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State v. Falk Respondent's Brief Dckt. 48311

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48311-2020**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-19-50247**
	)	
CRAIG ROBERT FALK,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE JASON D. SCOTT
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Craig Robert Falk appeals from his convictions for aggravated battery, enhanced by use of a deadly weapon, and burglary. He argues on appeal that the district court abused its sentencing discretion by executing an aggregate, unified sentence of twenty years with eleven years fixed.

Statement Of The Facts And Course Of The Proceedings

Karen Quinn was involved in a contentious divorce with her now ex-husband, Roger Falk, during which Roger repeatedly "threatened her life" and stated that he would "do whatever it took" to maintain custody of his e[redacted] daughter.[1] (PSI, pp. 1-2; Tr. Vol. I, p. 24, L. 21 – p. 25, L. 7; Tr. Vol. II, p. 89, L. 22 – p. 90, L. 9.[2]) As part of that effort, he made insistent but entirely unsubstantiated allegations that Ms. Quinn had abused their daughter when, in fact, he was judged to have an inappropriate and "toxic" relationship with his daughter that Department of Health and Welfare personnel were concerned involved grooming. (Tr. Vol. II, p. 37, L. 5 – p. 40, L. 23; p. 113, L. 18 – p. 114, L. 9.) In a "last push" to maintain custody of his daughter, Roger began "contacting people he has not spoken to in years to see what he could come up with." (PSI, pp. 1, 142.)

[1] To avoid confusion between the defendant, Craig Falk, and his brother, Roger Falk, the state will refer to the defendant as "Falk" and his brother as "Roger."

[2] The pdf file of transcripts contains two separately paginated volumes. The first, containing the transcript of the preliminary hearing, extends from pages 1-14 of the file. The second, containing the transcript of the change of plea hearing and the transcript of the sentencing hearing, extends from pages 15-54 of the file. The state will refer to the former as "Tr. Vol. I" and the latter as "Tr. Vol. II."

One of those people was his brother, the defendant, Falk, who was living in Georgia. (PSI, pp. 1-2.) On November 29, 2019, Falk—whom Ms. Quinn had never met—appeared outside Ms. Quinn's home as she returned from shopping with her daughter, followed her into her garage, and severely beat her with a metal bar while her daughter looked on. (Tr. Vol. I, p. 13, L. 1 – p. 20, L. 2; p. 22, L. 19 – p. 23, L. 3.) Ms. Quinn suffered serious injuries to her head and arms, and spent four days in the intensive care unit. (Tr. Vol. I, p. 17, L. 13 – p. 18, L. 8; p. 21, L. 5 – p. 22, L. 12; PSI, pp. 207-10 (partial medical records).)

Later the same day, an officer observed Falk, who met the description of the person who assaulted Ms. Quinn, walking and carrying a black bag. (PSI, p. 138.) When the officer called out to him, Falk acknowledged the officer but then tried to hide the bag, which was later recovered and found to contain the metal bar—a barbell— with which he had beaten Ms. Quinn. (PSI, pp. 138-39.) Falk's rental car was found near Ms. Quinn's home and a search of the car recovered notes, including "get phone in Utah charge"; "call Roger, take out battery, and get envelope"; two addresses in Boise, one of which was the location where Ms. Quinn routinely dropped her daughter off for visitation with Roger; "Gloves, hat coat, Barbell knife, pick/Philips"; "big bags, change of clothes"; Ms. Quinn's name and address; a map with directions to Ms. Quinn's home; and the name of Ms. Quinn's then-boyfriend, his phone number, along with the nickname ("Lemon Head") that Roger used to refer to him. (PSI, pp. 136-37, 147-48; Tr. Vol. II, p. 108, L. 1 – p. 111, L. 5.) While Falk initially denied any involvement in the attack on Ms. Quinn, claiming that he had been "setup" by someone (PSI, pp. 132-33), he later claimed that he was only trying to "scare" her to help his brother, but Ms. Quinn said something that he could not remember, he "just started swinging," and "blacked out" (PSI, pp. 101, 151-53).

The state charged Falk with aggravated battery, enhanced by use of a deadly weapon, and burglary. (R., pp. 42-43.) Falk agreed to enter Alford[3] pleas to all charges. (R., pp. 60-67; Tr. Vol. II, p. 8, L. 8 – p. 12, L. 8.) He claimed that he was entering Alford pleas because, while he remembered entering the garage to "scare" Ms. Quinn, and he remembered swinging the metal bar at her, he could not remember anything else until he saw her sitting on the ground and heard his niece "shrieking." (Tr. Vol. II, p. 12, Ls. 16-21; p. 14, Ls. 2-9; p. 19, Ls. 10-21.) The court accepted the pleas. (Tr. Vol. II, p. 20, L. 22 – p. 21, L. 3.)

