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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47839-2020
Plaintiff-Respondent,)	
)	
v.)	Bannock County Case No.
)	CR03-19-4233
)	
CHRISTOPHER BRAYDEN VOGLER,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Christopher Brayden Vogler failed to show that the district court abused its discretion by sentencing him to six years, with the mandatory minimum term of three years determinate?

ARGUMENT

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

A. Introduction

In February of 2019, Christopher Brayden Vogler sold heroin to an Idaho State Police Confidential Informant on two separate occasions. (PSI, p. 4.) Vogler first delivered 2.1 grams

of heroin to the confidential informant for \$250, and later delivered 3.1 grams of heroin to the confidential informant for \$300.

The state charged Vogler with two counts of trafficking in heroin, and one count of a second or subsequent offense under the Uniform Controlled Substances Act. (R., pp. 38-41.) Vogler pleaded guilty to one count of trafficking in heroin, and the district court sentenced him to six years, with three years determinate and credit for 311 days served. (R., pp. 79-90, 111-113.) Vogler then filed a timely appeal. (R., pp. 119-121.)

On appeal, Vogler argues that “his unified sentence of six years, with three years fixed, is excessive.” (Appellant’s brief, p. 2.) Vogler has failed to show that the district court abused its discretion by sentencing him to six years, with three years determinate for trafficking in heroin.

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).

C. Vogler Has Shown No Abuse Of The District Court's Discretion

The sentence imposed is within the statutory limits of I.C. § 37-2732B(a)(6)(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.

First, the determinate portion of the sentence imposed on Vogler is the mandatory minimum sentence required by law. I.C. § 37-2732B(a)(6)(A). Thus, only the three year indeterminate portion of the sentence is subject to appellate review. The district court did not abuse its discretion by imposing three years indeterminate.

At the sentencing hearing, the district court stated “the reality is [Vogler] didn’t make a mistake. [He] made a choice to have a bunch of drugs in [his] car. That’s what happened. ... And those choices got [Vogler] where [he is] today.” (Tr., p. 18, Ls. 3-8.) The district court stated that Vogler “set in motion a chain of events that led to [him] being in possession of these drugs leading to this charge. That’s what happens in our lives. We make choices.” (Tr., p. 18, Ls. 11-15.) The district court, being bound to a fixed minimum term, decided to sentence Vogler to six years, with the mandatory minimum term of three years determinate. (Tr., p. 20, Ls. 11-12.)

Vogler argues that the mitigating factors—substance abuse issues, expressed desire for treatment, difficult childhood, and remorse—show an abuse of discretion. (Appellant’s brief, p. 5.) Vogler’s argument does not show an abuse of discretion. His LSI score is twenty-five, placing him in the moderate risk to reoffend category. (PSI, p. 14.) His extensive criminal history consists of numerous drug charges. (PSI, pp. 5-8.) The presentence investigator stated that Vogler “would benefit from participation in assessed rehabilitative programs and/or pro-social activities during a period of penal incarceration to address his substance abuse and mental health issues.” (PSI, p. 15.)

Vogler's trafficking in heroin presents a great risk to the community, and a lesser sentence would depreciate the seriousness of the instant offense. Heroin threatens harm to society, and the sentence imposed provides proper punishment to Vogler, as well as deterrence to him and other possible offenders. The presentence investigator recommended correctional treatment that can be provided most effectively by his commitment to an institution. The sentence imposed is reasonable, and Vogler has failed to show that the district court abused its discretion by sentencing him to six years, with three years determinate for trafficking in heroin.

CONCLUSION

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

DATED this 12th day of November, 2020.

/s/ Kenneth K. Jorgensen
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Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of November, 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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/s/ Kenneth K. Jorgensen
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