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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47894-2020
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR14-18-25670
v.)	
)	
TAYLOR R. DOBSON,)	APPELLANT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After his first trial ended with a hung jury, the jury in Taylor R. Dobson’s second trial found him guilty of felony attempted strangulation. The district court imposed a unified sentence of four years, with two years fixed, suspended the sentence, and placed Mr. Dobson on supervised probation for a period of four years. On appeal, Mr. Dobson asserts that the district court abused its discretion when it imposed his sentence.

Statement of the Facts & Course of Proceedings

The State charged Mr. Dobson with felony attempted strangulation and domestic battery—traumatic injury. (R., pp.29-31.) He entered a not guilty plea to the charges. (*See* R., p.34.) After Mr. Dobson exercised his right to a jury trial, the jury at his first trial hung on the attempted strangulation charge, and found him not guilty of domestic battery—traumatic injury. (*See* R., pp.56-61.)

During Mr. Dobson’s second trial, Cassandra Sorg testified that, one Christmas Eve, she got into an argument with her husband, Mr. Dobson, after she could not find her keys. (*See* Trial Tr., p.150, L.20 – p.153, L.12.)¹ She testified that she started to bicker with him after he refused to let her borrow his keys to check their garage. (*See* Trial Tr., p.152, L.20 – p.153, L.12.) The arguing eventually escalated into yelling while she was outside their house and he was standing at the door. (*See* Trial Tr., p.154, L.5 – p.156, L.8.) After her three sons joined Ms. Sorg outside, Mr. Dobson locked the door. (*See* Trial Tr., p.156, Ls.9-18.) Ms. Sorg and her sons went for a short walk, and when they returned to the house, Mr. Dobson and one of their cars were gone. (*See* Trial Tr., p.156, L.19 – p.157, L.6.) Ms. Sorg’s two younger sons entered the house through a window, and one of them opened up the garage. (*See* Trial Tr., p.157, Ls.10-19.) Ms. Sorg found another set of keys, and used one of them to start Mr. Dobson’s truck. (*See* Trial Tr., p.158, L.13 – p.161, L.5.)

Ms. Sorg testified that she drove her sons to Mr. Dobson’s mother’s house that evening, which had been the plan before the argument. (*See* Trial Tr., p.161, Ls.9-20.) Mr. Dobson subsequently showed up at his mother’s house, and he had a loud conversation with his mother outside. (*See* Trial Tr., p.162, L.14 – p.163, L.1.) Mr. Dobson left without coming into his

¹ All citations to “Trial Tr.” refer to the transcripts of Mr. Dobson’s second jury trial, conducted on October 30 and 31, 2019.

mother's house, and his mother reported that he was very upset. (*See* Trial Tr., p.163, Ls.2-24.) Mr. Dobson's mother had offered to have the children stay at her house while Ms. Sorg went to talk with Mr. Dobson, and Ms. Sorg went to their house. (*See* Trial Tr., p.163, L.25 – p.164, L.12.)

Ms. Sorg testified that, when she arrived at their house, she saw broken Christmas decorations all over the front lawn. (*See* Trial Tr., p.165, L.10 – p.166, L.1.) Mr. Dobson had also sent her threatening text messages. (*See* Trial Tr., p.184, L.11 – p.185, L.12; State's Ex. 4.) She testified that, when she entered the house, Mr. Dobson was inside and really angry. (*See* Trial Tr., p.166, Ls.2-14.) She was crying, and there were broken things throughout the house. (*See* Trial Tr., p.166, L.15 – p.167, L.6.) Ms. Sorg testified that Mr. Dobson told her it was time to go to bed, and she told him she was angry and did not want to go to bed. (*See* Trial Tr., p.167, Ls.1-19.)

