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State v. Brown Respondent's Brief Dckt. 48221

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48221-2020**
Plaintiff-Respondent,	)	
	)	**Boundary County Case No.**
v.	)	**CR11-19-753**
	)	
MATTHEW KIRK BROWN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOUNDARY

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Matthew Kirk Brown appeals from his conviction and sentence for felony aggravated driving under the influence.

Statement Of The Facts And Course Of The Proceedings

At approximately 4:55 p.m. on Wednesday, September 19, 2018, witnesses observed Brown driving on US Highway 95 "erratically, swerving in and out of his lane." (PSI, pp.3, 80-81.) Brown crossed the center yellow line and struck an oncoming vehicle head-on. (PSI, pp.3, 116.) Law enforcement observed open containers of beer on the ground around Brown's vehicle. (PSI, p.82.) Medical and fire personnel worked to stabilize and extricate Shannon Gala, the driver of the other vehicle, before she was taken to the local hospital and later transported to Spokane. (PSI, p.3.) Brown was transported by Life Flight to the hospital. (PSI, p.3.) While Brown was at the hospital and unconscious, law enforcement took a blood sample without a warrant. (PSI, p.83.) Testing of Brown's blood revealed the presence of methamphetamine, amphetamine, Lorazepam, ketamine, and fentanyl. (PSI, p.92; Ex., p.1.)

The state charged Brown with aggravated driving under the influence (DUI). (R., pp.36-37.) Brown moved to suppress the results of the warrantless blood draw. (R., pp.53-56.) After a hearing, the district court found that given the totality of the circumstances, including the details of the crash and the fact that Brown was unconscious, "exigent circumstances existed that

relieved the police from the necessity of obtaining a warrant." (1/24/2020 Tr., p.21, Ls.17-20.)[1] The district court denied the motion to suppress. (1/24/2020 Tr., p.21, Ls.21-23; R., p.66.)

Thereafter, Brown pleaded guilty pursuant to a plea agreement in which he waived his right to appeal all issues except his sentence. (See 3/24/2020 Tr., p.32, Ls.9-25.) The district court sentenced Brown to seven years with three years fixed. (R., pp.80-82.) Brown filed a timely notice of appeal.[2] (R., pp.87-90.)

[1] Citations to transcripts refer to the "48221-2020 Transcripts (CR11-19-753)" electronic document. Because this document contains multiple transcripts (some individual and others combined), citations will refer to the transcript by date and use that transcript's internal pagination.

[2] Brown also filed a Rule 35 motion to reduce his sentence, which the district court denied. (R., pp.85, 103.) He does not challenge the denial of his motion for reconsideration on appeal.

ISSUES

Brown states the issues on appeal as:

a. Whether the District Court erred in denying the Defendant's Motion To Suppress?

b. Whether the sentence was unreasonable or cruel and unusual punishment?

(Appellant's brief, p.5.)

The state rephrases the issues as:

I. Has Brown waived his right to appeal the district court's denial of his motion to suppress?

II. Has Brown failed to show that the district court abused its sentencing discretion?

ARGUMENT

I.
Brown Waived His Right To Appeal The District Court's Denial Of His Motion To Suppress

Brown argues the district court erred when it denied his motion to suppress the results of his blood draw. (Appellant's brief, pp.5-11.) However, Brown explicitly waived his right to appeal the district court's denial of his motion pursuant to the plea agreement. Brown does not address, much less challenge, the validity of this waiver. Given the clarity with which the district court specifically reviewed the waiver with Brown, there is no question that the waiver was knowingly, intelligently, and voluntarily made. Therefore, this claim is not properly before this Court on appeal.

"Plea agreements are essentially bilateral contracts between the prosecutor and the defendant." McKinney v. State, 162 Idaho 286, 296, 396 P.3d 1168, 1178 (2017). Both the state and the defendant are bound by the terms of a plea agreement. Id. This Court will enforce a defendant's knowing, intelligent, and voluntary waiver of his right to appeal and decline to address issues for which the right to appeal has been waived. See id.; State v. Taylor, 157 Idaho 369, 373, 336 P.3d 302, 306 (Ct. App. 2014); State v. Rodriguez, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006).

Brown pleaded guilty pursuant to a plea agreement. (See 3/24/2020 Tr., p.25, Ls.13-17.) Although the plea agreement was not filed formally with the court and therefore does not appear in the record, it was reviewed by the district court and its terms were discussed in detail at the change of plea hearing. (See 3/24/2020 Tr., p.26, L.1 – p.28, L.8.) Pursuant to the plea agreement, Brown "would waive all rights to appeal any previous motions he had. The only issue he could raise on appeal would be if he felt that the Court gave an excessive sentence."

(3/24/2020 Tr., p.27, Ls.18-23.) The district court addressed this provision directly: "certainly it's understood, I think, between the parties that the only appeal available to Mr. Brown after a guilty plea would be appealing the length of the sentence." (3/24/2020 Tr., p.28, Ls.2-5.) Both Brown and his counsel (who remains his counsel on appeal) affirmed that they understood this term of the plea agreement. (See 3/24/2020 Tr., p.28, Ls.6-13.)

After going through other terms of the plea agreement and the potential sentence in more detail, the district court again addressed the appeal waiver: "Now, some further provisions of this plea agreement is that you're giving up your right to appeal decisions by the Court that were prior to today's guilty plea. Do you understand that?" (3/24/2020 Tr., p.32, Ls.9-13.) Brown answered in the affirmative. (3/24/2020 Tr., p.32, L.20.) The district court continued, spelling out the waiver even more explicitly: "So on your Motion to Suppress evidence, when I denied that motion, by your pleading guilty today you no longer have a right to appeal that decision to a higher Court. Do you understand that?" (3/24/2020 Tr., p.32, Ls.15-19.) Again, Brown answered in the affirmative. (3/24/2020 Tr., p.32, L.20.) The district court went on: "The only issue that you would have would be whether my sentence was excessive depending on whatever that sentence may be. Do you understand that?" (3/24/2020 Tr., p.32, Ls.21-24.) Brown answered, as he had twice before, "Yes, your Honor." (3/24/2020 Tr., p.32, L.25.) The district court found Brown "freely, voluntarily, knowingly, and intelligently" waived his rights and entered his guilty plea, which the court accepted. (3/24/2020 Tr., p.43, Ls.17-22.) At sentencing, the district court again confirmed with the parties that Brown waived his right to appeal "any motions, anything previous, except for excessive sentencing." (6/23/2020 Tr., p.46, Ls.10-22.)

The appeal waiver in this case is about as clear as a waiver gets. Not only did Brown affirm that he read, understood, and agreed to the terms of the plea agreement, the district court

went through them point by point and in detail with Brown. (See 3/24/2020 Tr., p.28, L.11 – p.36, L.11.) Brown affirmed that he understood and agreed to the appeal waiver. (3/24/2020 Tr., p.32, Ls.9-14.) The district court explained that the waiver meant specifically Brown could not appeal the denial of his motion to suppress, but only an excessive sentence; Brown affirmed that he understood. (3/24/2020 Tr., p.32, Ls.15-25.) Yet, now Brown appeals the denial of his motion to suppress despite specifically and explicitly waiving his right to do so. Brown makes no argument that his waiver or plea were not freely, voluntarily, knowingly or intelligently entered, nor is there any basis in the record to reach such a conclusion. Because Brown validly waived his right to appeal the denial of his motion to suppress, this claim is not properly before this Court and should be disregarded.

II.
Brown Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Brown argues the district court abused its sentencing discretion by imposing a sentence that was "too harsh." (Appellant's brief, pp.11-13.) The district court's sentence of seven years with three years fixed is reasonable and not an abuse of discretion given the severity of the underlying crime and Brown's pattern of reckless behavior.

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)). Where a sentence is within statutory limits, the appellant bears

the burden of demonstrating that it 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)). 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, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Brown Has Shown No Abuse Of The District Court's Sentencing 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). In determining whether the appellant met this burden, the court considers the entire sentence but presumes that the determinate portion will be the period of actual incarceration. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing Oliver, 144 Idaho at 726, 170 P.3d at 391). "When reviewing the reasonableness of a sentence, this Court conducts an independent review of the record, giving consideration to the nature of the offense, the character of the offender and the protection of the public interest." State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015). 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. Farwell, 144 Idaho at 736, 170 P.3d at 401. "'In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable

minds might differ.'" State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2018) (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

The sentence imposed is reasonable in light of the circumstances and consequences of Brown's aggravated DUI. Shortly before 5:00 p.m. on a weekday, Brown drove his vehicle on the highway while under the influence of methamphetamine and fentanyl. (PSI, p.3.) He crossed the center line and struck Gala's vehicle head-on. (PSI, p.3.) Both vehicles were totaled and both Brown and Gala were seriously injured. Gala gave a lengthy victim impact statement in which she detailed the trauma she suffered as a result of the crash, the ongoing pain and suffering she has endured (which may be lifelong), the financial hardship caused by the loss of her job and Brown's failure to be insured, and the emotional toll this has taken on her and her family. (PSI, pp.4-10; 6/23/2020 Tr., p.6, L.3 – p.30, L.5.) As described in her statement, Gala suffered broken patellas, a broken femur, several broken ribs, a lung contusion, a broken wrist, lacerations, cuts and bruises, a dissected carotid artery, and four strokes; she endured numerous surgeries and procedures that left her incapacitated and largely immobile for months. (PSI, pp.5-10.) At the time of the PSI, Gala's out-of-pocket medical expenses exceeded one hundred thousand dollars and she lost wages totaling over fifty thousand dollars, along with various other expenses in the tens of thousands. (PSI, p.11.) The district court recognized how impactful Gala's statement was and the hardships she has been forced to endure as a result of Brown's actions. (See 6/23/2020 Tr., p.51, L.20 – p.52, L.4.) The district court considered Brown's DUI to be on the high end of the spectrum of aggravated DUIs, given that the damage fell "on the horrific side" of the scale. (6/23/2020 Tr., p.52, Ls.15-21.)

