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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                        |   |                                   |
|------------------------|---|-----------------------------------|
| STATE OF IDAHO,        | ) |                                   |
|                        | ) | NO. 47782-2020                    |
| Plaintiff-Respondent,  | ) |                                   |
|                        | ) | Ada County Case No. CR01-19-43345 |
| v.                     | ) |                                   |
|                        | ) |                                   |
| KENDALL MICHELLE CASE, | ) |                                   |
|                        | ) | RESPONDENT’S BRIEF                |
| Defendant-Appellant.   | ) |                                   |
| _____                  | ) |                                   |

Has Case failed to show that the district court abused its sentencing discretion when it imposed a suspended sentence of six years with two years determinate and probation upon her conviction for possession of heroin?

ARGUMENT

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

A. Introduction

A shoplifting burglary investigation showed Case in possession of methamphetamine, heroin, and “multiple items of drug paraphernalia.” (PSI, p. 81 (page numbers refer to electronic page number of the “confidential documents” electronic file).) The state charged Case with

possession of heroin, possession of methamphetamine, possession of paraphernalia, and petit theft. (R., pp. 16-17.) Case pled guilty to possession of heroin. (R., p. 19.) The district court imposed a suspended sentence of six years with two years determinate and granted probation. (R., pp. 36-42.) Case filed a timely notice of appeal. (R., pp. 48-50.)

On appeal Case contends the district court erred by not withholding judgment and by imposing an excessive underlying sentence. (Appellant's brief, pp. 4-7.) Review of the record and application of the relevant legal standards shows Case has not carried her appellate burden of showing an abuse of discretion.

#### 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)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). 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 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, 270, 429 P.3d 149, 158 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)). Following conviction, a district court "in its discretion may ... [w]ithhold

judgment.” I.C. § 19-2601(3). “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. Edghill, 134 Idaho 218, 219, 999 P.2d 255, 256 (Ct. App. 2000) (quotation marks omitted).

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

“The purpose of this statutory authority to withhold judgment and ultimately to dismiss the charge is to provide an opportunity for rehabilitation and to spare the defendant, particularly a first offender, the burden of a criminal record.” State v. Woodbury, 141 Idaho 547, 549, 112 P.3d 835, 837 (Ct. App. 2005). 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, because the decision to release the defendant on parole is exclusively the province of the executive branch, 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). 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. 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.”” Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

First, the district court correctly perceived the issue as one of discretion. (Tr., p. 20, Ls. 8-11.)

Second, the district court acted within the outer boundaries of its discretion. The district court imposed a sentence within the statutorily applicable maximum sentence of seven years. I.C. § 37-2732(c)(1).

Third, the district court acted consistently with the legal standards applicable to the specific choices available to it. The district court specifically considered the four goals of sentencing. (Tr., p. 20, Ls. 12-25.)

Finally, the district court reached its decision by the exercise of reason. The district court considered the aggravating and mitigating factors in this case and balanced them to reach its judgment. (Tr., p. 21, L. 1 – p. 24, L. 9.) The district court concluded a withheld judgment was inappropriate “given the defendant’s prior history of unsuccessful drug abuse treatment” and “her history and admissions of selling drugs.” (Tr., p. 26, L. 24 – p. 27, L. 4.)

The record shows none of the elements of an abuse of discretion claim. To the contrary, the district court reasonably and appropriately exercised its sentencing discretion.

On appeal Case argues the district court abused its discretion based on her age, lack of prior criminal record, lack of disciplinary problems in jail, family support, general history, and drug addiction. (Appellant’s brief, pp. 5-6.) She contends that her past failure at rehabilitation and actions in selling drugs were not disqualifying. (Appellant’s brief, pp. 6-7.) She contends the underlying sentence is excessive for the same reasons. (Appellant’s brief, pp. 5-7.) She has failed to show error on the record.

The district court in this case “carefully and thoroughly considered the goals of sentencing” when it denied Case’s request for a withheld judgment. Edghill, 134 Idaho at 220, 999 P.2d at

257. Case had a six year history of heavy drug use, including selling drugs to maintain her habit. (PSI, p. 89.) She once attempted a 30 day residential treatment and “remained sober for three months” before relapsing. (PSI, p. 89.) The record shows she was also stealing to support herself. (PSI, pp. 17, 23-35, 40, 48.) The record shows that Case’s crime was not a one-time, out-of-character mistake that could be easily or quickly addressed thorough withholding judgment. Rather, Case’s rehabilitation was an enterprise fraught with difficulties. Because of the depth and breadth of Case’s addiction and criminal behavior prior to being first caught and prosecuted, the district court did not abuse its discretion by declining to withhold judgment. Likewise, the underlying sentence was reasonable under the facts of this case.

Case has shown no abuse of discretion. The record shows all of the four elements of an appropriate exercise of discretion.

#### CONCLUSION

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

DATED this 31st day of December, 2020.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of December, 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:

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/s/ Kenneth K. Jorgensen  
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KKJ/dd