According to Ms. Sorg, the argument moved into the bedroom, where she yelled at Mr. Dobson and he pushed her onto the bed and started breaking heirlooms on her dresser. (*See* Trial Tr., p.167, L.12 – p.168, L.21.) She testified that a few times, he grabbed her around her throat, smacked her head against the wall, and told her to stop. (*See* Trial Tr., p.169, L.4 – p.170, L.10.) Ms. Sorg also testified that later, after they had both fallen off the bed during their struggle, Mr. Dobson put his hands around her neck and pulled her up. (*See* Trial Tr., p.170, L.20 – p.171, L.5.) She testified that, at some point, he grabbed her face and applied pressure to her eye sockets and pushed in on her eyes. (*See* Trial Tr., p.171, Ls.9-14.) Ms. Sorg testified that she felt that she was unable to breathe when his hands were around her neck, and he released her after she went limp. (*See* Trial Tr., p.171, L.18 – p.172, L.12.) After the incident, her left eyelid was purple and swollen. (*See* Trial Tr., p.188, Ls.4-15; State's Ex. 6.) Her neck was red

after the incident, but she testified that her neck always had some redness. (*See* Trial Tr., p.186, L.20 – p.187, L.18; State’s Exs. 5 & 7.)

Mr. Dobson elected not to testify in his defense. (*See* Trial Tr., p.281, L.24 – p.283, L.2.) In closing arguments, while Mr. Dobson’s counsel conceded that Mr. Dobson had argued with Ms. Sorg and broken stuff, defense counsel asserted that Mr. Dobson did not strangle Ms. Sorg. (*See* Trial Tr., p.314, L.18 – p.315, L.1.) The jury found Mr. Dobson guilty of attempted strangulation. (R., pp.182-83.)

At the sentencing hearing, Mr. Dobson asked the district court “for one year fixed, three years indeterminate with probation, the Court to withhold judgment and any treatment or necessary classes from the probation officer.” (Sentencing Tr., p.11, Ls.11-14.)² The State asked the district court to “either impose a sentence of one year fixed followed by three years indeterminate or alternatively impose a sentence of two years fixed followed by two years indeterminate but retain jurisdiction and send Mr. Dobson on a rider.” (Sentencing Tr., p.8, Ls.8-13.) The district court imposed a unified sentence of four years, with two years fixed, suspended the sentence, and placed Mr. Dobson on supervised probation for a period of four years. (R., pp.206-10.) The district court declined to withhold judgment. (Sentencing Tr., p.21, Ls.5-8.)

Mr. Dobson filed a Notice of Appeal timely from the Judgment of Conviction, Order of Probation. (R., pp.215-17; *see* R., pp.227-32 (Amended Notice of Appeal).)

ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of four years, with two years fixed, upon Mr. Dobson following his conviction for attempted strangulation?

² All citations to “Sentencing Tr.” refer to the transcripts of Mr. Dobson’s March 2, 2020, sentencing hearing,

ARGUMENT

The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Four Years, With Two Years Fixed, Upon Mr. Dobson Following His Conviction For Attempted Strangulation

A. Introduction

Mr. Dobson asserts that the district court abused its discretion when it imposed a unified sentence of four years, with two years fixed, upon him following his conviction for attempted strangulation. The district court should have instead followed Mr. Dobson's recommendations by withholding judgment, or alternatively, by imposing a unified sentence of four years, with one year fixed, before placing him on probation. (*See Sentencing Tr.*, p.11, Ls.11-14.)

B. The District Court Abused Its Discretion When It Declined To Withhold Judgment

Mr. Dobson asserts the district court abused its discretion when it declined to withhold judgment. "In Idaho, when a criminal defendant is found guilty of the crime charged the district court may, among other things, suspend the execution of judgment under I.C. § 19-2601(2) or withhold judgment pursuant to I.C. § 19-2601(3)." *State v. Branson*, 128 Idaho 790, 792 (1996). The decision whether to withhold jurisdiction is in the district court's discretion. *State v. Edghill*, 134 Idaho 218, 219 (Ct. App. 2000). In reviewing a trial court's alleged abuse of discretion, an appellate court considers whether the trial court: correctly perceived the issue as one of discretion; acted within the outer boundaries of its discretion; acted consistently with the legal standards applicable to the specific choices available to it; and reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018). "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.” *Edghill*, 134 Idaho at 219 (internal quotation marks omitted).

