

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

1-21-2021

### State v. Amos Appellant's Brief Dckt. 48150

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

---

#### Recommended Citation

"State v. Amos Appellant's Brief Dckt. 48150" (2021). *Not Reported*. 6975.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/6975](https://digitalcommons.law.uidaho.edu/not_reported/6975)

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).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

JENNY C. SWINFORD  
Deputy State Appellate Public Defender  
I.S.B. #9263  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 48150-2020
	)	
v.	)	BEAR LAKE COUNTY
	)	NO. CR04-19-1253
BRANDYN LYNN AMOS,	)	
	)	APPELLANT’S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

After Brandyn Amos pled guilty to aiding and abetting burglary, the district court sentenced him to five years, with two years fixed. Mr. Amos appeals, and he argues the district court abused its discretion by imposing an excessive sentence.

Statement of Facts and Course of Proceedings

In September 2019, the State filed a criminal complaint alleging Mr. Amos committed burglary of a car wash. (R.,<sup>1</sup> pp.11–12.) Mr. Amos waived a preliminary hearing, and the

<sup>1</sup> The clerk’s record is not in chronological order.

magistrate judge bound him over to district court. (R., pp.53–54.) The State filed an information charging Mr. Amos with burglary. (R., p.52.)

In February 2020, pursuant to a plea agreement, Mr. Amos pled guilty to an amended charge of aiding and abetting burglary. (R., pp.95, 96–99, 110–13; Tr.,<sup>2</sup> p.15 (p.7, Ls.15–19), pp.21–22 (p.13, L.23–p.14, L.18).) The State agreed to recommend probation. (R., p.97.) Due a recent presentence investigation report (“PSI”) for another case, Mr. Amos waived a PSI. (Tr., pp.23–24 (p.15, L.6–p.16, L.15).)

In May 2020, the district court held two sentencing hearings. At the first hearing, the district court continued sentencing in order for Mr. Amos to obtain an updated GAIN evaluation. (Tr., pp.41–42 (p.33, L.11–p.32, L.12).) At the second hearing, Mr. Amos moved for another continuance because he was scheduled to complete his GAIN evaluation the following day. (*See* Tr., pp.45–59 (p.37, L.5–p.51, L.15).) The district court denied the continuance and proceeded with sentencing. (Tr., p.59 (p.51, Ls.6–7); R., p.140.) Mr. Amos and the State both recommended probation. (Tr., p.61 (p.54, Ls.11–12), p.63 (p.55, Ls.17–18).) The district court sentenced Mr. Amos to five years, with two years fixed, and retained jurisdiction (a “rider”). (Tr., p.78 (p.70, Ls.16–19), p.79 (p.71, Ls.8–10); R., pp.120–23.) The district court entered a judgment of conviction and order retaining jurisdiction, and Mr. Amos timely appealed. (R., pp.120–23, 187–88.)

In June 2020, Mr. Amos filed an Idaho Criminal Rule 35 (“Rule 35”) motion. (R., pp.127–28.) He argued the State breached the plea agreement. (R., p.127) At a hearing in July 2020, (R., pp.205–06), he also challenged the district court’s decision to deny his motion for

---

<sup>2</sup> Citations to “Tr.” refer to the 131-page electronic document with the transcripts on appeal Citations reference the overall pagination of the document and then, parenthetically, the internal pagination and line numbers of the specific transcript.

a second continuance for the GAIN evaluation. (*See* Tr., pp.85–92 (p.77, L.12–p.84, L.23).) On the alleged breach of the plea agreement, he asserted that the State failed to make a sentencing argument consistent with its probation recommendation. (Tr., pp.92–93 (p.84, L.24–p.85, L.21), pp.108–113 (p.100, L.17–p.105, L.2), p.115–16 (p.107, L.12–108, L.11).) The district court took the matter under advisement. Mr. Amos submitted a supplemental memorandum on the alleged breach of the plea agreement. (R., pp.142–45.) He also submitted character letters on his behalf. (R., pp.195–204.) The State provided a memorandum in opposition to the Rule 35 motion. (R., pp.207–10.) In September 2020, the district court denied Mr. Amos’s Rule 35 motion. (R., pp.176–85.) The district court rejected Mr. Amos’s request for a sentence reduction (based on the second continuance denial) and disagreed with his argument that the State breached the plea agreement. (R., pp.176–85.)

In January 2021, the district court held a rider review hearing and placed Mr. Amos on probation. (Aug. R., pp.1–7.) Because Mr. Amos is currently on probation, and thus has received the relief to be requested from his alleged breach of the plea agreement or any error in the denial of his motion for a second continuance, this appeal is limited to a challenge of his underlying sentence. *See State v. Manzanares*, 152 Idaho 410, 419 (2012) (citation omitted) (“A case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. A case is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome.”).