The sentence is also reasonable in light of Brown's criminal history, which the district court found to be an aggravating factor. (See 6/23/2020 Tr., p.52, Ls.22-23.) Brown's criminal

history shows an issue with both substances and driving. His history of misdemeanors includes an alcoholic beverage violation by an individual under the age of 21, reckless driving, possession of drug paraphernalia, possession of a controlled substance, and a probation violation. (PSI, pp.12-13.) Most concerning is a misdemeanor DUI conviction Brown accrued after the underlying crime in this case. Less than two months after being released on probation violations, Brown again drove while intoxicated with a breath alcohol level of .148, nearly twice the legal limit. (PSI, pp.13, 15.) Further, Brown has made admissions to other uncharged criminal activities. Although Brown indicated in the PSI that he didn't know how methamphetamine and fentanyl were in his system in this case, he admitted to his probation officer that he used methamphetamine with fentanyl before the crash. (PSI, pp.11-15.) In that same conversation, Brown admitted to bringing LSD into the county to sell. (PSI, p.15.)

While on probation and after the crash underlying this case, Brown continued to drink and use drugs. He repeatedly tested positive for THC and failed urinalysis tests (UAs). (PSI, p.14.) On one occasion, law enforcement had to respond to Brown's residence due to his disorderly behavior; Brown was consuming alcohol and marijuana was found on his person. (PSI, p.14.) Brown yelled profanities at the officers and actively resisted. (PSI, p.14.) He failed his UA the next day, testing at "excessive" levels. (PSI, p.14.) As his probation officer reported, Brown passed his first UA and then failed the next twenty UAs, each time testing positive for THC, three times testing positive for alcohol, and twice with excessive alcohol levels over 10,000 ng/ml, which is the highest amount the lab tests for. (PSI, p.14.) Brown's probation officer expressed concern that Brown "not only continued to use drugs and alcohol while on probation, even after being violated, but also got another DUI less than 2 months after getting out of jail on his [probation violation], showing no concern for getting behind the wheel of a vehicle

again after almost killing himself and his victim." (PSI, p.15.) The district court similarly expressed concern about Brown's pattern of reckless behavior. (6/23/2020 Tr., p.53, L.13 – p.54, L.10.)

The district court properly considered the objectives in criminal sentencing when it imposed Brown's sentence of seven years with three years fixed. (See 6/23/2020 Tr., p.51, Ls.7-19.) The PSI recommended Brown be "sentenced to the physical custody of the Idaho Department of Corrections" and noted he may benefit from "rehabilitative programs and/or pro-social activities" in custody. (PSI, p.25.) The district court discussed Brown's "pattern of reckless behavior that puts the public at risk." (6/23/2020 Tr., p.54, Ls.9-10.) It also emphasized the need for general and specific deterrence, as well as punishment, given the inherent risk and severe consequences of Brown's actions. (6/23/2020 Tr., p.55, L.18 – p.56, L.18.) The district court noted that rehabilitation would be available but was ultimately "in [Brown's] hands." (6/23/2020 Tr., p.56, Ls.19-21.) The district court did not abuse its discretion when it sentenced Brown to seven years with three years fixed for aggravated DUI.

Brown argues that he has "demonstrated an ability to rehabilitate his conduct to fit within the law and demonstrated an ability to remain clear and sober," and thus, "with substance abuse under control [Brown] is not a danger to society." (Appellant's brief, p.12.) The district court recognized that Brown's conduct in the months preceding sentencing was much improved. (6/23/2020 Tr., p.55, Ls.1-9.) "However, turning one's life around after the damage is done is only a small portion of what the Court has to consider." (6/23/2020 Tr., p.55, Ls.10-12.) The district court considered each objective of criminal sentencing, the circumstances of the case, and Brown's behavior and determined a sentence of imprisonment was necessary. The district court did not abuse its sentencing discretion in doing so.

CONCLUSION

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

DATED this 22nd day of January, 2021.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of January, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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KLJ/dd