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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48225-2020
Plaintiff-Respondent,)	
)	Canyon County Case No.
v.)	CR14-19-25830
)	
MARK ANTHONY SAMPERI,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Mark Anthony Samperi failed to show that the district court abused its discretion when it imposed a sentence of five and one-half years with one and one-half years fixed following a felony conviction for failure to register as a sex offender?

ARGUMENT

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

A. Introduction

Samperi is required to register as a sex offender as a result of 2004 Louisiana conviction for indecent behavior with juveniles. (R., p. 7; PSI, p. 1.) While on probation in Idaho, and following a violation of that probation, he moved without permission and without providing notice

of his new address. (Id.) Samperi could not be located. (Id.) More than a month later, he was arrested on a warrant. (R., pp. 11-14.) He was charged with one count of failure to register as a sex offender in violation of Idaho Code §§ 18-8307, 18-8309, and 18-8311. (R., pp. 32-33.) Samperi agreed to plead guilty, with the state agreeing to recommend at most two years fixed and five years indeterminate, and agreeing to dismiss a misdemeanor charge in another case. (Tr. Vol. I, p. 3, L. 5 – p. 4, L. 11.¹) The court accepted Samperi’s plea. (Tr. Vol. I, p. 4, L. 17 – p. 8, L. 20.) At the sentencing hearing, the state recommended a term of incarceration of seven years with two years fixed, to run concurrently with a sentence of five years with two years fixed on a sentence executed after Samperi admitted probation violations in Canyon County case number CR017-2340, and concurrently with a sentence of one and one-half years fixed imposed on a conviction for felony possession of a controlled substance in Ada County case number CR01-19-52835. (Tr. Vol. II, p. 11, Ls. 10-23; PSI, pp. 2-3, 6.) While Samperi asked for a withheld judgment (Tr. Vol. II, p. 8, Ls. 20-25), his counsel acknowledged that that was not very likely “under the current circumstances” (Tr. Vol. II, p. 16, Ls. 9-12). Instead, defense counsel requested a sentence of three years with one year fixed. (Tr. Vol. II, p. 15, Ls. 15-21.) The district court imposed a sentence of five and one-half years with one and one-half years fixed, to run concurrently with all other sentences. (Tr. Vol. II, p. 22, L. 9 – p. 23, L. 18; R., pp. 117-18.) Samperi timely filed a notice of appeal. (R., pp. 124-26.)

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

¹ “Tr. Vol. I” refers to the transcript of the change of plea hearing, held June 2, 2020. “Tr. Vol. II” refers to the transcript of the sentencing hearing, held July 22, 2020.

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 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 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. Samperi 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). In determining whether the appellant met this burden, the court considers the entire sentence but, because the decision to release the defendant on parole is exclusively the province of the executive branch, 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). 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. 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.” Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

On appeal, Samperi argues that the district court failed to exercise reason because it did not adequately consider his drug addiction and mental health issues as mitigating factors. (Appellant’s brief, pp. 4-7.) That argument fails.

The district court judge considered the applicable legal standards, and stated that he had carefully considered the parties’ arguments at the hearing, Samperi’s statements to the court, and the presentence materials. (Tr. Vol. II, p. 19, Ls. 10-23.) The presentence materials included a mental health examination report under Idaho Code § 19-2524. (PSI, pp. 61-64.) The report indicated provisional diagnoses of stimulant use disorders and an anxiety disorder. (PSI, p. 61.) It indicated that Samperi’s “mental health needs” were being adequately addressed through treatment in jail, and recommended that he continue to receive mental health treatment if he was incarcerated. (PSI, p. 63.) His substance abuse issues were discussed extensively at the sentencing hearing (Tr. Vol. II, p. 3, L. 8 – p. 4, L. 25; p. 9, L. 7 – p. 10, L. 18; p. 14, L. 22 – p. 15, L. 13), and are also discussed extensively in the GAIN assessment (PSI, pp. 48-60).