“If the court grants a withheld judgment to a particular defendant and places that defendant on probation, jurisdiction is retained by the district court during the period of probation and the court has continuing jurisdiction to modify the conditions of the defendant’s probation.” *Branson*, 128 Idaho at 792. “If those conditions are violated, the district court may revoke the defendant’s probation and thereafter ‘impose *any* sentence which originally might have been imposed at the time of conviction.’” *Id.* (quoting *Peltier v. State*, 119 Idaho 454, 460 (1991)) (emphasis in original). “When judgment is withheld under I.C. § 19-2601 there is no sentence actually imposed on the defendant and, more importantly, no judgment of conviction is entered.” *Id.* at 793.

Mr. Dobson submits that the district court abused its discretion when it declined to withhold judgment, because the district court did not act consistently with the applicable legal standards. The district court did not have sufficient information to determine that a withheld judgment would be inappropriate.

To the contrary, the information presented to the district court at sentencing warranted a withheld judgment. For example, Mr. Dobson had gone through about a year of pretrial release with no violations, except for his failure to appear for his presentence investigation. (*See R.*, p.186; Sentencing Tr., p.8, Ls.20-22, p.11, Ls.4-6.) Mr. Dobson served his country by enlisting in the United States Army, and he was medically discharged while serving a tour in Afghanistan. (*See Conf. Exs.*, p.23; Sentencing Tr., p.11, L.15.)³ The instant offense was Mr. Dobson’s first felony conviction. (*See Conf. Exs.*, p.20; Sentencing Tr., p.11, L.16.)

³ All citations to “Conf. Exs.” refer to the 261-page PDF version of the confidential exhibits, including the presentence report.

Mr. Dobson had good employment, working as a crew foreman building houses for his uncle's company, while being on standby as a certified wildland firefighter. (*See* Conf. Exs., p.24.) Even though Mr. Dobson maintained his innocence, he had a low risk category LSI score of 14.0. (*See* Conf. Exs., pp.26-27.) Further, Mr. Dobson and Ms. Sorg had gone their separate ways, with their divorce finalized before sentencing. (*See* Conf. Exs., p.22; Sentencing Tr., p.11, Ls.21-22.)

Perhaps most importantly, Mr. Dobson had a groundswell of support from his friends and family. Mr. Dobson's uncle and employer, in a letter of support, wrote, "Taylor is a great example to others, [i]n my opinion Taylor is someone with hard work[,] honesty and integrity, [h]e has shown up to work when he was supposed to and did the work he was asked to." (Conf. Exs., p.50.) The uncle also stated that his company was in the middle of a 6,000 square foot cabin build "that Taylor is the main lead man in, Taylor is needed to keep the project on task." (Conf. Exs., p.50.) Mr. Dobson's mother wrote a letter of support, where she explained what her testimony would have been had she been called to testify. (*See* Conf. Exs., pp.45-49.) Mr. Dobson's stepfather wrote that Mr. Dobson "is on a path towards complete healing and redemption," and "is a person deserving of a chance to better himself, and his opportunities—to contribute to society and people around him." (Conf. Exs., p.53.) Additionally, Mr. Dobson submitted letters of support from another uncle, several aunts, his sister, two cousins, and a former supervisor at his work. (*See* Conf. Exs., pp.42-44, 51-52, 54-58, 61-62.)

In view of the above, the information presented to the district court at sentencing warranted a withheld judgment. The district court did not have sufficient information to determine that a withheld judgment would be inappropriate. Thus, the district court abused its

discretion when it declined to withhold judgment, because the district court did not act consistently with the applicable legal standards.

C. The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Four Years, With Two Years Fixed

In the alternative, Mr. Dobson asserts the district court abused its discretion when it imposed a unified sentence of four years, with two years fixed. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving “due regard to the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Strand*, 137 Idaho 457, 460 (2002).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Mr. Dobson does not assert that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Dobson 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.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Mr. Dobson asserts his sentence is excessive considering any view of the facts, because the district court did not adequately consider the mitigating factors discussed above in Section B. and incorporated herein. Thus, the district court abused its discretion when it imposed a unified sentence of four years, with two years fixed.

CONCLUSION

For the above reasons, Mr. Dobson respectfully requests that this Court vacate his judgment of conviction and remand his case for entry of a withheld judgment. Alternatively, Mr. Dobson respectfully requests that that this Court reduce his sentence as it deems appropriate.

DATED this 6th day of November, 2020.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of November, 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

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

BPM/eas