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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 48094-2020
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-19-34348
)	
EMILIO ZAVALA,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

Issue

Has Zavala failed to establish that the district court abused its discretion by imposing a sentence of five years, with three years fixed, for unlawful possession of a firearm?

Zavala Has Failed To Establish That The District Court Abused Its Sentencing Discretion

According to the Presentence Report (“PSI”¹), Zavala was driving a Chrysler SUV and tried to pass a Subaru that was attempting to turn left from a center turn lane. (PSI, p.3.) When

¹ PSI page numbers correspond with the page numbers of the electronic file “Confidential Exhibits Appeal 47769-2020.pdf.” All documents in that electronic file will be identified as “Zavala 48094 psi.pdf.”

Zavala tried to pass the Subaru on the left, he drove into the oncoming lane of travel and crashed into the Subaru as he tried to go back into the proper lane. (Id.) The Chrysler rolled onto its driver's side and blocked a lane. (Id.) Zavala, the only occupant of the Chrysler, was placed under citizen's arrest for reckless driving by an eyewitness. (Id.) During the crash, a loaded Sterling .22 L.R. pistol was thrown from the Chrysler, and after Zavala was given Miranda warnings by a police officer, he "admitted to knowledge of a gun being in the vehicle and was in possession of a .22 caliber bullet matching the caliber of the gun." (Id.) A "narcotic K-9" positively alerted to the odor of narcotics coming from inside the Chrysler, and a vehicle search resulted in the discovery of a glass jar which contained a crystal like substance that "NIK tested positive for amphetamines." (Id.) Law enforcement determined that Zavala had several felony convictions in Texas. (Id.)

The state charged Zavala with unlawful possession of a firearm, possession of a controlled substance (methamphetamine), possession of drug paraphernalia, and reckless driving. (R., pp.29-30.) Pursuant to a plea agreement, Zavala pled guilty to unlawful possession of a firearm and the remaining charges were dismissed. (R., pp.48-59, 62; see generally Tr., p.5, L.10 – p.12, L.19.) The district court sentenced Zavala to five years, with three years fixed. (R., pp.61-64.) Zavala filed a Rule 35 Motion for Reduction of Sentence (R., p.69), which, in the absence of any order on that motion in the appellate record, was presumably denied. Zavala filed a timely notice of appeal. (R., pp.71-73.)

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). 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) (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)). The maximum prison sentence for unlawful possession of a firearm is five years. I.C. § 18-3316(1). The district court imposed a sentence of five years, with three years fixed, which falls within the statutory guidelines. (R., pp.61-64.)

Zavala claims to have the support of his family, and that he has accepted responsibility for his crime and begun to conform his behavior to jail expectations. (Id., pp.5-6.) Though laudable, those factors do not show that Zavala’s sentence was excessive.

Of the four sentencing criteria, Zavala focuses primarily on rehabilitation, contending that “the biggest issue when it comes to his rehabilitation is his dual diagnosis” of substance abuse and mental health issues. (Appellant’s brief, p.5.) Zavala “acknowledged that, when he is not on his

medications, he turns to drugs to self-medicate and then turns to crime to support his drug abuse.” (Appellant’s brief, p.5; see PSI, p.14.) He asserts that the “medications provided by the jail were beginning to have a positive effect” on him, and notes that the district court said he “has the potential to successfully rehabilitate if he adheres to his mental health and medication regimen.” (Id.) Zavala concludes that the court abused its discretion by not placing him on a rider “since the rider program would provide the sort of dual treatment [he] needs, but has not yet, apparently, had the opportunity to receive.” (Id., p.6-7.)

Zavala’s I.C. § 19-2524 mental health review determined that he has stimulant use disorder (cocaine type, severe), phencyclidine (PCP or angel dust) use disorder (severe), major depressive disorder (single episode, with psychotic features), and generalized anxiety disorder.² (PSI, pp.20 (cocaine and PCP are his drugs of choice), 39.) The evaluation found that Zavala’s mental health needs “appear to be addressed through his current treatment at Canyon County Jail[,]” and recommended that he “continue to access mental health treatment while incarcerated and if released into the community to avoid deterioration of functioning and to monitor for any ongoing risk.” (Id., p.41.) Zavala’s GAIN-I evaluation recommended he be placed in a “Level II.I Intensive Outpatient Substance Abuse Treatment Program.” (PSI, p.38.)

Zavala’s mental health issues are mitigating factors in his case. While substance abuse may be considered as a mitigating factor, State v. Nice, 103 Idaho 89, 645 P.2d 323 (1982), it may also be considered as an aggravating factor, State v. King, 120 Idaho 955, 958, 821 P.2d 1010, 1013 (Ct. App. 1991). Here, Zavala’s repeated decisions to stop taking his mental health

² Zavala self-reported to the Presentence Investigator that “he was diagnosed with paranoid schizophrenia, PTSD, mood swings, anxiety, and depression when he was [REDACTED] while incarcerated at the Texas Youth Commission.” (PSI, pp.18-19.) No verification of those early diagnoses is found in the Presentence Report or attachments.

medications and instead “self-medicate” with illegal controlled substances, which, in turn, led to his decisions to commit crimes to acquire such substances, should not be deemed mitigating.