### ISSUE

Did the district court abuse its discretion by imposing an excessive sentence of five years, with two years fixed, upon Mr. Amos for aiding and abetting burglary?

## ARGUMENT

### The District Court Abused Its Discretion By Imposing An Excessive Sentence Of Five Years, With Two Years Fixed, Upon Mr. Amos For Aiding And Abetting Burglary

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Mr. Amos’s sentence does not exceed the statutory maximum. See I.C. § 18-1403 (one-year minimum, ten-year maximum for burglary). Accordingly, to show the sentence imposed was unreasonable, Mr. Amos “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

*Stevens*, 146 Idaho at 148. “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.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Here, Mr. Amos asserts the district court did not exercise reason and therefore abused its discretion by imposing an excessive sentence under any reasonable view of the facts. Specifically, he contends the district court should have sentenced him to a lesser term of imprisonment in light of the mitigating factors, including his remorse and acceptance of

responsibility, lesser culpability, cooperation with law enforcement, commitment to his sobriety, and steady employment.

For example, Mr. Amos expressed remorse and accepted responsibility for his role in the burglary. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *State v. Shideler*, 103 Idaho 593, 595 (1982). At sentencing, he informed the district court that he was very sorry for what had happened. (Tr., p.68 (p.60, Ls.6–8).) He stated: “I want everybody to know that I don’t try to mess up. I don’t try to make mistakes in life. I’m human, and I just, I made my mistakes, and I’m trying to rearrange everything to get back on track, do the right thing.” (Tr., pp.68–69 (p.60, L.22–p.61, L.1).) Mr. Amos explained that he did not know about the commission of the offense beforehand, but he did spend “some of the money” after the burglary. (Tr., p.68 (p.60, Ls.8–13).) These statements of acceptance, remorse, and regret stand in favor of mitigation.

Moreover, Mr. Amos was cooperative with law enforcement’s investigation. (Tr., pp.63–64 (p.55, L.24–p.56, L.2).) He spoke to the chief of police and “gave him every answer to the very best of my knowledge.” (Tr., p.68 (p.60, Ls.13–21).) This cooperation supports a lesser sentence as well. Further, while Mr. Amos accepted responsibility for his role in the offense, he was less culpable in that he did not enter the car wash, but he did drive others there to commit the theft. (Tr., p.29 (p.21, Ls.11–20), p.60 (p.52, Ls.2–4, p.52, Ls.8–10).) These facts also support a lesser sentence.

Finally, Mr. Amos was a productive and contributing member of society. He had been sober since December 2019. (Tr., p.39 (p.31, Ls.9–10), p.70 (p.62, Ls.23–24).) He wanted to continue working on his substance abuse and mental health issues. (Tr., p.69 (p.61, Ls.1–24).) He also started a good-paying, full-time job in the construction industry. (Tr., pp.69–70 (p.61,

L.23–p.62, L.2.) *See State v. Mitchell*, 77 Idaho 115, 118 (1955) (recognizing gainful employment as a mitigating factor); *see also Shideler*, 103 Idaho at 594–95 (employment and desire to advance within company were mitigating circumstances). Mr. Amos hoped to provide for his girlfriend and her children and get caught up on his bills. (Tr., p.70 (p.62, Ls.3–7, p.62, Ls.13–15).) Ultimately, Mr. Amos explained:

I'm just trying the best to stay on my best behavior, Your Honor, and do what is right and let everybody see that I'm not this problematic person. That I can actually succeed at things I've tried to do. . . . Doing the best I can with working ten-hour shifts five days a week. I want to do good, and I feel like I can, if given the chance.

(Tr., pp.70–71 (p.62, Ls.14–18, p.62, L.24–p.63, L.2).) This mitigating information on Mr. Amos's sobriety, gainful employment, and focus on being a contributing member of society justifies a lesser sentence.

In sum, Mr. Amos maintains the district court did not exercise reason and thus abused its discretion by imposing an excessive sentence. He contends proper consideration of the mitigating factors in his case warrants a more lenient sentence.

### CONCLUSION

Mr. Amos respectfully requests this Court reduce his sentence as it deems appropriate. In the alternative, he respectfully requests this Court vacate his judgment of conviction and remand this case to the district court for a new sentencing hearing.

DATED this 21<sup>st</sup> day of January, 2021.

/s/ Jenny C. Swinford  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of January, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

JCS/eas