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### State v. Beck Respondent's Brief Dckt. 48166

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 48166-2020
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-20-17521
	)	
ZACHARY WILLIAM BECK,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Beck failed to show that the district court abused its sentencing discretion when it imposed a sentence of five years with two years determinate upon his conviction for violation of a no contact order?

ARGUMENT

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

A. Introduction

While on parole for grand theft and felony violation of no-contact order, and with an active no contact order prohibiting him from contacting his wife (or ex-wife),<sup>1</sup> Beck ingested

<sup>1</sup> Beck’s 2017 Presentence Report (“PSI”), located in the electronic court file entitled “Pre-Sentence Report for CR01-16-41349,” was not updated in this case. (Tr., p.6, Ls.5-8.) It will be

methamphetamine and bath salts and went to the women's shelter where she was staying, and pounded on the door in the middle of the night. (R., pp.10, 50; Tr., p.6, L.19 - p.8, L.12; PSI, p.15.) Beck acted as if he was undergoing a delusional drug-induced episode, refused to leave when a female night watch employee ordered him to, and he remained at the women's shelter until police arrived. (PSI, pp.12-15.)

The state charged Beck with violation of a no contact order (felony), and trespass. (R., pp. 42-43.) Beck pled guilty to both offenses. (R., p.44-54.) The district court imposed a sentence of five years with two years determinate for violation of a no contact order and 90 days jail for trespass. (R., pp.57-61.) Beck filed a timely notice of appeal. (R., pp.62-64.)

On appeal Beck contends the district court abused its discretion by imposing an excessive sentence. (Appellant's brief, pp.2-4.) Application of the relevant standards shows Beck 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

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cited as "2017 PSI." The electronic court file labeled "Beck 48166 psi.pdf" contains the "Prosecutor Packet Submitted for Sentencing," and will be referred to as "PSI."

Despite police report references to the victim in this case as Beck's wife, Beck and his wife were in the process of divorce in 2017, but the record does not verify whether they were divorced when the current offense occurred. (2017 PSI, p.4.)

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)). 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. Schiermeier, 165 Idaho 447, 454, 447 P.3d 895, 902 (2019); Anderson, 163 Idaho at 517, 415 P.3d at 385 (citing State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982)).

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. Beck 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). The record shows no abuse of discretion.

The district court specifically stated it was exercising its discretion and applying the relevant legal criteria directing the exercise of that discretion. (Tr., p.9, Ls.14-24.) The district court also considered the evidence, arguments, and statements before it. (Tr., p.9, L.24 – p.10, L.4.) The case was “concerning to the Court that this is [Beck’s] second felony no-contact order conviction.” (Tr., p.10, Ls.5-6.) In the 2016 incident leading to Beck’s first felony conviction for violating a no contact order, he came within the prohibited 100 feet of his wife and “presented a pocket knife to [her] and demanded some property from her. [She] was fearful and gave him the

property as she believed he would harm her.” (2017 PSI, p.3.) The fact that, three years after his first offense, Beck was still violating the court’s no contact order intended to protect his (presumably) former wife is extremely troubling. The district court explained that Beck “did not learn from his first conviction, he continued to use substances, and the fact that he was in and out of prison did not act sufficiently as a deterrent to him.” (Tr., p.10, Ls.7-10.) The court was “not convinced that [Beck] is safe to be in the public at this time[,]” and sentenced him to five years with two years fixed. (Tr., p.10, Ls. 11-17.)

The district court’s consideration of the fact that Beck had not been deterred from criminality by being “in and out of prison” was well warranted. The 2017 Presentence Report summarized his criminal history (as of that time) as follows:

[Beck] received his first felony conviction for Attempted Robbery . . . in February 2004. He was sentenced to seven (7) years probation. After his first probation violation in September 2005, he participated in a period of Retained Jurisdiction (Rider). He appears to have successfully completed the Rider in January 2006 and was placed on probation. In September 2006, his second probation violation resulted in his sentence being imposed.

In June 2006, the defendant was convicted of Aggravated Assault . . . . He was sentenced to five (5) years prison. In June 2008, he was granted Parole. An Agent’s Warrant was issued in May 2009. His sentence was then imposed and he was granted parole in February 2011. In September 2011, an Agent’s Warrant was issued and the defendant appears to have participated in a CAPP Rider before being released on parole in January 2012.

In April 2013 an Agent’s Warrant was issued after the defendant was charged with Assault . . . . The defendant was sentenced to a fine of \$1,152.50 and remained on parole.<sup>2</sup>

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<sup>2</sup> The 2017 Presentence Report shows Beck was convicted of the following noteworthy offenses: petit theft (2000 and 2008); attempted robbery (2003); aggravated assault (2008); felony assault (2013); misdemeanor violation of no contact order (2014 and 2016); battery/domestic violence (2016); felony violation of no contact order (2016); and robbery (2016). (2017 PSI, pp.4-9.)

(2017 PSI, pp.9-10.) Based at least in part on his criminal record, the (2017) LSI-R (“Level of Service Inventory-Revised) evaluation placed Beck in the “high” risk category for recidivism, which was borne out by his current offenses. (2017 PSI, p.18.)

Notwithstanding the multiple opportunities Beck was given to succeed on probation and parole, it did not deter him from criminal conduct – especially against his former wife. (Tr., p.10, Ls.7-10.) This, combined with his significant prior criminal history, convinced the district court that Beck was not “safe to be in the public at this time[.]” (Tr., p.10, Ls.11-17.) The court’s factual findings and reasoning both support its exercise of discretion.

Beck argues that the district court abused its discretion by imposing an excessive sentence in light of his acceptance of responsibility by pleading guilty, acknowledgment that “his drug use contributed to the crime and [he] wanted to get back into treatment,” and work to support his family. (Appellant’s brief, p.4.) However, the district court specifically considered the materials, arguments, and statements presented. (Tr., p.6, L.5 – p.10, L.4.) Beck is merely asking this Court to reweigh those matters. He has failed to show an abuse of discretion.

The district court applied the correct legal standards to unchallenged factual findings and exercised its discretion to impose a reasonable sentence. Beck has failed to show error.

### CONCLUSION

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

DATED this 11th day of May, 2021.

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

CERTIFICATE OF SERVICE

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

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

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

JCM/dd