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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. DAKOTA MATTHEW CROCKFORD, Defendant-Appellant.	)	NO. 48009-2020 Ada County Case No. CR01-19-30383 RESPONDENT'S BRIEF

Has Crockford failed to show that the district court abused its discretion when it relinquished its jurisdiction, or when it denied Crockford's motion under Idaho Criminal Rule 35(b)?

ARGUMENT

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

A. Introduction

In July of 2019, Crockford and his then-girlfriend drove to the home of his ex-girlfriend, A.G. (Conf. Docs., pp. 33, 2009.) He called A.G. and told her that he had a gun and would kill himself if she did not come out. (Id.) When she came out, Crockford was holding a gun pointed

at his stomach and again threatened to kill himself if she did not get in the car. (Id.) Instructed by Crockford, his then-girlfriend attempted to force A.G. into the car. (Id.) Crockford then exited the vehicle himself and attempted to force A.G. into the car. (Id.) When A.G.'s mother heard A.G. screaming for help and come out of the house, Crockford said, "I'm going to shoot your mom, I want to shoot your mom." (Id.) Crockford and his then-girlfriend fled. (Id.) That night, Crockford continued to harass A.G. through text messages and by accessing her social media account, posting messages purportedly from her. (Conf. Docs., pp. 33-34, 2009.) When police contacted Crockford the following day and informed him he was under arrest, he fled with a firearm tucked in his waistband, tried to hide the gun, and then was apprehended after a short stand-off. (Conf. Docs., pp. 34-35, 2009) When police found the gun, they discovered that it was an extremely realistic appearing Airsoft pistol. (Conf. Docs., pp. 10-11, 25-26, 2009-2010.)

Crockford was charged with attempted second degree kidnapping and aggravated assault, both felonies, as well as stalking in the second degree and resisting and/or obstructing officers, both misdemeanors. (R., pp. 37-39.) The district court granted a motion for a competency evaluation pursuant to Idaho Code § 18-211. (R., pp. 25-31.) The evaluation determined that, while Crockford does appear to have an "Antisocial Personality Disorder and a history of mild intellectual disability," he was competent to proceed. (Conf. Docs., p. 18.) Crockford accepted a plea agreement pursuant to which he pled guilty to aggravated assault and second degree stalking—with the state to recommend no more than five years with two years fixed and retained jurisdiction on the former and time served on the latter—while the state dismissed the other charges. (R., p. 40; Supp. Tr., p. 5, Ls. 9-18.) Prior to sentencing, the district court ordered a psychological evaluation, domestic violence evaluation, as well as a presentence report. (R., pp. 53-60.)

At sentencing, after statements from A.G. and her mother, the state followed the plea agreement and recommended that the court sentence Crockford to five years with two years fixed and retain jurisdiction. (Supp. Tr., p. 9, L. 5 – p. 11, L. 23.) Defense counsel asked the court to "consider placing [Crockford] on probation in this case." (Supp. Tr., p. 12, L. 3 – p. 14, L. 4.) The district court imposed a sentence of five years with three years fixed on the aggravated assault charge, and 180 days on the second degree stalking charge, the sentences to run concurrently, and retained jurisdiction. (Tr., p. 16, L. 9 – p. 20, L. 18; R., pp. 65-68.)

An APSI recommended that the court relinquish its jurisdiction based on Crockford's refusal to complete programming and repeated disciplinary issues. (Conf. Docs., pp. 2680-90.) The district court relinquished its jurisdiction. (Tr., p. 9, L. 22 – p. 10, L. 15; R., pp. 72-74.)

Three months later, Crockford filed a motion for a reduction of sentence under Idaho Criminal Rule 35(b), attaching a letter from his adoptive mother discussing his alleged mental health issues and a letter he authored in which he discussed his behavioral improvement, the extent to which he had benefited from programming, and his fear of COVID-19. (Aug., pp. 8-12.) The district court denied the motion. (Aug., pp. 1-3.)

Crockford timely appealed from the district court's decision to relinquish jurisdiction and the denial of his motion under Idaho Criminal Rule 35(b). (R., pp. 75-77.)

