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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48150-2020
Plaintiff-Respondent,)	
)	Bear Lake County Case No.
v.)	CR04-19-1253
)	
BRANDYN LYNN AMOS,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Brandyn Lynn Amos failed to show that the district court abused its sentencing discretion when it imposed a unified sentence of five years, with two years fixed, and retained jurisdiction upon his conviction for aiding and abetting burglary?

ARGUMENT

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

A. Introduction

The state charged Amos with burglary. (R., p.52.) Pursuant to a plea agreement, Amos pled guilty to an amended charge of aiding and abetting burglary. (R., pp.95-99, 110-13; 2/20/20 Tr., p.7, Ls.15-19; p.13, L.23 – p.15, L.5.) During sentencing, the parties jointly recommended

probation. (5/21/20 Tr., p.53, Ls.4-6; p.55, Ls.17-18.) The court rejected the joint recommendation and imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. (R., pp.120-23; 5/21/20 Tr., p.70, L.12 – p.71, L.10.¹) Several months later, the district court held a rider review hearing and placed Amos on probation. (Aug., pp.1-7.) Amos timely appealed. (R., pp.120, 187-88.)

On appeal, Amos asserts the district court did not exercise reason, and therefore abused its sentencing discretion, when it imposed an excessive sentence of five years, with two years fixed. (Appellant’s brief, pp.4-6.) He has failed to show an abuse of discretion. The sentence imposed was reasonable.

B. Standard Of Review

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).

C. Amos Has Shown No Abuse Of The District Court’s Sentencing Discretion

The district court did not abuse its discretion when it imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323,

¹ Amos timely filed a Rule 35 motion. (R., pp.120, 127-28, 142-45, 195-204.) The district court denied the motion. (R., pp.176-85, 205-06; see 7/2/20 Tr., pp.75-122) Amos does not challenge the denial of his Rule 35 motion on appeal. (See Appellant’s brief, pp.2-3.)

324 (1982)). Furthermore, where a sentence fits within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. Id. (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. 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. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007).

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. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citation omitted). 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, [the appellate 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).

Amos concedes that his sentence “does not exceed the statutory maximum.” (Appellant’s brief, p.4.) Burglary is punishable by imprisonment for not less than one year but not more than ten. I.C. § 18-1403. In this case, the district court imposed a unified sentence of five years, with two years fixed. (R., pp.120-23.) Because the sentence imposed fits within the statutory limits, 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, 50 P.3d 472, 475 (2002). He cannot do so.

The sentence imposed was reasonable. In fashioning Amos’s sentence, the court reviewed the PSI materials and considered the necessary sentencing factors. (5/21/20 Tr., p.64, L.20 – p.65, L.4.) The PSI revealed that Amos has an extensive criminal history. (PSI, pp.5-13.) The district court found that Amos’s criminal history began in 1995 and spans about twenty-five years. (5/21/20 Tr., p.66, Ls.16-19; PSI, pp.5-13.) He had been charged with nearly forty-five misdemeanors, which resulted in thirty convictions. (5/21/20 Tr., p.66, Ls.19-24; PSI, pp.5-13.) He had also been charged with three felonies, which resulted in one conviction. (5/21/20 Tr., p.67, Ls.9-12; PSI, pp.5-13.) The court expressly tied Amos’s substantial criminal history with the need to protect society and to the related goals of punishment and deterrence. (5/21/20 Tr., p.66, L.11 – p.67, L.17.) Additionally, the court considered the fact that Amos was a moderate risk to reoffend, and that he had a demonstrated history of “significant and chronic” substance abuse. (5/21/20 Tr., p.69, L.21 – p.70, L.11.)

The court also considered Amos’s conduct in light of his history of property crimes. (5/21/20 Tr., p.67, Ls.3-17.) The court noted that Amos’s misdemeanor convictions included “numerous” property crimes and that Amos had a prior burglary charge that was ultimately dismissed. (5/21/20 Tr., p.66, L.22 – p.67, L.17; see PSI, pp.5-13.) In this case, the court found that Amos illegally entered the business premises of a car wash with the intent to commit a crime. (5/21/20 Tr., p.67, Ls.3-8.) According to the prosecutor, Amos drove himself and his accomplices to the car wash, took money out of a machine and then spent the money at a casino. (5/21/20 Tr., p.55, Ls.7-15.) Given Amos’s underlying conduct in light of his criminal history, chronic

substance abuse, and moderate risk to reoffend, the sentence imposed was reasonable to achieve the goals of sentencing.

Amos contends his sentence is excessive in light of certain mitigating factors. (Appellant's brief, pp.3-4.) Specifically, Amos points to his expression of remorse and acceptance of responsibility, "lesser culpability" in relation to his accomplices, cooperation with law enforcement, commitment to sobriety, and steady employment. (Appellant's brief, pp.4-6.) According to Amos, had the court properly considered these mitigating factors, it would have imposed a more lenient sentence. (Id.) He is incorrect.

The district court properly weighed any mitigating factors when it originally imposed Amos's sentence. The court considered defense counsel's sentencing argument as well as Amos's expression of remorse. (5/7/20 Tr., p.20, L.14 – p.27, L.5; 5/21/20 Tr., p.51, L.14 – p.54, L.23; p.57, L.16 – p.58, L.15; p.60, L.1 – p.65, L.4.) The district court indicated that Amos did "appear to be less culpable." (5/21/20 Tr., p.65, Ls.9-20.²) The court also addressed Amos's family history, his level of schooling, his employment history, his need for substance abuse and mental health treatment. (5/21/20 Tr., p.67, L.18 – p.70, L.8.) The court recognized that the sentence imposed may "jeopardize" his employment. (5/21/20 Tr., p.71, Ls.11-15.) But even considering this mitigating information, the court determined that the sentence imposed was necessary because it balanced the need to achieve the goals of sentencing while providing an opportunity for Amos to receive treatment and to demonstrate to the court that he merited a period of probation. (5/21/20 Tr., p.71, L.11 – p.72, L.6.) Amos has failed to show that the court did not exercise reason simply

² However, during the hearing on Amos's Rule 35 motion, the court stated that it was surprised to discover that it made such a statement during the sentencing hearing, and then clarified that it must have misspoken because it did not, in fact, feel that Amos was less culpable than the others who participated in the robbery. (7/2/20 Tr., p.85, L.13 – p.86, L.23.)

because it gave less weight to the mitigating circumstances than he desired. See State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010) (finding no abuse of discretion upon a weighing of mitigating and aggravating factors in sentencing); State v. Stover, 140 Idaho 927, 932, 104 P.3d 969, 974 (2005) (emphasizing the discretionary nature of weighing mitigating and aggravating factors).

In sum, because the district court properly considered and applied the goals of sentencing and weighed the aggravating circumstances against any mitigating information in fashioning Amos's underlying sentence, Amos has failed to show that the district court abused its sentencing discretion.

CONCLUSION

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

DATED this 11th day of March, 2021.

/s/ Justin R. Porter
JUSTIN R. PORTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th 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/ Justin R. Porter
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JRP/dd