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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47681-2019
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR28-19-2495
v.)	
)	
BRYAN A. DEWITTE,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Bryan A. Dewitte appeals from his judgment of conviction for malicious injury to property.¹ Mr. Dewitte pleaded guilty and the district court imposed a sentence of five years indeterminate. Mr. Dewitte appeals, and he asserts that the district court abused its discretion by imposing an excessive sentence.

¹ Mr. Dewitte also pleaded guilty to battery and the district court imposed a sentence of 90 days, with 90 days of credit for time served. (R., p.105.) Mr. Dewitte does not challenge this conviction or sentence.

Statement of the Facts & Course of Proceedings

On February 20, 2019, Mr. Dewitte jumped into a vehicle at a car wash while the owner was vacuuming it. (Presentence Investigation Report (hereinafter, PSI), p.6.) The owner of the vehicle reported that Mr. Dewitte threw objects at the car, entered the vehicle and struck him in the head, and fled on foot. (PSI, p.6.) Authorities eventually located and arrested Mr. Dewitte. (PSI, p.8.)

Mr. Dewitte was charged with battery and malicious injury to property². (R., p.65.) The State also sought a persistent violator enhancement. (R., p.66.) He pleaded guilty and the State dismissed the persistent violator enhancement. (R., p.93.) The district court imposed a sentence of 90 days, with 90 days of credit for time served, for battery, and five years indeterminate for malicious injury to property. (R., pp.105; 106.) Mr. Dewitte appealed. (R., p.112.) He asserts that the district court abused its discretion by imposing an excessive sentence for malicious injury to property.

ISSUE

Did the district court abuse its discretion when it imposed a sentence of five years indeterminate upon Mr. Dewitte following his plea of guilty to malicious injury to property?

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Sentence Of Five Years Indeterminate Upon Mr. Dewitte Following His Plea Of Guilty To Malicious Injury To Property

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294

² Charges of burglary and petit theft were dismissed following the preliminary hearing. (R., p.61.)

(1997) (alteration in original)). Here, Mr. Dewitte’s sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Dewitte “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

At the sentencing hearing, Mr. Dewitte addressed the court and stated that he did not hurt anyone in this case, and that he loved his parents and brother, and that his stepfather was a good man. (Tr., p.21, L.19 – p.22, L.13.) Counsel emphasized that the agreement in this case was to run the sentence in this case concurrent to a parole violation in a separate case. (Tr., p.20, Ls.10-16.) The State also agreed not to recommend a fixed term. (R., p.92.) The district court ordered the sentence to run concurrent and did not impose a fixed term. (R., p.25, Ls.3-6.) Considering that Mr. Dewitte did not hurt anyone and that he had the support of his family, Mr. Dewitte respectfully submits that the district court abused its discretion by imposing a sentence of five years indeterminate.

CONCLUSION

Mr. Dewitte respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 24th day of August, 2020.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas