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### State v. Batista Respondent's Brief Dckt. 47948

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	NOS. 47948-2020, 47949-2020,
	)	& 48000-2020
Plaintiff-Respondent,	)	
	)	Cassia County Case Nos.
v.	)	CR16-19-5040 & CR16-19-9391
	)	
ROBERT LOREN BATISTA,	)	Minidoka County Case No.
	)	CR34-19-3000
Defendant-Appellant.	)	
	)	RESPONDENT’S BRIEF
	)	

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Has Batista failed to show that the district court abused its sentencing discretion when it imposed sentences of six years with three years determinate upon his conviction for grand theft and five years with two years determinate for felony eluding?

ARGUMENT

Batista Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Police caught Batista trying to pawn stolen jewelry and arrested him. (PSI, p. 3.) In a search incident to arrest police found methamphetamine on Batista’s person. (Id.) The state

charged Batista with grand theft by possession of stolen property, burglary, and possession of methamphetamine. (47948 R., pp. 24-25, 31-32.) Batista was released on his own recognizance on July 3, 2019. (47948 R., p. 18.)

A little more than a month after his release, police in a different county found Batista in possession of methamphetamine. (PSI, pp. 4-5.) The state charged Batista with possession of methamphetamine with intent to deliver. (48000 R., pp. 42-43.) Batista was once again released on his own recognizance. (48000 R., p. 15.)

Approximately four months later officers attempted to arrest Batista on warrants issued in the grand theft and possession with intent to deliver cases for failure to appear and violations of the conditions of release (47948 R., p. 36; 48000 R., pp. 22-30), but Batista fled, speeding and running a stop sign and red lights (PSI, pp. 5-6). The state charged Batista with eluding police. (47949 R., pp. 21-22.)

Batista pled guilty to grand theft by possession of stolen property, possession of methamphetamine (reduced from possession with intent to deliver), and eluding as part of plea agreements with the state. (47948 R., pp. 47-49, 60-61; 47949 R., pp. 28-30, 41-42; 48000 R., pp. 69-70, 95-96.) The district court imposed a sentence of six years with three years determinate for grand theft, concurrent with the eluding sentence, and retained jurisdiction. (47948 R., p. 79.) The district court imposed a sentence of seven years with three years determinate for possession of a controlled substance, concurrent with both other convictions, and retained jurisdiction. (48000 R., pp. 112-14.) The district court imposed a sentence of five years with two years determinate for eluding, concurrent with the grand theft sentence, and retained jurisdiction. (47949 R., pp. 59-61.)

Batista filed a timely notice of appeal in the grand theft and eluding cases. (47948 R., pp. 6 (judgment entered 3/9/20), 83-84; 47949 R., pp. 66-67.) Because the judgment on the possession

of methamphetamine conviction was entered on March 10, 2020 (48000 R., p. 112), and the notice of appeal was filed 51 days later on April 30, 2020 (48000 R., p. 124), the notice of appeal in the possession case was not timely from the entry of the judgment. I.A.R. 14.<sup>1</sup>

Batista challenges the district court's decision to retain jurisdiction instead of placing him immediately on probation. (Appellant's brief, p. 8.) He has failed to show an abuse of discretion.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks "whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." State v. Herrera, 164 Idaho

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<sup>1</sup> The notice of appeal was timely only from the judgment of restitution. (48000 R., pp. 119, 124.) Batista has not, however, challenged restitution on appeal. (Appellant's brief, p. 8.) Because this Court lacks appellate jurisdiction to consider Batista's challenge to the judgment of conviction in the possession case, I.A.R. 21; State v. Ciccone, 150 Idaho 305, 306, 246 P.3d 958, 959 (2010), the state requests this Court to dismiss the appeal in Docket 48000.

261, 270, 429 P.3d 149, 158 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

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

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met this burden, the court considers the entire sentence but, because the decision to release the defendant on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). To establish that the sentence was excessive, the appellant must demonstrate that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Farwell, 144 Idaho at 736, 170 P.3d at 401. A sentence is reasonable “if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

The district court applied the relevant legal standards. (Tr., p. 16, Ls. 4-15.<sup>2</sup>) The district court deemed Batista ineligible for drug court “because of his inappropriate behavior with a service provider.” (Tr., p. 16, L. 16 – p. 17, L. 16.) After considering the nature of the crimes and the information and arguments before it (Tr., p. 15, L. 25 – p. 16, L. 3; p. 17, L. 17 – p. 19, L. 24), the district court exercised its discretion and imposed concurrent sentences of five years with two years

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<sup>2</sup> All citations to the transcript are to the March 19, 2020, sentencing hearing.

determinate for eluding and six years with three years determinate for grand theft, and retained jurisdiction (Tr., p. 19, L. 24 – p. 20, L. 10; p. 20, L. 22 – p. 21, L. 3). The district court found that lesser sentences would “depreciate the seriousness of the offense in both cases.” (Tr., p. 20, Ls. 11-14.) The court also found that Batista was not at that time “appropriate for community supervision.” (Tr., p. 21, Ls. 3-5.)

The district court did not abuse its discretion. The record shows it 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. Batista accumulated three felony convictions in six months, including a felony eluding committed while trying to avoid arrest on outstanding warrants. (PSI, pp. 3-6.) This was on top of five misdemeanor convictions for destruction of evidence, disturbing the peace, DUI, under the influence in public, and battery. (PSI, pp. 9-11.) The facts of the crimes and Batista’s history support the district court’s finding that Batista was not at that time a good candidate for drug court or for probation.

Batista contends the district court “should have followed Mr. Batista’s recommendations by placing him on probation.” (Appellant’s brief, p. 8.) He argues his sentence is excessive “because the district court did not adequately consider mitigating factors,” specifically his alleged “remorse and acceptance of responsibility,” his “mental health issues,” and his “problems with substance abuse.” (Appellant’s brief, pp. 9-13.) However, the district court stated on the record that it had considered Batista’s statements, the arguments of counsel, and the other sentencing materials. (Tr., p. 15, L. 25 – p. 16, L. 3; p. 17, L. 17 – p. 19, L. 24.) Batista’s actions of committing three felonies in quick succession, the latter two while on release, support the district court’s

conclusion that Batista was not a good candidate for probation. His concurrent sentences and the decision to retain jurisdiction are reasonable. Batista has failed to show error on appeal.

CONCLUSION

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

DATED this 25th day of February, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th 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  
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/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd