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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 47658-2019 & 47659-2019
Plaintiff-Respondent,	)	
	)	
v.	)	Ada County Case Nos. CR01-19-8053 &
	)	CR01-19-28313
	)	
SHANNON ELAINE SMITH,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Shannon Elaine Smith failed to show that the district court abused its discretion by imposing concurrent sentences of twenty years, with five years determinate, for trafficking in heroin, twenty years, with five years determinate for trafficking in methamphetamine, and one year determinate for possession, introduction or removal of certain articles into or from correctional facilities?

ARGUMENT

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

A. Introduction

In February of 2019, authorities conducted a search warrant on Shannon Elaine Smith’s residence. (PSI, pp. 2-3.) Boise Police officers found 4.82 grams of heroin in Smith’s bathroom,

along with indicia in her name, a drug scale, and drug paraphernalia. (PSI, p. 3.) Smith acknowledged the presence of heroin in her bathroom, but did not indicate how much there was. (PSI, p. 3.) Smith's roommates stated that the bathroom, and the heroin located inside the bathroom, belonged to Smith. (PSI, p. 3.) Following her arrest, Smith posted bail and was released from custody for the time being. (R., p. 21.)

In July of 2019, Boise Police executed another search warrant on Smith's residence. (PSI, p. 3.) Officers found Smith hiding in the back yard, and Jade Moody said that Smith ran upon seeing officers approaching the residence. (PSI, p. 3.) 5.7 grams of heroin and 40.1 grams of methamphetamine were located in Smith's bedroom, and .7 grams of methamphetamine was located in Smith's bathroom next to indicia with Smith's name on it. (PSI, p. 3.) Upon arrival at the jail, jail staff found 2.83 grams of heroin in Smith's mouth. (PSI, p. 3.)

Under case number CR01-19-8053, the state charged Smith with felony trafficking in heroin and misdemeanor possession of drug paraphernalia. (R., pp. 77-78.) Under case number CR01-19-28313, the state charged Smith with one count of felony trafficking in heroin, one count of felony trafficking in methamphetamine or amphetamine, one count of felony possession, introduction or removal of certain articles into or from correctional facilities and one count of misdemeanor possession of drug paraphernalia. (R., pp. 194-195.) In CR01-19-8053, Smith pleaded guilty to trafficking in heroin, and under CR01-19-28313, Smith pleaded guilty to trafficking in methamphetamine and possession, introduction or removal of certain articles into or from correctional facilities. (R., pp. 90-91, 227-228.) In CR01-19-8053, the district court sentenced Smith to twenty years, with five years determinate for trafficking in heroin. (R., pp. 143-144.) In CR01-19-28313, the district court sentenced Smith to twenty years, with five years determinate for trafficking in methamphetamine, and one determinate year for possession,

introduction or removal of certain articles into or from correctional facilities, to be served concurrently with each other and with the prior sentence. (R., pp. 234-237.)

On appeal, Smith argues that “the district court abused its discretion by imposing an excessive sentence of 20 years, with five years fixed, for her trafficking in heroin conviction,” and by “sentencing her to an excessive sentence of 20 years, with five years fixed, for her trafficking in methamphetamine and introducing contraband convictions.” (Appellant’s brief p. 6.) Smith has failed to show that the district court abused its discretion by imposing concurrent sentences of twenty years, with five years determinate for trafficking heroin, twenty years, with five years determinate for trafficking methamphetamine, and one year determinate for possession, introduction or removal of certain articles into or from correctional facilities.

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).

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

The sentences imposed are within the statutory limits of I.C. §§ 37-2732B(a)(6)(A), 37-2732B(a)(4)(A), and 18-2510(4). 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 sentencing hearing for CR01-19-8053, the district court stated that “in this case, there is not only a risk of re-offense, there was re-offense. And once more, the re-offense was so serious that it also amounted to another trafficking case. The defendant then engaged in failures to appear.” (47658 Tr., p. 43, Ls. 13-18 (citations to electronic file named “Smith 47658 & 47659 trs.pdf”).) The district court stated that “the level of accelerated criminal behavior is so substantial that [the court] think[s] we are talking about not only addiction, but serious criminal thinking.” (47658 Tr., p. 45, Ls. 20-23.) The district court determined that “the combination of that serious criminal thinking, plus this level of addiction, means that a greater period of time for sobriety and treatment will be at everybody’s interest, but also a penalty is appropriate because this is dangerous conduct to members of the community,” because trafficking in controlled substances “carries the risk of substantial harm, and there’s no way under the sun that this is a victimless offense.” (47658 Tr., p. 45, L. 24 – p. 46, L. 8.)

