1-29-2021

State v. Dawkins Respondent's Brief Dckt. 48259

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

JUSTIN R. PORTER
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. DEMARIEA LEVON DAWKINS, Defendant-Appellant.	)	NO. 48259-2020 Ada County Case No. CR01-20-8116 RESPONDENT'S BRIEF

ISSUES

1. Has Demariea Levon Dawkins failed to show that the district court abused its sentencing discretion when it imposed a unified sentence of five years, with two years fixed, upon his conviction for malicious injury to property?

2. Has Dawkins failed to show that the district court abused its discretion when it denied his Idaho Criminal Rule 35 motion?

STATEMENT OF THE CASE

While driving, Dawkins struck eleven vehicles in a parking garage. (PSI, p.216.[1]) At one point, Dawkins swerved directly into the path of an oncoming vehicle and hit it head on, which caused the driver to suffer whiplash and a concussion. (PSI, pp.217-18; Tr. Vol. I, p.9, L.14 – p.10, L.10.) Dawkins fled the parking garage in his car. (PSI, p.216.) After leaving the parking garage, Dawkins struck a light pole and traffic control sign with his car. (Id.) At that point, he abandoned his car and fled on foot. (Id.) Officers discovered an open container of whiskey behind the driver's seat of his abandoned car. (PSI, pp.216, 284.) Dawkins texted an acquaintance following the incident and stated that he was "heading to [his] cabin" and "[h]iding from cops." (PSI, pp.134-36, 216-17; Tr. Vol I, p.36, Ls.8-20.) When the acquaintance asked what he had done, Dawkins replied, "Check the news" and bragged "I'm famous." (PSI, pp.216-17.)

The state charged Dawkins with felony malicious injury to property, failure to notify upon striking an unattended vehicle, failure to notify upon striking fixtures, reckless driving, and possession of an open container of alcohol in a motor vehicle. (R., pp.42-44.) Pursuant to a plea agreement, Dawkins entered Alford[2] pleas to malicious injury to property and possession of an open container. (R., p.46; Tr., Vol. II, p.8, Ls.19-24, p.9, L.16 – p.10, L.5, p.11, L.25 – p.12, L.22.) The remaining charges were dismissed. (R., p.52.)

During sentencing, the state recommended a unified sentence of five years, with two years fixed. (Tr. Vol. I, p.11, L.16 – p.12, L.9.) Dawkins requested probation and alternatively a period of retained jurisdiction. (Tr. Vol. I, p.30, L.20 – p.31, L.16.) The district court imposed a unified sentence of five years, with two years fixed. (R., pp.50-54; Tr. Vol. I, p.41, Ls.5-10.)

---

[1] The state adopts the Appellant's citation designations. (See Appellant's brief, p.2, nn.1, 3.)

[2] North Carolina v. Alford, 400 U.S. 25 (1970).

Dawkins timely filed a motion pursuant to Rule 35. (R., pp.55-61.) He requested that the fixed portion of his sentence be reduced to just one year. (R., p.55.) The district court found that Dawkins had not presented any facts showing that his original sentence was unduly harsh or excessive and thus denied the motion without a hearing. (R., pp.62-64.)

Dawkins timely appealed. (R., pp.67-70.)

ARGUMENT

I.
Dawkins Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The district court imposed a unified sentence of five years, with two years fixed. (R., pp.50-54.) On appeal, Dawkins contends his sentence is excessive in light of mitigating factors. (Appellant's brief, pp.3-5.) According to Dawkins, proper consideration of mitigating factors such as his history of alcohol abuse, his expression of remorse, and a supportive adult role model warranted a lesser sentence of either probation or a rider. (Id.) The record supports the sentence imposed.

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. Dawkins 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. "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, 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).

Dawkins concedes that his sentence "does not exceed the statutory maximum." (Appellant's brief, p.3.) Idaho Code § 18-7001(2) provides that the maximum penalty for felony malicious injury to property is five years. I.C. § 18-7001(2). In this case, the district court imposed a unified sentence of five years, with two years fixed. (R., pp.50-54). Because the sentence imposed fits within the statutory limit, Dawkins "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 Dawkins's sentence, the court considered and applied the necessary sentencing factors. (Tr. Vol. I, p.37, Ls.16-23, p.40, Ls.21-

23.) The court expressly "[gave] the most weight to [the] protection of society." (Tr. Vol. I, p.37, Ls.21-23, p.40, Ls.21-23.) In doing so, the court placed significant weight on both the actual and potential harm caused by Dawkins's conduct. (Tr. Vol. I, p.37, L.24 – p.39, L.17.) According to Dawkins, he left his car in the parking garage to attend a concert. (PSI, p.218.) He claimed that he developed a headache, got an Advil from someone, took it, and claimed not to be able to remember anything until later that night. (Id.) The court found that regardless of whether Dawkins was "blacked out or not," whether he was malicious or clueless in his decision making, "people could have been very seriously hurt" and "in fact, someone was hurt by that, and a great deal of property damage was done." (Tr. Vol I., p.38, Ls.11-16.)

The court also emphasized Dawkins's criminal history. (Tr. Vol. I, p.33, Ls.2-24, p.38, L.17 – p.39, L.3; PSI, pp.218-20, 222, 226-32.) Dawkins has an extensive juvenile record, and he committed a hit and run with death or injury in California just before his eighteenth birthday. (R., pp.222, 226-29.) He has also been convicted of petit theft three times, misdemeanor DUI twice,[3] driving without privileges twice, failure to purchase a driver's license, reckless driving, attempting to flee from officers, failure to notify upon accident, and felony driving under the influence. (R., pp.222, 229-32.) His driver's license was suspended and he was on felony probation for DUI at the time of this incident. (Tr. Vol. I, p.38, L.23 – p.39, L.3.) The court found that his "past crimes have not served as a warning" for Dawkins. (Tr. Vol. I, p.39, Ls.3-5.) Rather, the court found that Dawkins voluntarily chose to break the law because he had decided for himself that the law "doesn't apply to [him]." (Tr. Vol. I, p.39, L.18 – p.40, L.2.) Dawkins's sentence is reasonable because it appears necessary to accomplish the primary objective of protecting society and to

[3] In 2016, Dawkins was charged with another DUI in California. (PSI, pp.222, 231.) That charge was still pending at the time of disposition in this case. (Id.)

achieve any or all of the related goals of sentencing, particularly in light of his extensive criminal history and the extreme danger posed by his underlying conduct.

Dawkins argues that "proper consideration of the mitigating factors in his case warranted a lesser sentence, a rider, or probation." (Appellant's brief, p.5.) Specifically, he points to such mitigating factors as his history of alcohol abuse, his expression of remorse, and support from an adult role model. (Appellant's brief, pp.3-5.) However, in fashioning an appropriate sentence, the district court properly considered these mitigating factors and weighed them against relevant aggravating factors such as his criminal history. The court expressly considered the PSI materials when it rejected Dawkins's request for a period of retained jurisdiction or probation. (Tr. Vol. I, p.33, Ls.2-5.) The PSI materials contained the relevant information regarding Dawkins's alcohol abuse and the "supportive adult role model" in his life. (PSI, pp.232-33, 236, 241-43, 330-31.) The court also considered the defendant's expression of remorse. (Tr. Vol. I, p.32, Ls.12-15.) Even considering these mitigating factors, a term of imprisonment was necessary to achieve the goals of sentencing. (Tr. Vol. I, p.37, L.16 – p.41, L.10.) Dawkins has failed to show otherwise.

II.
Dawkins Has Failed Show That The District Court Abused Its Discretion When It Denied His Rule 35 Motion

A. Introduction

Dawkins next asserts that the district court abused its discretion when it denied his Rule 35 motion. (Appellant's brief, pp.6-7.) He is incorrect. Because Dawkins failed to support his motion with any new or additional information showing that the sentence imposed was excessive, the district court properly denied the Rule 35 motion.

B. Standard Of Review

"'If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion.'" State v. Grant, 154 Idaho 281, 288, 297 P.3d 244, 251 (2013) (quoting State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)); see also State v. Anderson, 163 Idaho 513, 517, 415 P.3d 381, 385 (Ct. App. 2015) ("A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court."). In conducting a review "of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence." Anderson, 163 Idaho at 517, 415 P.3d at 385.

C. Dawkins Has Failed To Show An Abuse Of Discretion

The district court did not abuse its discretion when it denied Dawkins's Rule 35 Motion. "When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013) (internal quotations omitted). Dawkins attached a handwritten letter to his Rule 35 motion. (R., pp.55-61.) He contends this letter provided "new and additional information to support his request for a reduction in his fixed time to one year." (Appellant's brief, pp.6-7.) However, as the district court correctly found, the letter did not provide any new or additional information showing that his sentence was excessive. (R., p.63.) Rather, Dawkins's letter merely expressed his desire to improve himself and be successful in the community. (R., p.63.) Because Dawkins failed to present any new or additional information showing that his sentence was excessive, the district

court's denial of the Rule 35 motion was not an abuse of discretion. (R., p.63.) Dawkins has failed to show otherwise.

CONCLUSION

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

DATED this 29th day of January, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of January, 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:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

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

JRP/dd