B. Standard Of Review

This Court reviews appellate challenges to the length of a sentence, the determination to relinquish jurisdiction, and the denial of a motion under Idaho Criminal Rule 35(b) for abuse of discretion. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016) (length of sentence); State v. Latneau, 154 Idaho 165, 166, 296 P.3d 371, 372 (2013) (relinquishment of jurisdiction); State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007) (denial of motion under Idaho Criminal

Rule 35(b)). 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 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. Crockford's Sentence Is Not Excessive

It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. 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. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (holding district court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, "[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court." Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

Crockford's underlying sentence of five years with three years fixed is within statutory limits. See I.C. § 18-906. To show that it is excessive, he therefore has to show that there is no reasonable view of the facts under which it might be viewed as necessary to accomplish any of the goals of sentencing. He cannot do so.

The district court recognized its discretion and explicitly considered the goals of sentencing. (Supp. Tr., p. 16, L. 9 – p. 17, L. 2.) The court expressed concern regarding Crockford's extensive criminal history—albeit much of it juvenile—and the fact that "most of [it involved] victimizing somebody." (Supp. Tr., p. 17, Ls. 3-5; p. 18, Ls. 20-23.) That concern is supported by the record, which shows a long string of violent crimes, including a large number of assault, disturbing the peace, batter, and disorderly conduct charges, as well as a charge of lewd conduct with a minor, and repeated probation violations. (Conf. Docs, pp. 2011-14 (not including the present crimes, reflecting seven misdemeanors, one felony, and one probation violation as a juvenile, as well as four misdemeanors and one probation violation as an adult, many of which are violent).) He acknowledged a prior incident of domestic violence involving a gun. (Conf. Docs., pp. 2644.) The court recognized that the current crimes follow Crockford's pattern of victimization, often in a violent and dangerous manner. As the court noted, Crockford attempted to kidnap A.G., threatening both her and her mother with what they had every reason to believe was a gun. (Supp. Tr., p. 17, Ls. 15-21.) He then harassed her through social media. (Supp. Tr., p. 18, Ls. 4-8.) When confronted by police, Crockford fled from them while still holding what they had every reason to believe was a gun, putting himself and others at risk. (Supp. Tr., p. 17, L. 22 – p. 18, L. 3; Conf. Docs., p. 35.) The district court expressed concern that Crockford appeared to show very little remorse, in fact suggesting that he was somehow helping A.G. (Supp. Tr., p. 18, Ls. 15-19; Conf. Docs., p. 61 (telling police that he was trying to get A.G. away from

her "controlling" mother).) The court noted that the psychological evaluation the court ordered determined that Crockford was a high risk to re-offend (Tr., p. 17, Ls. 11-14), including by "physical aggression and manipulation." (Conf. Docs., pp. 1974-75.) Likewise, the domestic violence evaluation determined that Crockford was a high risk for both future domestic violence and stalking. (Conf. Docs., pp. 2638, 2651.) A discharge report issued in 2014 after Crockford received treatment associated with a conviction for sexual misconduct characterized Crockford as a "Very High" risk of impulsive, sexual acting out, and a Moderate-High risk of sexual recidivism. (Conf. Docs., p. 2558.) The court concluded that the underlying sentence was appropriate, particularly in light of the extent to which Crockford was dangerous and to protect the community. (Supp. Tr., p. 19, L. 17 – p. 20, L. 1.) Nevertheless, the court provided Crockford an opportunity for "an evaluative Rider" to convince the court that he deserves "a chance on probation." (Supp. Tr., p. 20, Ls. 2-7.)

The district court did not abuse its discretion. It was justifiably concerned about the aggravated nature of the crimes of which Crockford had been convicted; his criminal history, including many crimes of violence; his failure to recognize the harm caused to his victims and the serious nature of his crimes; and the suggestion by the psychological evaluation that he was both a risk to reoffend and not particularly amenable to treatment, as well as other expert evaluators concurring that that he represented a high risk to reoffend. State v. Araiza, 124 Idaho 82, 95, 856 P.2d 872, 885 (1993) ("[T]he trial court was concerned in sentencing Araiza with the protection of society—the primary goal in sentencing. Although reasonable minds might differ whether the sentences imposed were necessary for the protection of society, we cannot say that the sentences are excessive under any reasonable view of the facts."). Even with that concern, the court permitted Crockford an opportunity to show that he was a good candidate for probation.