Contrary to Zavala’s argument, the district court exercised reasonable discretion by determining that, despite his mental health and substance abuse issues, Zavala should be sentenced to prison – not a rider. The court read the pre-sentence report and was said it was “well aware of the four objectives of criminal sentencing” considerations, “[f]irst and foremost among them are protection of the community. The others are rehabilitation, deterrence, and punishment.” (Tr., p.22, Ls.8-13.) See State v. Toohill, 102 Idaho 565, 652 P.2d 707 (Ct. App. 1982). The court also cited the criteria of I.C. § 19-2521 “that are intended to guide courts in distinguishing cases in which a prison sentence is appropriate.” (Tr., p.22, Ls.14-19.)

Zavala’s LSI-R (Level of Service Inventory-Revised) score was 38, “which places him in the high-risk category” to reoffend. (PSI, p.21.) That “high-risk” classification was based, in part, on his criminal history and alcohol/drug problems. (Id.) As the Presentence Investigator explained, “the defendant has one juvenile misdemeanor adjudication, 16 adult misdemeanor convictions, and eight adult felony convictions in Texas. Since arriving in Idaho in May 2019, he has two misdemeanor convictions and three pending misdemeanors apart from the instant offense.”³ (PSI, p.13.) The Presentence Investigator noted that Zavala “was also disruptive upon his arrival to the Canyon County Jail in November 2019” and reportedly “made threats to staff several times, covered safety cameras, and attempted to break a fire suspension sprinkler. His actions required multiple members of the Canyon County Sheriff’s Office to place the defendant

³ In one of the Idaho cases, Zavala was charged with misdemeanor domestic battery for striking his then-girlfriend (and later wife) in the face in November 2019. (PSI, pp.13, 15.)

in a restraining device for his own safety and the safety of the deputies and other staff involved.”
(PSI, pp.13-14.)

Although most of Zavala’s Texas convictions appear to be property crimes such as burglary or theft, he was placed on probation for 10 years for the felony of “aggravated assault causing serious bodily injury” in 1999, sentenced to 12 months jail for misdemeanor assault in 2001, and sentenced to three years imprisonment for robbery (second degree) in 2015. (PSI, pp.7-8, 11.) The district court summarized Zavala’s Texas convictions, his three pending Idaho misdemeanor cases, and his jail misconduct, observing that many of Zavala’s theft/shoplifting misdemeanors in Texas would have been felonies (burglary) in Idaho. (Tr., p.22, L.20 – p. 24, L.15.)

Just before pronouncing Zavala’s sentence, the district court emphasized its determination that Zavala appeared to be a “community safety risk,” explaining:

So you’ve certainly had trouble keeping your nose clean, so to speak, and the criminal charges you are racking up are not crimes that don’t risk public safety in some way, so that’s a concern.

. . . You’ve certainly got a substantial history of using illegal drugs. And so there are a lot of things that point to you presenting a risk to the community currently. That’s not to say that, with proper medication management and sort of, I guess, a renewed commitment on your part to staying on your medications and to living your life in a way where you accept that your rights end when somebody else’s rights begin –

THE DEFENDANT: Yes, sir.

THE COURT: – that you couldn’t turn the page –

THE DEFENDANT: Yes, sir.

THE COURT: – and live a different life. But as I said, presently, you appear to present a risk to the community, and that risk justifies certainly a period of incarceration, and neither side says differently either, just arguing for different modes or lengths of incarceration

I suppose I ought to mention the particular circumstances of this case as well, which involved the defendant being found to have possession of a firearm in

an incident that involved reckless and dangerous driving behavior, so the incident in and of itself is just one more, I guess, reason for concern about a community safety risk.

(Tr., p.24, L.7 – p.25, L.15.) The court concluded, telling Zavala “it seems to me, that you have got a substantial period of incarceration coming for what you’ve done and that efforts to rehabilitate you, it would seem to me, is a bit of a longer-term project than a rider.” (Tr., p.26, Ls.6-12.)

Based on Zavala’s extensive criminal history, the district court’s overriding concern that society be protected, and that he become a good citizen, it cannot have abused its sentencing discretion by sentencing Zavala to five years, with three years fixed instead of a rider. Zavala has failed to show any abuse in the district court’s sentencing discretion.

Conclusion

The state respectfully requests this Court to affirm Zavala’s conviction and sentence.

DATED this 17th day of March, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of March, 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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/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd