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State v. Castro Respondent's Brief Dckt. 48274

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. DELFINO CASTRO, Defendant-Appellant.	)	No. 48274-2020 Cassia Co. Case No. CR16-20-2916 RESPONDENT'S BRIEF

Issue

Has Delfino Castro failed to establish that the district court abused its discretion in sentencing him or by denying his Rule 35(b) motion for reduction of sentence?

Castro Has Failed To Establish That The District Court Abused Its Discretion

In July of 2020, the state charged Castro with one count of burglary and one count of grand theft. (R., pp.12-13.) Pursuant to a plea agreement with the state, Castro pleaded guilty to the grand theft charge. (R., pp.16-18; Tr., p.12, L.13 – p.14, L.9.) The district court imposed a sentence of three years, with zero years fixed, to run consecutive to a sentence previously

imposed in a Minidoka County case. (R., pp.29.) Thereafter, Castro filed a Rule 35(b) motion for a reduction of sentence, requesting the court "consider running the sentence concurrent rather than consecutive," which the court denied. (R., pp.36-37, 48-50.) Castro timely appealed. (R., pp.39-41.)

Castro argues on appeal that the district court abused its discretion by imposing an excessive sentence and by denying his Rule 35 motion. (Appellant's brief, pp.2-6.) Review of the record and application of the relevant legal standards shows no abuse of discretion.

First, Castro fails to meet his burden to show the district court abused its discretion by sentencing him to three years with zero years fixed. He argues "given any view of the facts" his sentence is excessive, but does so "[m]indful" of the unavoidable fact that forecloses his appeal: "that he received the sentence he requested." (Appellant's brief, pp.1-3.) While the plea agreement stated that the state would recommended the three-year indeterminate sentence, and that Castro could "make any recommendation to the Court at Sentencing" (R., pp.16-17), Castro ultimately invited the district court to impose the sentence found in the plea agreement.

At the change of plea hearing, defense counsel waived the preparation of a presentence investigation, and asked for a sentencing immediately after the plea, explaining to the court that "this is a stipulated imposed sentence." (Tr., p.4, Ls.15-19.) The prosecutor likewise informed the court that "the agreement has already been made and there's a stipulated imposed sentence," which he asked the court to "go ahead and just follow." (Tr., p.15, Ls.3-6.) Later in the hearing, defense counsel's only remarks on sentence recommendations were as follows:

> Your Honor, we would also ask the Court to adopt the Plea Agreement in this matter. Through extensive negotiations, it seems to be appropriate for Mr. Castro to be eligible for parole at the earliest date that the parole board can hear them. That makes sense for this defendant, and we would ask the Court to adopt it.

(Tr., p.16, Ls.9-15.)

Following both parties' requests, the district court stated it would not "add[] a significant amount of fixed time" but was "going to follow the Plea Agreement"—which it did, imposing the requested indeterminate three-year sentence. (Tr., p.19, L.19 – p.20, L.6.) In light of all of this, Castro understandably concedes on appeal "that he received the sentence he requested." (Appellant's brief, pp.1-3.)

The invited error doctrine is "well settled in Idaho": defendants "may not request a particular ruling by the trial court and later argue on appeal that the ruling was erroneous." State v. Griffith, 110 Idaho 613, 614, 716 P.2d 1385, 1386 (Ct. App. 1986). "This doctrine applies to sentencing decisions as well as to rulings during trial." Id. Because Castro concedes "he received the sentence he requested" (Appellant's brief, pp.1-3), he invited any purported error, and cannot show the court erred in sentencing him or in denying his belated Rule 35 challenge to the sentence he asked for. This appeal should be dismissed.

Even if Castro had not invited any alleged errors, he fails to show his sentence was excessive. Where "a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion by the court imposing the sentence." State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015) (internal quotation marks omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. 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. Id. 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) (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, this 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 State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)). "Furthermore, '[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.'" Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

Castro fails to show the district court imposed an excessive sentence. Castro cites the remorseful statements and "plans to better himself" that he offered at the sentencing hearing as "mitigating factors" showing the "district court did not reach its decision by an exercise of reason." (Appellant's brief, pp.3-5 (citing Tr., p.16, L.20 – p.17, L.24; Tr., p.18, L.13 – p.19, L.8).) This falters because the district court was well aware of Castro's statements at sentencing. The court considered those comments, along with the statements of the attorneys, the statutory goals of sentencing, Castro's other drug case, his character, and his "plans … to address [his] underlying substance abuse issues" upon release. (Tr., p.17, L.19 – p.19, L.25.) After weighing all those aggravating and mitigating circumstances, the court "truly wish[ed] [Castro] well," and noted Castro had "some really good reasons on why you want to be drug and alcohol-free and crime-free." (Tr., p.21, Ls.6-9.) And while the court ultimately concluded that "probation would be risky, and a lesser sentence just is not appropriate," it wanted Castro "to understand that the Court [did] not think" he was "without hope," which is precisely why the court was "following this Plea Agreement and not adding a significant amount of fixed time." (Tr., p.20, Ls.1-6.) By doing so the court plainly "reach[ed] its decision by an exercise of reason" (Appellant's brief, p.5), insofar as it weighed all of the foregoing factors (including Castro's statements at

sentencing), and ultimately imposed the sentence that Castro himself was lobbying for (Tr., p.19, L.9 – p.20, L.14). Castro fails to show any abuse of discretion.

Likewise, Castro fails to show the district court erred in denying his Rule 35 motion for reconsideration of his sentence. Castro argues on appeal that the motion should have been granted because he "supplied new or additional information to the district court"; that is, his attorney's averment "that 'the [stolen] property was returned to the victim in working condition.'" (Appellant's brief, p.6 (citing R., p.36).)

This argument fails, first, because there is no evidence in the record showing that "the property was returned to the victim in working condition." (See R.) Castro's Rule 35 motion contained no affidavits or declarations, nor cited any evidence to support his attorney's claim that the property was returned. (See R., p.36.) And unsworn representations, even those made by counsel, are not evidence. C.f. State v. Cunningham, 161 Idaho 698, 701, 390 P.3d 424, 428 (2017) (holding that "unsworn representations, even by an officer of the court, do not constitute 'substantial evidence'" upon which a restitution award could be predicated). Thus, counsel's unsupported statement was not "new," insofar as he had already told the sentencing court that "I believe everything was recovered." (Tr., p.15, Ls.18-24 (where the prosecutor also made "the assumption" that the tools were recovered).) Because no evidence supported counsel's updated claim—that the property *was* in fact recovered—Castro fails to show there was new information, beyond defense counsel's own unsupported statements, that would justify granting his motion.

Finally, even assuming arguendo the stolen property was recovered, Castro does not explain why this would justify running this sentence concurrently. (See Appellant's brief, p.6.) Both parties sought this sentence and the district court thoughtfully considered it, as explained

above. Even if the stolen property was recovered, Castro fails to show that would justify reconsidering the imposed sentence.

Conclusion

The state respectfully requests this Court affirm Castro's sentence and affirm the denial of his Rule 35 motion.

DATED this 6th day of April, 2021.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of April, 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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