The district court was well aware of this information when it stated that “the main reason that I’m putting you into prison is to help you get the treatment that you need and the opportunities that you need to really truly be successful when you do earn parole.” (Tr. Vol. II, p. 21, L. 20 – p. 22, L. 3.) In light of the “type of conviction” and Samperi’s “criminal history,” particularly his failures on supervised release, the court recognized the necessity of the fixed period of confinement for Samperi to receive that treatment he needed and prove he “belong[s] in society.” (Tr. Vol. II,

p. 21, Ls. 17-25.) Samperi's criminal history certainly reflects that he has had difficulties managing his issues in the community on supervised release.

Samperi was convicted of felony possession of a controlled substance in 2017 and was sentenced to five years with three years fixed, suspended in favor of probation. (PSI, p. 3.) Only two months later, he admitting to using methamphetamine. (PSI, pp. 3-4.) He "was no longer working, was essentially homeless and noncompliant with his sexual offender registration, . . . had yet to engage in treatment, and again tested positive for methamphetamine and admitted to using 'every couple days.'" (PSI, p. 4.) Following a report of violation and an arrest on new felony and misdemeanor charges, the district court revoked probation and retained jurisdiction in March of 2018. (Id.) Samperi completed a rider and was re-admitted to probation on a new, three year term. (Id.) Though he was receiving mental health treatment, he continued to violate rules associated with his housing, leading to his eviction, was suspended from his employment, missed medication appointments, and again admitted using methamphetamine. (Id.) In August of 2019, he was arrested on a warrant for failure to comply with sexual offender registration requirements. (PSI, pp. 4-5.) In a report of probation violation, his parole officer noted that he had been charged with "new misdemeanor offenses, changed residences without permission, used methamphetamine, failed to report contact with law enforcement as instructed, and associated with felons without permission." (PSI, p. 5.) While awaiting adjudication on those violations, he tested positive for methamphetamine and failed to report for scheduled visits with his parole officer. (Id.) His probation was again revoked and reinstated for a new period of three years. (Id.) Nine days after those proceedings, he was found in possession of pornographic videos and "a number of small baggies," and his "text messages revealed exchanges wherein other individuals asked for 'a half gram' and 'a gram.'" (Id.) While he denied selling narcotics, he again admitted using

methamphetamine. (Id.) He was removed from his housing at a rehabilitation facility for failure to follow rules, and again repeatedly failed to attend his scheduled appointments with his parole supervisor. (Id.) In December of 2019, when officers responded to a report of suspected drug activity at the home of another parolee, Samperi gave a false name, stated that he had been living there for several days, and was discovered to be in possession of methamphetamine. (PSI, pp. 5-6.) He was arrested on possession charges, as well as on the warrant issued in this case. (PSI, p. 6.)

Samperi acknowledged at his sentencing hearing that he is “not good on probation” (Tr. Vol. II, p. 17, Ls. 17-18), but that dramatically understates the facts. In light of his performance on supervised release and his failures to take advantage of mental health and substance abuse treatment while in the community, it was perfectly reasonable for the district court to conclude that Samperi required an opportunity for treatment and rehabilitation during a period of incarceration. Finally, as the district court noted, because the sentence was to run concurrently with the eighteen month fixed term for his conviction for felony possession in Ada County case number CR01-19-52835, and concurrently with the sentence of five years with two years fixed that was executed following the revocation of his probation from the 2017 conviction for felony possession in Canyon County case number CR2017-2340, his sentence in this case did not add any additional fixed time. (Tr. Vol. II, p. 23, Ls. 7-18.) Instead, it simply gave the Department of Correction additional “leeway” to determine when Samperi is ready for parole. (Tr. Vol. II, p. 22, Ls. 4-8.)

The district court considered Samperi’s substance abuse and mental health issues and determined that, in light of his failures on supervised release, the sentence imposed was appropriate to ensure he received adequate treatment and rehabilitation. Samperi has not shown any abuse of discretion.

CONCLUSION

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

DATED this 1st day of March, 2021.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st 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/ Andrew V. Wake
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AVW/dd