2-12-2021

# State v. Dobson Respondent's Brief Dckt. 47894

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

JOHN C. McKINNEY
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. 47894-2020 |
| Plaintiff-Respondent, | ) | |
| | ) | Canyon County Case No. |
| | ) | CR14-18-25670 |
| v. | ) | |
| | ) | |
| | ) | |
| TAYLOR R. DOBSON, | ) | RESPONDENT'S BRIEF |
| | ) | |
| Defendant-Appellant. | ) | |
| | ) | |

Has Taylor Dobson failed to show that the district court abused its discretion by imposing a unified sentence of four years with two years fixed, and placing him on probation for four years?

## ARGUMENT

### Dobson Has Failed To Show That The District Court Abused Its Discretion

### A. Introduction

Dobson and his wife, Cassy, had been arguing on Christmas eve, and after Cassy and her three boys went to Dobson's mother's house, Cassy and Dobson separately returned to Cassy's

house, and Dobson was still very angry. (See generally Tr., p.150, L.20 – p.166, L.14.) Cassy was upset because Dobson, in his anger, had destroyed many Christmas decorations and lights outside her house, and when she went into the house, she discovered he had broken many things there too, and he continued to do so by picking "things up off [her] dresser and . . . slamming them down, heirlooms from [her] grandparents." (Tr., p.166, L.2 – p.167, L.6; p.168, Ls.20-21.)

Dobson told Cassy that it was time to go to bed, and she told him she did not want to because she was angry. (Tr., p.167, Ls.1-9.) Dobson and Cassy ended up in the bedroom, and he pushed her over the footboard onto the bed, and as she tried to get up, she yelled at him. (Tr., p. 168, Ls.1-13.) Dobson became very angry, and grabbed Cassy by the face "around here" and was "smacking [her] head against the wall. And then he grabbed [her] around [her] throat and told [her] to just stop" talking so he didn't have to do that to her. (Tr., p.169, Ls.4-20.) Dobson did that a few times; when Cassy would catch her breath and say something else, he would do the same thing. (Tr., p.169, L.21 – p.170, L.10.) Cassy pushed Dobson back and, after they fell off the bed, he put her in a headlock and pulled her neck back up. (Tr., p.170, Ls. 18-19.)

Cassy attempted to stand up from a kneeling position, but Dobson got in front of her and "he put his hands around [her] neck and pulled [her] up as if [she] was standing and continued to pull [her] up onto [her] tippy toes." (Tr., p.170, L.23 – p.171, L.5.) Cassy felt herself "actually not being able to breathe and [she] couldn't get any air back." (Tr., p.172, Ls.1-2.) When Cassy's "eyes closed and [her] body went limp[,]" Dobson released her. (Tr., p.172, Ls.8-11.)

At some point during Cassy's struggle against Dobson, he "would grab [her] face and apply pressure like on the inside of [her] sockets and then pull out at [her] eyes and push in at the same time." (Tr., p.171, Ls.11-14; see PSI, p.131.) After Dobson stopped choking Cassy, she curled up on the bed and needed to go to the bathroom; Dobson told her, "You can just piss right there."

(Tr., p.173, Ls.10-19.) Dobson relented, saying, "[t]hen I'm going to watch you go pee,]" which he did. (Tr., p.173, L.24 – p.174, L.6.) The next day, Cassy went on a walk, and after talking to a young friend who saw the condition of Cassy's face, the friend told Cassy that if Cassy didn't call 911, she would. (Tr., p.180, L.7 - p.181, L.7.) Cassy called 911 and later that day the police went to her home and talked with her and, after she was taken to the hospital, they photographed her. (Tr., p.181, L.10 – p.182, L.10; see State's Exhibits 2-6.)

The state charged Dobson with attempted strangulation and domestic battery-traumatic injury. (R., pp.29-31.) At the end of the first trial, a jury could not reach a verdict on the attempted strangulation charge, and acquitted Dobson of domestic battery with traumatic injury. (R., pp.60, 107-108.) Upon re-trial, a jury convicted Dobson of attempted strangulation. (R., p.182.) The district court sentenced Dobson to four years, with two years fixed, and placed Dobson on probation for a period of four years. (R., pp.206-210.) Dobson filed a timely notice of appeal. (R., pp.215-217, 227-232.)

On appeal, Dobson argues that the district court abused its discretion by not withholding judgment and, alternatively, by not "imposing a unified sentence of four years, with *one* year fixed, before placing him on probation." (Appellant's brief, p.5 (emphasis added).) Dobson has failed to show that the district court abused its discretion in either way.

