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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47856-2020
Plaintiff-Respondent,	)	
	)	
v.	)	Jerome County Case No. CR27-19-251
	)	
ENRIQUE VIELMAS,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Enrique Vielmas failed to show that the district court abused its discretion by sentencing him to five years, with three years determinate for eluding the police?

ARGUMENT

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

A. Introduction

In January of 2019, authorities conducted a traffic stop on Enrique Vielmas. (PSI, p. 20.) Vielmas failed to produce a driver’s license and proof of insurance, and he verbally identified himself as Arturo Hernandez. (PSI, p. 20.) After questioning Vielmas, the deputy returned to his

patrol vehicle and Vielmas fled from the traffic stop. (PSI, p. 21.) The deputy pursued Vielmas as he exceeded speed limits, failed to stop for a traffic signals and made several erratic lane changes. (PSI, p. 21.) Vielmas crossed from Jerome County to Twin Falls County, and a Twin Falls County Sheriff's Deputy performed a PIT maneuver on Vielmas' vehicle, causing Vielmas to lose control of his car and strike another vehicle parked in a driveway. (PSI, p. 21.) Vielmas then exited the vehicle and fled on foot. (PSI, p. 21.) Upon searching Vielmas' vehicle, authorities located a loaded nine millimeter handgun, magazines for other firearms, and Vielmas' wallet containing two of his Idaho Identification Cards. (PSI, pp. 21-22.)

The state charged Vielmas with one count of eluding a peace officer, one count of driving without privileges, one count of failure to provide proof of insurance (second offense), one count of driving without a license on person, one count of providing false information to law enforcement and one count of resisting and/or obstructing officers. (R., pp. 63-65.) Vielmas pleaded guilty to one count of eluding a peace officer, and the state agreed to dismiss all remaining counts. (R., pp. 95-96, 113-14.) The district court sentenced Vielmas to five years, with three years determinate, and Vielmas filed a timely appeal. (R., pp. 138-140, 156-158.)

On appeal, Vielmas argues that "the district court abused its discretion by imposing an excessive sentence." (Appellant's brief, p. 1.) Vielmas has failed to show that the district court abused its discretion by sentencing him to five years, with three years determinate for eluding a peace officer.

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

The sentence imposed is within the statutory limits of I.C. § 49-1404. 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 criteria set forth for sentencing in the cases of State vs. Toohill and the criteria for placing the defendant on probation or imposing imprisonment that are set forth in Idaho Code 19-2521.” (Tr., p. 58, Ls. 11-16.) The district court stated that Vielmas “is more than the crimes that he is before this Court on. He has good qualities. He certainly appears to love his family,” but “the Court is not sentencing Mr. Vielmas based entirely on what is good for Mr. Vielmas and his needs for rehabilitation.” (Tr., p. 58, Ls. 17-23.) The district court stated it must consider “the good order and protection of society, and when that is factored in, [the district court] believes that the sentence dictated does not require probation or does not deserve probation.” (Tr., p. 58, L. 24 – p. 59, L. 2.) The district court stated there is an “undue risk that during any period of probation that this defendant would commit another crime as is seen in the subsequent Twin Falls case that was filed after the eluding charge. Very shortly

after the eluding, he was charged with two new felonies, which he is also before the Court for.” (Tr., p. 59, Ls. 3-12.) The district court found that the need for correctional treatment that can be provided most effectively by incarceration “weighs in favor of incarceration,” and that a lesser sentence would depreciate the seriousness of Vielmas’ crime. (Tr., p. 59, Ls. 13-21.) The district court determined that Vielmas “certainly threatened harm by his actions and his driving. There’s no indication that he acted under any provocation. There’s no excuse or ground to justify his conduct,” and that “probation is not a viable option for this defendant. So the sentence is for three years fixed, two years indeterminate to serve.” (Tr., p. 61, Ls. 10-17; p. 62, Ls. 4-9.)

Vielmas argues that the mitigating factors—apology for his actions, remorse, difficult childhood, desire to be a good husband and father and lack of prior treatment—show an abuse of discretion (Appellant’s brief, p. 5.) The record does not support Vielmas’ argument.

Vielmas’ LSI score is thirty-four, placing him in the high risk to reoffend category. (PSI, p. 35.) His extensive criminal history contains two felony cases subsequent to the instant offense. (PSI, pp. 24-28.) The presentence investigator stated that it is “a concern that the defendant has several theft related offenses, consisting of weapons being involved,” and that “Vielmas lied to law enforcement, giving a false identity, and then fled the scene in a vehicle. Furthermore, it appears the defendant does not take the criminal justice system seriously.” (PSI, p. 37.) The presentence investigator recommended that Vielmas be “sentenced to the physical custody of the Idaho Department of Correction.” (PSI, p. 37.)

Vielmas’ eluding threatened great harm to the community, and a lesser sentence than that imposed would depreciate the seriousness of the instant offense. The two felony cases following the instant offense show that Vielmas’ criminal conduct is escalating and that there is an undue risk that Vielmas would commit a new offense if sentenced to a lesser term of incarceration or

community supervision. The sentence imposed provides proper punishment and deterrence to Vielmas, as well as protection to society. The district court thoroughly reviewed and considered the factors in this case, and Vielmas has failed to show that the district court abused its discretion by sentencing him to five years, with two years determinate for eluding a peace officer.

CONCLUSION

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

DATED this 20th day of November, 2020.

/s/ Kenneth K. Jorgensen  
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ZACHARI S. HALLETT  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th 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:

JUSTIN M. CURTIS  
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/s/ Kenneth K. Jorgensen  
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