Crockford argues that the district court abused its discretion by failing to appropriately consider his mental health. He is incorrect. The district court ordered a psychological evaluation and indicated that it had reviewed the evaluation. (Supp. Tr., p. 16, L. 22 – p. 17, L. 2.) In fact, the court cited the psychological evaluation and its conclusion that Crockford was "not particularly amenable to treatment" in fashioning the sentence it did. (Supp. Tr., p. 17, Ls. 11-14; Conf. Docs., pp. 1974-75.) As the court later noted in ruling on Crockford's motion under Idaho Criminal Rule 35, it "was well aware of [Crockford's] medical and psychological history when it imposed sentence." (Aug., p. 2.) "[M]ental illness and substance abuse can be mitigating, or aggravating, or both." State v. Garcia, 166 Idaho 661, ___, 462 P.3d 1125, 1144 (2020); see also State v. Strand, 137 Idaho 457, 462, 50 P.3d 472, 477 (2002) (holding that there was no abuse of discretion where the district court considered defendant's mental health conditions, but placed greater weight on the need to protect the community and punish the defendant); State v. Miller, 151 Idaho 828, 837, 264 P.3d 935, 944 (2011) (same). The district court was well aware of Crockford's mental issues at sentencing and Crockford is simply asking this Court to do what it repeatedly declines to do—reweigh the factors the district court considered in sentencing. Garcia, 166 Idaho at ___, 462 P.3d at 1144-45.

Crockford has not shown that the district court abused its sentencing discretion by imposing an excessive sentence.

D. Crockford Has Not Shown That The District Court Abused Its Discretion By Relinquishing Jurisdiction

In deciding to relinquish jurisdiction or grant probation, the district court should consider "all of the circumstances to assess the defendant's ability to succeed in a less structured environment and to determine the course of action that will further the purposes of rehabilitation,

protection of society, deterrence, and retribution." State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001). A court does not abuse its discretion in relinquishing jurisdiction if the record shows that the district court "properly considered the information before it and determined that probation was not appropriate." State v. Pelland, 159 Idaho 870, 367 P.3d 265, 269 (Ct. App. 2016). Even where prison officials make a recommendation for probation following a period of retained jurisdiction, such a recommendation "does not alone create an abuse of discretion in the district judge's decision not to place the defendant on probation." Statton, 136 Idaho at 137, 30 P.3d at 292.

Here, the APSI recommended that the court relinquish its jurisdiction over Crockford and documented a variety of disciplinary issues and a complete lack of willingness to participate in programming. (Conf. Docs., pp. 2680-90.) When confronted with disciplinary issues, Crockford responded, "I don't give a fuck," "I don't really fucking care," and otherwise expressed disdain for prison officials and the programming intended to assist him in establishing his ability to succeed on probation. (Conf. Docs., p. 2682.) He regularly made "anti-social statements" and "vague threats" to staff and other inmates. (Conf. Docs., p. 2683.) For example, in "an attempt to intimidate" one of his instructors, he told the instructor that he had previously "shanked" another instructor. (Conf. Docs., p. 2686.) Crockford then chose to sign himself out of the programming well before completion. (Conf. Docs, p. 2683.)

All of this was despite the fact that, at sentencing, when the district court initially granted a period of retained jurisdiction despite the court's deep concerns about the danger presented by Crockford, the serious nature of his crimes, and his inability to control himself, the court was completely clear that Crockford needed to complete his programming and perform exceptionally well for the court to consider probation at the end of the period of retained jurisdiction. (Supp.

Tr., p. 19, L. 9 – p. 20, L. 7.) At the jurisdiction review hearing, when the court relinquished jurisdiction, the judge again expressed concern about the danger Crockford presented, the serious nature of his crimes, and his criminal history, and noted that he had explained at sentencing that he would grant a rider but that Crockford "really had to show … that he was capable of making good decisions and doing well on the Rider" or the court would relinquish jurisdiction. (Tr., p. 9, L. 22 – p. 10, L. 8.) As the court correctly found, Crockford had not done that "by any stretch, which is consistent with the Department's recommendation of relinquishment." (Tr., p. 9, L. 22 – p. 10, L. 8.) In addition to the information regarding the nature of this crime, Crockford's criminal history, the determination by professionals that he was a high risk for re-offense and not amenable to treatment, and his repeated failures on probation, his abject failure during his rider was excellent reason for the district court to conclude, in its discretion, that Crockford was not a good candidate for probation.

Crockford's argument to the contrary is premised on the claim that he did not receive mental health treatment while incarcerated, suggesting that explains his failure to succeed during the rider. (Appellant's brief, p. 5-6.) He claims, for example, that "he was not in his 'right mind' when he signed out of the program." (Appellant's brief, p. 6 (citing Tr., p. 7, Ls. 17-19).) The APSI, though, reflects that Crockford was evaluated by a clinician before he was permitted to sign out of the programming and the clinician "cleared him to make the decision whether or not to quit programming." (Conf. Docs, p. 2683.) Contrary to Crockford's assertion, a professional judged that he was "in his right mind" when he decided to quit the programming that he was told he needed to complete to show that he was suitable for probation. In addition, while the APSI reflects that Crockford was "not currently receiv[ing] mental health treatment," that was "due to [his] not requesting an appointment with an IDOC clinician or requesting psychotropic medications."

