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### State v. Allen Respondent's Brief Dckt. 48244

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48244-2020
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-20-11687
	)	
JOHNNY DEAN ALLEN,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

ISSUE

Has Allen failed to establish that the district court abused its discretion by imposing a unified sentence of seven years, with two years fixed, upon his guilty plea to possession of methamphetamine?

ARGUMENT

Allen Has Failed To Establish That The District Court Abused Its Sentencing Discretion

A. Introduction

After Allen violated the conditions of his parole and absconded supervision, officers arrested him on an outstanding warrant and found a container of methamphetamine on his

person. (PSI, pp. 4-6.<sup>1</sup>) The state charged Allen with possession of methamphetamine and possession of drug paraphernalia. (R., pp. 22-23.) Pursuant to a plea agreement, Allen pled guilty to possession of methamphetamine and the state dismissed the remaining charge. (R., pp. 35, 42.) The district court imposed a unified sentence of seven years, with two years fixed. (R., pp. 41-44.) Allen filed a notice of appeal timely from the judgment of conviction. (R., pp. 51-53.)

Allen asserts his sentence is excessive in light of his age [REDACTED] at the time of sentencing), difficult childhood, work history, support from his girlfriend, and his health, mental health, and substance abuse issues. (Appellant’s brief, pp. 3-9.) The record supports the sentence imposed.

#### B. Standard Of Review

Appellate review of a sentence is based on an abuse of discretion standard. State v. Dobbs, 166 Idaho 202, \_\_\_, 457 P.3d 854, 855 (2020) (citation omitted). “Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion.” State v. Schiermeier, 165 Idaho 447, 454, 447 P.3d 895, 902 (2019) (citation omitted). “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. “A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary ‘to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to the given case.’” Id. (quoting State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982)). The district court has the

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Confidential Exhibits Appeal.pdf.”

discretion to weigh those objectives and to give them the weight deemed appropriate. Dobbs, 166 Idaho at \_\_\_, 457 P.3d at 856. “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Bodenbach, 165 Idaho 577, 591, 448 P.3d 1005, 1019 (2019) (citation omitted).

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

Application of these legal standards to the facts of this case shows no abuse of discretion. First, the district court applied the correct legal standards. (Tr., p. 22, Ls. 15-24.) It noted that the instant offense was Allen’s seventh felony conviction and that he had “been in and out” of prison “for decades.” (Tr., p. 23, Ls. 5-7.) The court stated, “[Y]ou keep getting out and thinking you’re going to do the right things and then not.” (Tr., p. 23, Ls. 8-10.) The district court concluded, “Where you are at, given the number of felony convictions, including some that include true victims, it is apparent to the Court you are not suitable at this time for community supervision” and that imposing sentence was therefore “the only reasonable thing to do at this time.” (Tr., p. 23, Ls. 15-22.)

The district court’s decision is supported by the record. Allen has a lengthy criminal history that spans approximately four decades and includes at least 10 misdemeanor convictions, as well as prior felony convictions for possession of a controlled substance, lewd conduct with a minor under the age of 16, unlawful possession of a firearm, grand theft by receiving/possessing stolen property, and two separate convictions for burglary. (PSI, pp. 5-6, 12-16.) Allen “has spent 20 years in prison and he has had a number of parole violations.” (PSI, p. 182.) In 2017, Allen’s parole officer reported that Allen “used meth most of his parole and did not go to treatment ... he’s an old timer with all the same behavior that he’s always had.” (PSI, p. 16.) Allen’s most recent report of parole violation, from February 2020, similarly indicated that he

violated the conditions of his parole with behavior including drug use, failure to attend treatment, and absconding supervision. (PSI, p. 6.)

The psychological evaluator determined that Allen “can be considered a moderate to high risk to the public” and, “compared to other violent offenders, [he] would be considered a High risk to engage in future general violence.” (PSI, p. 185.) The evaluator also advised that Allen “has been abusing drugs since he was young and he has been unable to maintain his sobriety in the community.” (PSI, p. 186.)

Allen’s sentence is appropriate in light of his ongoing disregard for the law and the terms of community supervision, his failure to rehabilitate or to attend treatment while in the community, and the risk he presents to society. The district court did not abuse its discretion when it determined that Allen was not a viable candidate for community supervision and that a unified sentence of seven years, with two years fixed, was necessary to meet the goals of sentencing.

On appeal, Allen argues that his sentence is excessive in light of his health, mental health, and substance abuse issues. (Appellant’s brief, pp. 6-9.) However, Allen reported a 50-year history of substance abuse, for which he has previously been afforded treatment, but he has nevertheless continued to abuse drugs. (PSI, pp. 24-25, 33.) He stated that he was diagnosed with high blood platelets in 2012 and with “A-Fib” in 2014, that he “also had some heart problems in 2013,” and that he has had migraine headaches “for almost 30 years”; yet none of his health issues precluded his continued substance abuse and criminal behavior. (PSI, pp. 23, 182.) Likewise, Allen previously received treatment for his mental health problems from approximately 2013 to 2015, but he chose to discontinue treatment and to instead use illegal drugs. (PSI, pp. 36, 182.)

Allen also argues that his sentence is excessive because he is [REDACTED] and he had a difficult childhood. (Appellant’s brief, pp. 4, 9.) This does not show that the district court abused its discretion, as Allen has had his entire adult life to seek treatment and/or counseling for his issues stemming from childhood, but he has failed to do so. Moreover, that Allen is still committing felony offenses at the [REDACTED] simply shows that he has failed to rehabilitate and continues to present a risk to the community. Allen has failed to establish an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm Allen’s conviction and sentence.

DATED this 30th day of March, 2021.

/s/ Kenneth K. Jorgensen \_\_\_\_\_  
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Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of March, 2021, served a true and correct copy of the attached RESPONDENT’S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen \_\_\_\_\_  
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