

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

1-19-2021

### State v. Flynn Respondent's Brief Dckt. 47745

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Flynn Respondent's Brief Dckt. 47745" (2021). *Not Reported*. 6832.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/6832](https://digitalcommons.law.uidaho.edu/not_reported/6832)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

COLLEEN D. ZAHN  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47745-2020
Plaintiff-Respondent,	)	
	)	
v.	)	Bonner County Case No. CR09-18-4362
	)	
ALICIA LEDA FLYNN,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Alicia Leda Flynn failed to show that the district court abused its discretion by sentencing her to two years, with one year determinate for possession of a controlled substance, and retaining jurisdiction?

ARGUMENT

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

A. Introduction

In 2018, authorities arrested Alicia Leda Flynn for domestic battery following a dispute between Flynn and Robert Hegseth. (PSI, p. 33 (citations to electronic file named “Appeal Vol 1

– Confidential Documents.pdf”).) At the time of her arrest, Flynn possessed a jacket and a small backpack. (PSI, p. 33.) During a search of the backpack, authorities located a clear glass pipe with white and burnt residue, which tested positive for methamphetamine. (PSI, p. 33.)

The state charged Flynn with one count of possession of a controlled substance, and one count of unlawful possession of drug paraphernalia. (R., pp. 74-75.) While on pretrial release, Flynn failed to appear for arraignment, and failed to comply with the terms of her release on numerous occasions. (R., pp. 31, 61-62, 76-77, 79, 105-106, 138-139.) Flynn pleaded guilty to possession of a controlled substance, and the state agreed to dismiss the paraphernalia charge. (R., p. 115.) The district court sentenced Flynn to two years, with one year determinate and retained jurisdiction. (R., pp. 154-156.) Following a period of retained jurisdiction, the district court placed Flynn on probation for a period of two years, and credited her for 351 days served. (R., pp. 181-182.) Flynn filed a notice of appeal. (R., pp. 164-165.<sup>1</sup>)

On appeal, Flynn argues that “[t]he two-year sentence was unreasonable,” and that “[t]his Court should discharge Ms. Flynn from probation immediately as she has already served 351 days of incarceration and 192 days of probation.” (Appellant’s brief, p. 4.) Flynn has failed to show that the district court abused its discretion by sentencing her to two years, with one year determinate, and placing her on probation following a period of retained jurisdiction.

#### 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

---

<sup>1</sup> It appears on the record that Flynn had her appeal rights reinstated through a post-conviction action. (R., p. 162.)

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 decision to place a defendant on probation is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Reed, 163 Idaho 681, 684, 417 P.3d 1007, 1010 (Ct. App. 2018) (citations omitted). Rehabilitation and public safety are dual goals of probation. State v. Le Veque, 164 Idaho 110, 114, 426 P.3d 461, 465 (2018). A decision to deny probation will not be deemed an abuse of discretion if it is consistent with the criteria articulated in I.C. § 19-2521. State v. Reber, 138 Idaho 275, 278, 61 P.3d 632, 635 (Ct. App. 2002) (citing State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982)).

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

The sentence imposed is within the statutory limits of I.C. § 37-2732(c)(1). 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 reviewed the case history and stated that Flynn “didn’t appear and so a warrant was issued. [She] bonded the same day. Then [she] failed to appear again for the next court date, arrested on a warrant, bonded again.” (08/12/2020 Tr., p. 7,

Ls. 9-12.) The district court stated that Flynn “failed to comply with the release conditions and [was] taken back into custody. This was all within a matter of just a few weeks in early 2019, in and out of custody. [Flynn] failed to appear at [her] arraignment on February 25 and [she] failed to comply with [her] release conditions.” (08/12/2020 Tr., p. 7, Ls. 13-18.) The district court stated that Flynn was “arrested on March 16. [She was] released on [her] own recognizance on April 16. Another warrant for failure to comply, [Flynn] only tested clean one time after [her] release. [She was] back in, arrested in May of ’19 on that warrant.” (08/12/2020 Tr., p. 7, Ls. 19-23.) The district court noted that the state “agreed to release [Flynn] when [she] entered [her] plea on May 24. Again, [Flynn] failed to comply with release conditions, [was] arrested eventually on June 15. At that time [she was] charged with a new felony possession charge. That did get dismissed without prejudice at preliminary hearing.” (08/12/2020 Tr., p. 7, L. 24 – p. 8. L. 5.) The district court stated its “concern is that [Flynn has] been completely unable to comply, warrant after warrant after warrant,” and that Flynn has “not shown that [she] can stay clean, [she has] not shown that [she] can comply with the Court’s orders.” (08/12/2020 Tr., p. 8, Ls. 8-18.)

Flynn contends that the mitigating factors—that this is her first felony conviction, and that the possession of methamphetamine residue in a meth pipe is a *de minimus* violation—show an abuse of discretion. (Appellant’s brief, p. 3.) Flynn’s argument does not show an abuse of discretion.

Flynn’s LSI score is thirty, placing her in the moderate risk to reoffend category. (PSI, p. 44.) The presentence investigator noted that “a total of 16 warrants have been issued in regard to her present and past cases. Her prior offenses include Petit Theft, Inattentive Driving, Disturbing the Peace, False Information Provided to an Officer, and Possession of Controlled Substance.” (PSI, p. 46.) The presentence investigator stated that Flynn “does not appear to be a good candidate

for probation at this time,” but that “Flynn appears to be a good candidate for an order of retained jurisdiction.” (PSI, p. 46.) During her pretrial release, Flynn failed to appear for drug tests on February 8, 12 and 22, 2019, and June 3, 2019. (R., pp. 77, 139.) Flynn failed urinalyses on February 15, 2019 for methamphetamine and THC, February 19, 2019 for methamphetamine, May 28, 2019 for methamphetamine and THC, and May 29, 2019 for methamphetamine. (R., pp. 77, 139.) Flynn provided an invalid urine sample on April 24, 2019, and refused to test on April 25, 2019 and June 5, 2019. (R., pp. 106, 139.)

Although the crime was Flynn’s first felony, and the amount underlying her conviction was small, Flynn amply demonstrated her unsuitability for probation. Flynn’s inability, or unwillingness to comply with the conditions of her pretrial release shows that she was in need of correctional treatment, and that she was not a suitable candidate for community supervision at that time. The seriousness of the instant offense and Flynn’s continued drug use while released justifies the underlying sentence of two years, with one year determinate. The underlying sentence is an appropriate deterrence for Flynn as she is now on probation, and retained jurisdiction provided rehabilitative structure that Flynn clearly needed at the time of sentencing. Flynn has failed to show that the district court abused its discretion by sentencing her to two years, with one year determinate for possession of a controlled substance, and retaining jurisdiction.

CONCLUSION

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

DATED this 19th day of January, 2021.

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

ZACHARI S. HALLETT  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of January, 2021, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

DENNIS BENJAMIN  
ATTORNEY FOR APPELLANT  
db@nbmlaw.com

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