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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47686-2020
Plaintiff-Respondent,)	
)	
v.)	Bingham County Case No.
)	CR-2018-3913
)	
CURTIS BAUER,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Curtis Bauer failed to show that the district court abused its discretion by imposing a unified sentence of five years, with two years fixed and placing him on probation for four years?

ARGUMENT

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

A. Introduction

In May of 2018, Bingham County Sheriff’s Deputy Morgan spoke with Ken Davis and Dan Cummings regarding their trailer that had been stolen from one of their worksites. (PSI, p. 3.) Their trailer had been taken over the weekend, and a number of hand tools had been stolen as

well. (PSI, p. 3.) In July of 2018, authorities found the trailer in the possession of Tracy Bingham, who purchased the trailer from Curtis Bauer. (PSI, p. 3.) Tracy stated that he saw the trailer on KSL, and that he viewed a bill of sale and Bauer's driver's license before purchasing the trailer. (PSI, p. 3.)

The state charged Bauer with one count of grand theft by receiving/possessing stolen property. (R., pp. 56-57.) A jury found Bauer guilty of grand theft by receiving or possessing stolen property, and the district court sentenced him to five years, with two years determinate and placed Bauer on probation for a period of four years. (R., pp. 182, 206-09, 231-34.)

On appeal, Bauer argues that "the district court abused its discretion by imposing an excessive sentence upon him," and that "had the district court 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." (Appellant's brief, pp. 6-7.) Bauer has failed to show that the district court abused its discretion by imposing a unified sentence of five years, with two years fixed and four years of probation.

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).

The determination of an appropriate sentence is vested within the sound legal discretion of the trial court. State v. Beltran, 109 Idaho 196, 706 P.2d 85 (Ct.App.1985). Such discretion includes whether to withhold judgment. I.C. § 19-2601; I.C.R. 33(d). “Refusal to grant a withheld judgment will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a withheld judgment would be inappropriate.” State v. Geier, 109 Idaho 963, 965, 712 P.2d 664, 666 (Ct. App. 1985).

C. Bauer Has Shown No Abuse Of The District Court’s Discretion

The sentence imposed is within the statutory limits of I.C. §§ 18-2407(1)(b)(1) and 18-2408(2)(a). 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, the district court considered “the objectives of criminal punishment.” (Tr., p. 469, Ls. 13-15 (citations to page numbers of electronic file).) The district court stated that it must “protect society from further behavior that is contrary to the norm of society,” “deter [Bauer] . . . from any further criminal activity,” “see to [Bauer’s] rehabilitation,” and address the “need for punishment or retribution for wrongdoing.” (Tr., p. 469, Ls. 15-23.) The district court imposed a sentence that Bauer could “have on [his] shoulders so that [he’s] encouraged not to engage in any criminal behavior down the road,” due to his “history, which suggests that there have been some issues with theft in the past.” (Tr., p. 468, L. 22 – p. 469, L. 3.)

On appeal, Bauer argues that the mitigating factors—employment history, no prior felony convictions, and support of his family—show an abuse of discretion. (Appellant’s brief, pp. 5-7.) Bauer’s LSI score is sixteen, placing him in the moderate risk to reoffend category. (PSI, p. 12.) Bauer’s criminal history contains two petit theft cases, and he’s received multiple opportunities of probation. (PSI, pp. 4-6.)

The sentence imposed provides reasonable deterrence to Bauer’s criminal behavior, and is an encouraging factor in his probation. Bauer’s offense was detrimental to the community, as shown by Ken Davis’ and Dan Cummings’ loss of use of the trailer for their home renovation business, and Tracy Bingham’s lost money after purchasing the trailer, not knowing it had been stolen. Bauer has failed to show that a lesser sentence than that imposed was the only reasonable option, and that the district court should have withheld judgment.

CONCLUSION

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

DATED this 10th day of September, 2020.

/s/ Kenneth K. Jorgensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th 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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