

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

8-10-2020

### State v. Bauer Appellant's Brief Dckt. 47686

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Bauer Appellant's Brief Dckt. 47686" (2020). *Not Reported*. 6603.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/6603](https://digitalcommons.law.uidaho.edu/not_reported/6603)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

SALLY J. COOLEY  
Deputy State Appellate Public Defender  
I.S.B. #7353  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47686-2020
Plaintiff-Respondent,	)	
	)	BINGHAM COUNTY NO. CR-2018-3913
v.	)	
	)	
CURTIS BAUER,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, Curtis Bauer was convicted of one count of grand theft by possession of stolen property. He received a unified sentence of five years, with two years fixed, but the district court suspended the sentence and placed Mr. Bauer on probation for four years.

On appeal, Mr. Bauer contends that this sentence represents an abuse of the district court’s discretion, as it is excessive given any view of the facts.

## Statement of the Facts and Course of Proceedings

On June 1, 2018, Curtis Bauer purchased a trailer from Kasey Hudson, a man he contacted in response to a Craigslist ad. (Trial Tr. Vol. II, p.43, L.25 - p.47, L.10.) He used the trailer to move his belongings from a storage shed, then sold the trailer to a man in Utah. (Trial Tr. Vol. II, p.51, L.15 – p.53, L.11; p.55, L.20 – p.57, L.25.) Although Mr. Bauer had registered the trailer as a homemade trailer, he later learned it was a manufactured trailer with a Vehicle Identification Number (VIN).<sup>1</sup> (Trial Tr. Vol. II, p.51, L.22 – p.53, L.2; p.58, Ls.7-14.) When the VIN was registered by the new purchaser, the trailer came back as having been reported stolen. (Trial Tr. Vol. II, p.59, Ls.9-15.) Law enforcement made contact with Mr. Bauer, who cooperated with the trailer investigation. (Trial Tr. Vol. II, p.54, L.2 – p.55, L.19.) He told law enforcement that he had purchased the trailer from Kasey Hudson, who advised Mr. Bauer that it was a homemade trailer, with the bumpers missing. (Trial Tr. Vol. II, p.48, L.25 – p.49, L.17.) Detective Dalley interviewed Mr. Bauer, who turned over his cell phone so that his communications with Kasey Hudson could be extracted. (Trial Tr. Vol. II, p.54, L.8 – p.55, L.19.) After law enforcement failed to extract the data (Trial Tr. Vol. II, p.32, L.22 – p.34, L.4), the State filed an Information alleging Mr. Bauer committed grand theft by possession of stolen property. (R., pp.56-57.)

The case proceeded to trial. (*See* Trial Tr. Vol. I, II.)

Ultimately, the jury convicted Mr. Bauer of felony possession of stolen property. (Trial Tr. Vol. II, p.159, Ls.1-20; R., p.182.)

At the sentencing hearing, the State asked the district court to sentence Mr. Bauer to a unified term of seven years, with two years fixed, but to place him on probation for five years.

---

<sup>1</sup> The VIN was located up on the tongue of the trailer. (Trial Tr. Vol. I, p. 155, Ls.1-2.)

(12/4/19 Tr., p.10, Ls.6-13.) Mr. Bauer's counsel asked the district court to withhold judgment and place him on probation. (12/4/19 Tr., p.6, Ls.1-5.) The district court sentenced Mr. Bauer to a term of five years, with two years fixed, but suspended the sentence and placed Mr. Bauer on probation for four years. (12/4/19 Tr., p.16, Ls.2-13; R., pp.206-210, 231-235.) Mr. Bauer filed a Notice of Appeal timely from the district court's Judgment of Conviction. (R., pp.211-219, 224-229.)

## ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of five years, with two years fixed, but suspended the sentence and placed Mr. Bauer on probation for four years, following his conviction for grand theft by possession of stolen property?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed Upon Mr. Bauer A Suspended Sentence Of Five Years, With Two Years Fixed, With Four Years Of Probation, Following His Conviction For Grand Theft By Possession Of Stolen Property

Mr. Bauer asserts that, given any view of the facts, his unified sentence of five years, with two years fixed, and four years of probation is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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.

*Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

Mr. Bauer does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show the district court abused its discretion by failing to reach its decision by the exercise of reason, Mr. Bauer must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.*

In light of the mitigating factors present in this case, Mr. Bauer's sentence is excessive considering any view of the facts.

Mr. Bauer has no prior felony convictions. (Presentence Investigation Report (*hereinafter*, PSI),<sup>2</sup> pp.4-6; 12/4/19 Tr., p.6, Ls.5-11.) The Idaho Supreme Court has “recognized that the first offender should be accorded more lenient treatment than the habitual criminal.” *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (quoting *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227 (1971)); *see also State v. Nice*, 103 Idaho 89, 91 (1982).

Mr. Bauer does have a supportive family to assist him in his rehabilitation. (12/4/19 Tr., p.6, L.20 - p.7, L.24; PSI, p.7.) Mr. Bauer has a good relationship with his mother, who is an excellent source of support for him, and he has full custody of his [REDACTED]. (12/4/19 Tr., p.6, L.23 – p.7, L.20; PSI, pp.7-8.) Mr. Bauer’s employer has continued to employ him during the pendency of this case. (12/4/19 Tr., p.4, L.15 – p.5, L.16.) *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing sentence of defendant who had the support of his family and employer in his rehabilitation efforts).

Mr. Bauer is currently employed by Snake River Reclamation. (12/4/19 Tr., p.5, Ls.9-13; PSI, p.9.) Mr. Bauer does not have difficulty obtaining and maintaining employment—he was employed as a project manager for a painting business for twenty years. (12/4/19 Tr., p.6, Ls.12-19; PSI, p.9.) Idaho recognizes that good employment history should be considered a mitigating factor. *See Nice*, 103 Idaho at 91; *see also Shideler*, 103 Idaho at 595.

Based upon the above mitigating factors, Mr. Bauer asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court

---

<sup>2</sup> Appellant’s use of the designation “PSI” includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

properly considered that this was his first felony conviction, his family support, and his work history, it would have imposed a less severe sentence and would have withheld judgment.

CONCLUSION

Mr. Bauer 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 10<sup>th</sup> day of August, 2020.

/s/ Sally J. Cooley  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of August, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

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

SJC/eas