(Conf. Docs., p. 2684.) Crockford's failure to take advantage of readily available mental health treatment—despite, of course, being well aware of his own mental health history and the fact that his successful completion of programming was a necessary condition to avoid the court relinquishing its jurisdiction—is not somehow exculpatory; rather, it is evidence that he is not a good candidate for supervised release. Indeed, there is little reason to think Crockford's performance would have been better had he availed himself of treatment. As noted above, the psychological evaluation suggested that he was not particularly amenable to treatment and he acknowledged that he received treatment through his life but continued "to have difficulty managing his behavior, managing his impulses, and following the law." (Conf. Docs., pp. 1975, 1994.) In addition, Crockford was receiving at least one of the forms of treatment recommended in the psychological evaluation—anger management classes—and withdrew after he was judged by a professional to be competent to make that decision. (Conf. Docs., pp. 2003-04.)

The district court had excellent reason to believe that Crockford was not a good candidate for probation and did not abuse its discretion by relinquishing its jurisdiction.

E. The District Court Did Not Abuse Its Discretion By Denying Crockford's Motion Under Idaho Criminal Rule 35(b)

"A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court." State v. Anderson, 163 Idaho 513, 517, 415 P.3d 381, 385 (Ct. App. 2015). Where a sentence is neither illegal nor excessive when pronounced, "the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion." State v. Burggraf, 160 Idaho 177, 180, 369 P.3d 955, 958 (Ct. App. 2016) (citing State v. Huffman, 144 Idaho 201, 203, 159 P.3d, 338, 840 (2007)); see State v. Dabney, 159 Idaho 790, 798, 367 P.3d 185, 193 (2016) (affirming denial of Rule 35 motion that was not supported with any relevant information). "An

appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information." Huffman, 144 Idaho at 203, 159 P.3d at 840.

The district court properly determined that Crockford's Rule 35 motion was not supported by new evidence showing that his sentence was excessive. (Aug., pp. 1-3.) Crockford's motion was supported by a letter from his adoptive mother and a letter that he authored. (Aug., pp. 10-12.) In both, they referenced alleged mental and physical health issues, anxiety regarding COVID-19, and supposed improvement in his conduct after he failed in his rider. As the district court recognized, there had been "extensive evaluations" of Crockford, the district court reviewed and carefully considered those evaluations prior to sentencing, and they discussed Crockford's alleged mental and physical infirmities. (Aug., pp. 2-3.) The letters therefore did not include new evidence. Further, if anxiety about COVID-19 constituted new evidence showing that a sentence is excessive, courts will be swamped with Rule 35 motions claiming that sentences are excessive. The court correctly concluded that "anxiety over the virus is a worldwide phenomenon" and does not warrant a reduction in Crockford's sentence. (Aug. p. 2.) Finally, with respect to Crockford's alleged good behavior, his Rule 35 motion was filed only three months after the district court relinquished its jurisdiction for bad behavior. (R., pp. 72-73; Aug., pp. 8-9.) It is hard to see what sort of dramatic turnaround, within three months, could require the district court to reduce Crockford's sentence. Certainly his decision not to fight another inmate, which is the alleged improvement to which Crockford points, does not demonstrate such a turnaround. (Aug. p. 11.) At any rate, even crediting Crockford's reports of his good behavior during the three months between the court's decision to relinquish jurisdiction and Crockford's Rule 35 motion, it is not an abuse of discretion to decline a Rule 35 based on alleged good behavior. See State v. Cobler,

148 Idaho 769, 773, 229 P.3d 374, 378 (2010) ("the district court did not abuse its discretion in giving little or no weight to Cobler's good behavior while in prison"); State v. Gonzales, 122 Idaho 17, 20, 830 P.2d 528, 531 (Ct. App. 1992) (holding that district court did not abuse its discretion in denying Rule 35 motion based on progress reports from prison officials reporting good behavior).

The district court did not err by denying Crockford's request for leniency under Idaho Criminal Rule 35.

CONCLUSION

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

DATED this 11th day of January, 2021.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of January, 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:

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