; Tr., p.24, L.17 – p.25, L.11.¹)

Bell timely appealed. (47641 R., pp.77-79; 47601 R., pp.57-59.) The two cases were consolidated for appeal. (47601 R., p.7.)

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)). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018) (citation omitted).

¹ The court imposed sentences of credit for time served on the misdemeanor charges. (47601 R., pp.53-54; Tr., p. 25, Ls.12-16.)

C. Bell Has Shown No Abuse Of The District Court's Discretion

To carry 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 (2015)).

Here, the imposed sentences fit within the statutory limits. The maximum penalty for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed concurrent unified sentences of seven years, with three years fixed. (47641 R., pp.71-74; 47601 R., pp.49-52.) Because the imposed sentences do not exceed the statutory maximum Bell “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” Strand, 137 Idaho at 460, 50 P.3d at 475. He cannot do so.

Bell's sentences are reasonable. In imposing Bell's sentence, the district court correctly concluded that Bell was not “an appropriate candidate for probation.” (Tr., p.24, Ls.10-15.) Bell has an extensive criminal history, and much of it is related to drugs. Bell “start[ed] getting in

trouble very young and ha[d] felonies very young.” (Tr., p.21, Ls.15-17.) At the [REDACTED] [REDACTED] Bell was convicted of felony possession of a controlled substance, possession of a controlled substance at a correctional facility, and possession of drug paraphernalia. (PSI, pp.2, 6.) He was then convicted of possession of stolen property. (PSI, p.6.) In both cases, he was sentenced to five years of probation, which was ultimately revoked. (Id.) While on probation he was again convicted of felony possession of a controlled substance and sentenced to five years of confinement. (PSI, pp.6-7; Tr., p.21, Ls.21-22.) He was then convicted of second degree assault and armed criminal action, for which he was sentenced to seven years of confinement. (PSI, p.7; Tr., p.21, Ls.21-22.²) Twice he was convicted of failing to register as a violent offender. (PSI, p.10.) He has also been convicted of eight misdemeanors including DUI and domestic battery/assault in the presence of a child. (PSI, pp.6-11.)

Relying on the presentence report, which included Bell’s criminal history, the court found that he had already been given “chance after chance” to succeed on community supervision. (Tr., p.10, Ls.5-15; p.22, Ls.8-13.) This finding is supported by the record. Bell absconded from supervision multiple times, including after serving one year of his first prison sentence. (PSI, pp.12, 52.) More recently, Bell twice failed to report for probation orientation in Idaho after his felony probation was transferred from Montana on an interstate compact. (PSI, p.12.) Consequently, the interstate compact was revoked and his probation was returned to Montana. (Id.) Additionally, he violated his probation when he was convicted of failure to register as a violent offender, acquired new drug charges that were dismissed as part of a global resolution, and he ultimately served a one-year prison sentence upon revocation of his probation. (Id.) He was

² Section 571.015 of the Revised Statutes of Missouri states, “Any person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon is also guilty of the offense of armed criminal action”

placed on pre-release supervision following his completion of the Connections Corrections inpatient program, but repeatedly violated his pre-release conditions before it too was revoked. (Id.) By Bell's own admission, "he did not do well" on probation. (Id.)

Moreover, the court's decision to impose, not suspend, Bell's sentence is reasonable in light of Bell's conduct. The court found that Bell had been given a "huge break" in case no. CR11-19-39. (Tr., p.23, L.25 – p.24, L.3.) When officers originally stopped and cited Bell, he was merely given a summons for the misdemeanor charges because he was "dealing with addiction." (Tr., p.23, L.25 – p.24, L.5; see also PSI, pp.4-5.) Nevertheless, Bell did not take advantage of the opportunity to get into inpatient treatment. (Tr., p.24, Ls.3-5.) Instead, just five days after entering a guilty plea to possession of methamphetamine in that case, Bell was again charged in a separate case with possession of a methamphetamine, possession of marijuana, and possession of paraphernalia. (Tr., p.13, L.4 – p.14, L.1; p.24, Ls.6-9.) In addition to his recurring drug use even during the pendency of these cases, Bell failed to appear for his appointment with the presentence investigation interview and for his original sentencing hearing. (47641 R., p.53, 65-67.)

In light of Bell's extensive criminal history, his history of absconding and failing to appear, his poor performance on community supervision, and his continued drug use during the pendency of the instant case, the district court did not abuse its discretion when it imposed a unified sentences of seven years with three years fixed.

Bell erroneously argues to the contrary that his sentence is excessive because the district court failed to give sufficient weight to mitigating factors such as his history of substance abuse, need for treatment, acceptance of responsibility, and familial support. (Appellant's brief, pp.3, 5-7.) According to Bell, "had all of these mitigating factors been given their proper weight, the court

should have imposed a lesser sentence—specifically, probation.” (Appellant’s brief, p.7.) Bell’s argument lacks merit.

The district court gave due consideration to each of these mitigating factors. The district court expressly stated that it had twice reviewed the PSI, which included Bell’s substance abuse history, treatment recommendations, and the GAIN assessment. (Tr., p.10, Ls.10-15; PSI, pp.18-19, 25-41.) Bell indicated that he participated in substance abuse treatment several times in the past but had relapsed each time. (PSI, pp.18-19.) He also indicated that approximately one year after completing his first round of treatment he began smoking marijuana again thinking that he could just smoke marijuana, but in his own words, “I was terribly wrong.” (PSI, p.19.) Eventually, Bell relapsed on methamphetamine. (Id.) Despite acknowledging that he knew he could not “just smoke marijuana” because it leads him to relapse on harder drugs, he stated that “he does not want to stop using marijuana because he likes smoking.” (PSI, pp.18-19.) With respect to treatment, the PSI placed Bell in the high-risk category and recommended that he participate in a level two intensive outpatient treatment program. (PSI, pp.20-21.)

The court also considered Bell’s remorse and familial support. Bell authored a letter to the court in which he acknowledged that “being in possession of controlled substance[s] is a very serious thing” and stated that by asking for probation he was “not trying to down size [sic] the severity of [the] charges.” (PSI, pp.53-54.) The court considered this letter. (Tr., p.11, Ls.6-8.) Additionally, the court gave Bell the opportunity to speak during sentencing. (Tr., p.20, Ls.7-11.) Bell apologized for his failure to appear, acknowledged that he went “downhill” after his divorce and asked for a chance to prove himself to his family. (Tr., p.20, L.12 – p.21, L.4.) Bell’s trial counsel also advised the court that Bell’s father was present in the courtroom during the sentencing

hearing to support him and that his father had supported him throughout his life. (Tr., p.17, L.24 – p.18, L.3.) Accordingly, the district court gave due consideration to these mitigating factors.

Nevertheless, Bell's history of substance abuse, need for treatment, acceptance of responsibility, and familial support did not require a lesser sentence than the sentence imposed. When weighed against the aggravating factors the court considered such as Bell's extensive criminal history, his squandered treatment opportunities, his history of absconding while on community supervision, and his poor judgment in dealing with his legal and substance abuse problems in these cases, the district court did not abuse its discretion by imposing concurrent sentences of seven years, with three years fixed, and refusing to place Bell on probation.

CONCLUSION

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

DATED this 4th day of August, 2020.

/s/ Justin R. Porter
JUSTIN R. PORTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th 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:

ERIK R. LEHTINEN
CHIEF, APPELLATE UNIT
STATE APPELLATE PUBLIC DEFENDER'S OFFICE
documents@sapd.state.id.us

/s/ Justin R. Porter
JUSTIN R. PORTER
Deputy Attorney General