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).

The determination of an appropriate sentence is vested within the sound legal discretion of the trial court. State v. Beltran, 109 Idaho 196, 706 P.2d 85 (Ct.App.1985). Such discretion includes whether to withhold judgment. I.C. § 19-2601; I.C.R. 33(d). "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. Geier, 109 Idaho 963, 965, 712 P.2d 664, 666 (Ct. App. 1985).

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

The sentence imposed is within the statutory limits of I.C. §§ 18-923(1) for attempted strangulation. 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 guidelines set forth by statute, as well as the goals of sentencing, including the protection of the public and society, the issue of deterrence, the issue of rehabilitation and also the issue of punishment." (Tr., p.359, Ls.8-13 (citations to page numbers of electronic file).) The district court stated that "[t]here was certainly a violent event that occurred for which you are responsible. It concerns me that I don't think you're taking responsibility for that." (Tr., p.359, Ls.17-19.) The district court further explained

that Dobson was "violent towards [his] wife" and "there is a penalty that must be paid as a result of that." (Tr., p.360, Ls.10-12.)

The district court did not merely focus on the violence Dobson inflicted upon his wife. The court noted that Dobson had no issues during approximately one year of being on pre-trial release, and was compliant with the No Contact Order. (Tr., p.359, Ls.20-23.) The court concluded:

> Given the circumstances, given my belief that you can succeed in the community and I don't think that you're a threat at this point in time, given your showing that you can comply, I am going to give you the opportunity of probation. I'm not going to send you on a rider, I'm not going to send you to prison today.

(Tr., p.360, Ls.15-20.) After pronouncing Dobson's sentence of four years, with two years fixed, all suspended with four years of probation, the district court denied Dobson's counsel's request to withhold judgment. (Tr., p.360, L.21 – p. 361, L.9; p.365, Ls.5-8.)

On appeal, Dobson argues that the mitigating factors should have required the court to order his judgment withheld, or, alternatively, to reduce the fixed portion of his underlying sentence from two years to one year. (See generally Appellant's brief, pp.5-9.) Dobson cites the mitigating factors as follows: he went through about one year of pretrial release with no violations except failing to appear for his presentence investigation interview; he was in the U.S. Army until he was medically discharged while serving a tour in Afghanistan; he had no prior felony convictions; he had good employment as a crew foreman building houses; he was standby as a certified wildland firefighter; he had a "low risk" LSI score; and he had the support of friends and family.[1] (Appellant's brief, pp.6-7.)

Although each of Dobson's mitigating factors are laudable, they do not show that the district court abused its sentencing discretion by not withholding judgment or sentencing him to

[1] Contrary to Dobson's suggestion, the fact that he and Cassy "had gone their separate ways, with their divorce finalized before sentencing" is not a mitigating factor. (See Appellant's brief, p.7.)

an underlying fixed term of two years instead of one year. Dobson's blatant refusal to accept responsibility rightly "concerns" the court. In his version of the incident to the Presentence Investigator, Dobson *totally* omits the fact that a physical altercation took place, to wit:

> When I got home I saw all the Christmas stuff I made my wife, with a broken heart I broke the decorations. I fell asleep. I woke up to my wife coming back home alone. When she came in she was belittling and mean, so we began to argue again. I kept asking if we could go to bed, but we argued more. We eventually went to sleep. We woke up on Dec 25 and decided to go to breakfast, we ate at Denneys in Caldwell, then went to my moms to pick up our kids who stayed the night there.

(PSI, p.18 (verbatim); see PSI, pp.131-32 (photos of Cassy).) Even during the sentencing hearing, Dobson went on a dissertation claiming there was exculpatory evidence withheld by the state, the state failed to properly investigate his case, and the jury incorrectly convicted him "without any physical evidence." (Tr., p.356, L.12 – 358, L.15.) Given the serious nature of the offense in which Dobson attempted to strangle his wife, Cassy, and Dobson's steadfast reluctance to accept any responsibility for his actions, the court acted well within the bounds of its reasonable discretion in sentencing him.

The sentence imposed provides reasonable deterrence to Dobson's criminal behavior, and is an encouraging factor in his probation. Dobson's offense was extremely detrimental to Cassy and her three sons, as shown by their victim impact statements. (See PSI, pp.2-10.) Dobson has failed to show that a lesser fixed portion of his underlying sentence, or a withheld judgment, were the only reasonable options.

## CONCLUSION

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

DATED this 12th day of February, 2021.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of February, 2021, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

BEN P. McGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd