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### State v. Sanchez Respondent's Brief Dckt. 48266

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 48266-2020
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-19-36533
	)	
BILLY PEREZ SANCHEZ,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Sanchez failed to show that the district court abused its discretion by sentencing him to five years with two years fixed for aggravated assault, and two years indeterminate for felony malicious injury to property, all suspended, and placing him on probation for seven years?

ARGUMENT

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

A. Introduction

Samuel Camacho, Jarin Carey, and Megan Norman were together at a Jackson’s Food Store in Boise when they were approached by Sanchez, who, highly intoxicated, verbally threatened

them “by stating that he had a gun and that he was going to get it from his vehicle.” (PSI, p.401.<sup>1</sup>) Sanchez got into his Ford Excursion and drove it toward the three campers, and then drove “into Sam’s Chevrolet Cobalt that was parked in the gas station parking lot and proceeded to drive through a fence and into the lawn” of a residence. (Id.) When Megan tried to get the keys out of the Excursion’s ignition, Sanchez punched her face with his closed fist. (Id.) As Sanchez drove away from the gas station, he “hit Jarin and Megan with his vehicle,” and they were in fear for their lives. (Id.) When police officers located Sanchez, he fought with them, and spit in the faces of the officers and medical personnel, screaming incoherently. (Id.) Inside Sanchez’s vehicle were containers of alcohol and prescription pills. (Id.) As he was transported to a hospital, Sanchez yelled obscenities, refused to answer questions, and said “he was placing a curse on the responders.” (Id.) After arriving at the hospital, Sanchez continued to be “very combative.” (Id.) A blood sample drawn from Sanchez showed that his blood alcohol concentration level was 0.21. (PSI, pp.401, 504.)

Samuel Camacho subsequently informed law enforcement he “got injured chasing the suspect’s vehicle” when Sanchez “quickly turned towards him” and Samuel had to “quickly stop and jump out of the way,” injuring “his wrist, some ribs, and a leg.” (R., p.73.) Megan Norman reported that she had a “goose egg” on her right temple where Sanchez struck her “and several small cuts on her knees from the broken glass of the driver’s side door. Megan explained that as

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<sup>1</sup> The Presentence Report (“PSI”) is found at pages 400-418 of the electronic court file entitled “Appeal Confidential Exhibits 10-27-2020 [etc.]”

the driver's side door was opened, the broken glass fell out and ultimately cut her knees as she attempted to get the keys out of the ignition before getting struck by Billy.”<sup>2</sup> (PSI, p.74.)

The state charged Sanchez with four counts of aggravated assault, felony malicious injury to property, driving under the influence (excessive alcohol concentration), and three counts of misdemeanor battery. (R., pp.59-61.) Pursuant to a plea agreement, Sanchez pled guilty to one count of aggravated assault, malicious injury to property, and driving under the influence (excessive alcohol concentration). (R., pp.70-71, 75-86.) In a Judgment of Conviction entered on April 13, 2020, Sanchez was sentenced to five years with two years fixed for aggravated assault, two years indeterminate with zero years fixed for malicious injury to property (felony), to be served consecutively, and 226 days jail for driving under the influence (excessive alcohol concentration). (R., pp.90-98.) The district court suspended execution of his sentences and placed Sanchez on probation for seven years. (Id.) Sanchez filed a notice of appeal on August 28, 2020. (R., pp.107-109.)

On appeal Sanchez contends that “his aggregate unified sentence of seven years, with two years fixed, is excessive.” (Appellant’s brief, p.5.) Sanchez specifically asserts that “had the district court properly considered his remorse and severe mental health conditions, it would have imposed a less severe sentence.” (Appellant’s brief, p.7.) This Court lacks jurisdiction to hear this appeal because it is untimely. Even if the merits of Sanchez’s appeal are considered, application of the relevant standards shows Sanchez has failed to establish that the district court abused its sentencing discretion.

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<sup>2</sup> According to a police report, Jarin Carey “had a sore left knee from the incident[.]” (PSI, p.30.) Other attempts by law enforcement to have Jarin provide additional medical information failed. (PSI, pp.74-75.)

B. Standard Of Review

“The question of a court’s jurisdiction is a question of law over which this Court exercises free review.” State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003).

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 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. This Court Lacks Appellate Jurisdiction Because The Appeal Is Untimely

“A timely notice of appeal is essential to vesting jurisdiction in the Supreme Court of Idaho.” Stibal v. Fano, 157 Idaho 428, 433, 337 P.3d 587, 592 (2014). “Failure to timely file such a notice shall cause automatic dismissal of the issue on appeal.” Hamilton v. Alpha Servs., LLC, 158 Idaho 683, 693, 351 P.3d 611, 621 (2015) (internal quotations omitted).

Idaho Appellate Rule 14(a) provides that appeals “from the district court may be made only by physically filing a notice of appeal with the clerk of the district court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right in any civil or criminal action.” Rule 14(a) allows the time to appeal to be extended where a motion is filed “within fourteen (14) days of the entry of the judgment which, if granted, could affect the judgment, order or sentence in the action, in which case the appeal period for the judgment and sentence commences to run upon the date of the clerk’s filing stamp on the order deciding such motion.” I.A.R. 14(a).

Here, Sanchez filed his notice of appeal on August 28, 2020 – over four months after his Judgment of Conviction was entered on April 13, 2020. (See R., pp.90, 107.) Unless he filed a motion within 14 days of April 13, 2020 which could have affected “the judgment, order or sentence,” he is not entitled to an extension of his time to appeal. A review of the record reveals that no motion was filed by either party during that 14-day period, much less one filed by Sanchez that could have affected the judgment, order, or sentence. (See generally R., pp.7 (Register of Actions), 90-101.) Therefore, Sanchez’s Notice of Appeal was untimely and, as a result, this appeal should be dismissed because this Court lacks jurisdiction to hear it.

D. Sanchez 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 said it was exercising its discretion and applying the relevant legal criteria directing the exercise of that discretion. (Tr., p.41, L.22 – p.42, L.3.) The maximum prison sentence for aggravated assault and felony malicious injury to property is five years. I.C. §§ 18-906, 18-7001(2). The district court imposed a sentence of five years with two years fixed for aggravated assault, and two years indeterminate for felony injury to property, which fall within the statutory guidelines. (R., pp.90-98.)

Sanchez's LSI-R ("Level of Service Inventory-Revised") evaluation rated him in the "moderate risk category." (PSI, p.414.) Sanchez's GAIN-I Core assessment recommended that he undergo Level 1 outpatient treatment and abstain from "all mood-altering chemicals[,] follow "all recommendations from mental health screening[,] and undergo "random substance use testing." (PSI, p. 415.) The Presentence Report concluded that the "violent nature of Mr. Sanchez's crime is concerning[,] and that Sanchez may benefit from placement in the retained jurisdiction ("rider") program, but "[i]f he demonstrated the expected progress in a structured environment, treatment might be transferred to a community-based setting." (PSI, p.416.)

The district court acknowledged that, under Toohill, the number one goal of sentencing is the protection of society, and found there was "a demonstrated connection between [Sanchez's] addiction issues and harm to the public." (Tr., p.42, Ls.1-5.) The court observed, "This was a crime of violence and significant potential for horrific injuries beyond that that actually occurred.

We were lucky there was not somebody killed or seriously and permanently disabled based on the facts of this case. So its' a very significant case in that regard.” (Tr., p.42, Ls. 6-12.)

Despite the risk of great injury or death Sanchez's actions created, the court did not sentence him to prison or even place him in the rider program. Instead the court suspended his sentences and placed him on supervised probation for seven years so he could remain in the community. (R., p.92.) Nonetheless, Sanchez contends that “had the district court properly considered his remorse and severe mental health conditions, it would have imposed a less severe sentence.” (Appellant's brief, p.7.)

It is undisputed that Sanchez suffers from schizophrenia and abused alcohol and methamphetamine. (See PSI, p.395 (I.C. § 19-2522 court ordered Psychological Evaluation by Dr. Chad Sombke).) After initially being charged, the district court ordered Sanchez temporarily committed to the Department of Health and Welfare pursuant to I.C. § 18-212. (R., pp.44-45, 48-49 (Order Terminating Commitment).) At sentencing, the court fully considered Sanchez's mental condition and said it was encouraged by Dr. Sombke's report, which concluded that “Mr. Sanchez's risk to the community at large would be Low. If he is able to continue managing his psychiatric symptoms with medications and maintain his sobriety, his risk to the community can continue to be low.” (PSI, p.397; Tr., p.42, L.13- p.43, L.1.) In short, the court properly considered Sanchez's mental health problems, as well as his substance abuse issues.

Sanchez's remorse for his crimes is certainly a mitigating factor. (See Tr., p.40, Ls.3-12), Nonetheless, Sanchez's aggregate sentence of seven years, all suspended, with seven years of probation is not unreasonable or excessive. Sanchez recommended an aggregate sentence of five years with probation. (Tr., p.36, L.23 – p.37, L.2.) Two additional indeterminate years – converted to probation – can hardly be considered excessive, especially given the fact that Sanchez's mental

illness and substance abuse played major roles in his crimes. The court chose a proper way to protect the public by minimizing the risk that Sanchez will engage in future criminal activity due to those factors, yet allowing him to continue to reside in the community.

Sanchez is, in essence, asking this Court to reweigh the matters the district court considered. 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. Sanchez has failed to show error.

### CONCLUSION

The state respectfully requests this Court to affirm Sanchez's convictions and sentences.

DATED this 20th day of May, 2021.

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

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th 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:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
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/s/ John C. McKinney  
JOHN C. McKINNEY  
Deputy Attorney General

JCM/dd