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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 47681-2019
Plaintiff-Respondent,	)	
	)	Kootenai County Case No.
v.	)	CR28-19-2495
	)	
BRYAN A. DEWITTE,	)	
	)	
Defendant-Appellant.	)	RESPONDENT’S BRIEF
_____	)	

Has DeWitte failed to show that the district court abused its discretion by sentencing him to five years indeterminate following his guilty plea to malicious injury to property?

ARGUMENT

DeWitte Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

While a vehicle owner was vacuuming his vehicle at a car wash, Bryan A. DeWitte approached, throwing things at the vehicle. (PSI, p.6.) DeWitte entered the vehicle, tried to grab the owner, and struck him in the head. (PSI, p.6.) DeWitte grabbed the owner’s phone and car

keys and fled on foot, before tossing the items into the snow. (PSI, pp.6-7.) DeWitte then threw snow and ice at the vehicle. (PSI, p.7.) Throughout the encounter, DeWitte dented the vehicle, causing an excess of one thousand dollars of damage. (PSI, p.8.) The vehicle owner did not know and had no prior contact with DeWitte. (PSI, p.7.)

The state charged DeWitte with felony malicious injury to property, with a persistent violator enhancement.<sup>1</sup> (R., pp.65-67.) Pursuant to a plea agreement, DeWitte pleaded guilty and the state dismissed the persistent violator enhancement. (R., p.92.) The state agreed to recommend an indeterminate sentence with no fixed time, to run concurrent to DeWitte's sentence for a parole violation in a separate case. (R., p.92.) The district court sentenced DeWitte to five years indeterminate to run concurrent with his other sentence. (R., pp.106-10.) DeWitte filed a timely notice of appeal. (R., pp.112-14, 121-24.)

#### 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)). 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)). 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

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<sup>1</sup> The state also charged DeWitte with misdemeanor battery, to which DeWitte pled guilty and was sentenced to 90 days, with 90 days credit for time served. (See R., pp.65-67, 105.) DeWitte does not challenge that sentence on appeal. (See Appellant's brief, p.1, n.1.)

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. DeWitte Has Shown No Abuse Of The District Court’s Sentencing Discretion

To bear 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 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). “When reviewing the reasonableness of a sentence, this Court conducts an independent review of the record, giving consideration to the nature of the offense, the character of the offender and the protection of the public interest.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015). 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. ““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 (2018) (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

The district court properly considered the objectives of criminal sentencing and imposed an appropriate sentence. (See Tr., p.62, L.23 – p.63, L.1.<sup>2</sup>) The sentence is appropriate in light of DeWitte’s pattern of violent criminal behavior. DeWitte’s criminal history consists of over twenty misdemeanors and five felonies, which include illegal possession of a weapon, aggravated assault, domestic battery, and first degree kidnapping. (PSI, pp.9, 15-21.) As the PSI noted, most of DeWitte’s felony crimes “have been violent in nature and he has left several victims in the wake.” (PSI, p.11.) The district court noted the “somewhat disturbing” conduct underlying the charge in this case—DeWitte’s attack on the vehicle of a person he did not know. (Tr., p.63, L.1 – p.64, L.4; PSI, p.6.) The district court also expressed concern that DeWitte has “been unable over a long period of time to comply with the requirements of the law” despite being given “just about every opportunity and almost every resource that I can think of that we have here both locally and statewide,” including probation, retained jurisdiction, and jail. (Tr., p.63, Ls.15-24; PSI, pp.9-11.)

The district court reasonably determined that the objectives of criminal sentencing would be best achieved by imposing sentence, rather than placing DeWitte directly on probation. “The option of simply putting you on probation and turning you loose again doesn’t address any of the issues that got you into trouble in the first place here.” (Tr., p.64, Ls.17-20.) As the district court noted, the Department of Corrections has the resources to help DeWitte with his mental health issues. (Tr., p.65, Ls.11-13.) Additionally, the sentence puts DeWitte in a secure environment and gives the Parole Commission the opportunity and authority to determine when he is able to safely to rejoin the community. (Tr., p.64, L.21 – p.65, L.6.) The district court reasonably concluded that, in light of DeWitte’s criminal history, mental health issues, and facts of the case,

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<sup>2</sup> Citations to “Tr.” refer to and use the pagination in the “Transcripts Volume 1” electronic document.

the sentencing recommendation of five years indeterminate was appropriate. (Tr., p.64, L.21 – p.65, L.7.)

DeWitte argues that the sentence is excessive “[c]onsidering that Mr. DeWitte did not hurt anyone and that he had the support of his family.” (Appellant’s brief, p.3.) First, it is not clear on what basis DeWitte asserts that he did not hurt anyone. DeWitte not only damaged a vehicle, DeWitte also battered the vehicle’s owner by grabbing him and striking him in the head. (PSI, p.6.) He pleaded guilty to doing so. (See R., p.105; see also Tr., p.52, Ls.7-9.) Second, the district court specifically considered DeWitte’s family support before it announced its sentence. (See Tr., p.62, Ls.1-9.) Last, at sentencing, DeWitte specifically referred to the plea agreement “with the factor of running the zero and five concurrent” as “fair and just.” (Tr., p.61, Ls.10-13.) Rather than make a recommendation to the district court on the length of any indeterminate sentence, DeWitte submitted to the court’s discretion. (Tr., p.61, L.17 – p.62, L.8 (“We would ask that the five years, if the Court sentences my client to five years – well, in any event, whichever amount of time, we would ask that those two things run concurrent....”)) DeWitte has failed to show that the district court abused its discretion when it imposed a sentence of five years indeterminate.

#### CONCLUSION

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

DATED this 30th day of September, 2020.

/s/ Kacey L. Jones  
KACEY L. JONES  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of September, 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:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
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/s/ Kacey L. Jones  
KACEY L. JONES  
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