At the sentencing hearing for CR01-19-28313, the district court considered “protection of the community . . . rehabilitation, deterrence, and punishment.” (47659 Tr., p. 35, Ls. 6-10 (citations to electronic file named “Smith 47659 trs.pdf”).) The district court addressed the “distinct risks” created by introducing controlled substances to the jail because it “imperils the rehabilitative purposes that jails” in keeping people sober because “if drugs are making their way in there, then that objective of incarcerating people is undermined substantially.” (47659 Tr., p.

35, L. 19 – p. 36, L. 3.) The district court determined that “[Smith’s] misconduct is serious and warrants a significant punishment.” (47659 Tr., p. 40, Ls. 6-8.)

On appeal, Smith argues that the mitigating factors—substance abuse issues, education, employment history, volunteer services, lack of criminal history, support from her family, acceptance of responsibility and desire for treatment—show an abuse of discretion. (Appellant’s brief, pp. 3-6.) Smith’s argument does not show an abuse of discretion. Her LSI score is twenty-two, placing her in the moderate risk to reoffend category. (PSI, p. 12.) Smith failed to comply with the stipulations of her pretrial release by failing to report for four scheduled urine analyses, testing positive for amphetamines, methamphetamines and opiates, and by failing to appear for court. (R., pp. 130-132.) In a letter to the district court, Erin Jackson expressed her heartache and grief for her deceased daughter, Alexandra Michelle Jackson, who held a relationship with Smith and died from a heroin overdose. (R., pp. 139-140.) Erin explained that she witnessed Smith deliver a lighter, concealed in plastic wrap, to Alex while Alex was hospitalized for a serious bacterial infection around her eye. (R., p. 139.) Erin searched Alex’s hospital bathroom and found a sack of heroin, tin foil and a straw. (R., p. 139.) Erin flushed the heroin and confronted Alex about the drugs and paraphernalia, but Alex threatened to refuse treatment for her eye if Erin made any more gestures concerning the narcotics. (R., p. 139.) Two days after Alex’s discharge from the hospital, a friend who had delivered flowers and a card from Smith to Alex appeared at Erin’s residence to meet with Alex. (R., p. 139.) Alex went out to the friend’s car, and Erin desperately Google searched the words “Shannon” and “Boise”. (R., p. 139.) The Google search rendered images of Smith as a heroin dealer, and Erin approached the friend’s vehicle. (R., p. 139.) Erin demanded that the friend give her Smith’s address, and the friend fled Erin’s residence. (R., p.

139.) The following morning, Alex received two phone calls demanding that Erin keep her mouth shut, or Alex would be hurt. (R., p. 139.)

Erin explained her final hours with Alex before she overdosed on heroin. (R., p. 140.) Alex informed Erin that Smith would notify her clients that she had narcotics by saying “my cupboards are full.” (R., p. 140.) Alex told Erin that she was happy to be free of that lifestyle. (R., p. 140.) The following morning, Erin found her daughter deceased, folded forward at the waist and on her face in her bed. (R., p. 140.)

The effects of Smith’s trafficking in narcotics extends far and deep into the community. Smith’s criminal behavior cripples and destroys the lives of her clients, and the families of those addicts. Smith’s misconduct is not a simple, nonviolent drug offense. Drug trafficking devastates the lives members of the community, and Smith preyed on vulnerable people who struggled with addiction. The sentences imposed provide reasonable punishment and deterrence to Smith and other potential offenders. A period of incarceration provides a sobering time frame to Smith, and hopefully the individuals she supplied with heroin and methamphetamine. Smith has failed to show that a lesser sentence is the only reasonable option, and that the district court abused its discretion by sentencing her to twenty years, with five years determinate for trafficking in heroin, twenty years, with five years determinate for trafficking in methamphetamine, and one year determinate for possession, introduction or removal of certain articles into or from correctional facilities.

CONCLUSION

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

DATED this 9th day of September, 2020.

/s/ Kenneth K. Jorgensen  
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Deputy Attorney General

ZACHARI S. HALLETT  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of September, 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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