At sentencing, the state recommended an aggregate, unified sentence of thirty years with fifteen years fixed. (Tr. Vol. II, p. 94, Ls. 19-25.) Defense counsel recommended retained jurisdiction without specifying an underlying sentence. (Tr. Vol. II, p. 137, Ls. 14-21.) The district court imposed and executed an aggregate, unified sentence of twenty years with eleven years fixed.[4] (Tr. Vol. II, p. 154, Ls. 5-11; R., pp. 85-87.) Falk timely appealed. (R., pp. 89-91.)

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

[4] On appeal, Falk mistakenly identifies the sentence as an aggregate, unified sentence of twenty years with ten years fixed. (Appellant's brief, pp. 2-3.)

ISSUE

Falk states the issue on appeal as:

> Whether the district court abused its discretion when it sentenced Mr. Falk, a [redacted] Georgia resident with no criminal history, to a unified term of twenty years, with nine years fixed, for aggravated battery, and ten years fixed for burglary.

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Falk failed to show that the district court clearly abused its sentencing discretion by imposing and executing an aggregate, unified sentence of twenty years with eleven years fixed for aggravated battery, enhanced by use of a deadly weapon, and burglary?

ARGUMENT

Falk Has Not Shown That The District Court Abused Its Sentencing Discretion

A. Introduction

On appeal, Falk argues only that the district court abused its sentencing discretion. Without so much as citing the district court's sentencing discussion, he argues that there is no reasonable view of the facts under which the sentence was appropriate and the court should have suspended his sentence or retained jurisdiction. (Appellant's brief, pp. 5-8.) Falk has not shown that the district court abused its sentencing discretion.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard, as is the decision not to retain jurisdiction. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007); State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001). 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).

C. Falk Has Not Shown That His Sentence Is Excessive Under Any Reasonable View Of The Facts

"Refusal to retain jurisdiction will not be deemed a clear abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521." Statton, 136 Idaho at 137, 30 P.3d at 292 (quotation marks

and brackets omitted). An appellant arguing that a sentence is excessive must establish that it was excessive under any reasonable view of the facts. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007); State v. Burnight, 132 Idaho 654, 660, 978 P.2d 214, 220 (1999). 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." State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015). "A sentence need not serve all sentencing goals; one may be sufficient." State v. Struhs, 158 Idaho 262, 268, 346 P.3d 279, 285 (2015). "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 (quotation marks omitted). "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)).

Falk acknowledges that his sentence is well within statutory limits. (Appellant's brief, p. 5.) Setting aside the burglary conviction, he was subject to up to thirty years in prison on his conviction for aggravated battery enhanced by use of a deadly weapon alone. See I.C. §§ 18-908,

19-2520. Nevertheless, and without discussing the district court's stated reasons for imposing and executing the sentence it did, he argues that the district court abused its discretion because there is no reasonable view of the facts under which the district court's sentence was necessary to serve any of the goals of sentencing. (Appellant's brief, pp. 5-8.)

The district court determined that, in light of "the nature of the crime and the severity of the beating and its substantial and predictable emotional effects on the victim," probation was not appropriate and a lesser sentence would depreciate the seriousness of the crime. (Tr. Vol. II, p. 146, Ls. 4-7.) "It is very difficult to look at a man's uninvited invasion into a woman's garage, carrying a weapon and ultimately beating her severely with that weapon, as something that can merit less than an imposed sentence whatever the motivation for entering the garage and doing that." (Tr. Vol. II, p. 145, Ls. 14-19.)

The court was also deeply skeptical about Falk's account of the events. Below, as on appeal, Falk's central argument was that he was manipulated by his brother into believing that Ms. Quinn was abusing his niece and driving his brother to near suicide; he travelled from Georgia to Boise only to be supportive of and to visit his brother; while in Boise he concocted the plan to help his brother by scaring Ms. Quinn, which plan he developed and executed on his own initiative, without planning or coordination with his brother, while significantly sleep deprived and "running out of time" to help; and he never had any intent to harm Ms. Quinn in any way, but blacked out while trying to scare her. (PSI, pp. 18-28; Tr. Vol. II, p. 129, L. 14 – p. 133, L. 5; p. 142, L. 2 – p. 143, L. 2.) Likewise, on appeal, he suggests that, "in some ways," he was a victim in this case because he was allegedly manipulated to be sympathetic to his brother (Appellant's brief, p. 7), but that the attack "was never planned" or "intended at any point" (Appellant's brief, p. 5).

For very good reason, the district court did not find this at all credible. (Tr. Vol. II, p. 146, L. 8 – p. 151, L. 24.) Instead, the court judged that "the version of events in which the defendant's brother and the defendant planned some sort of attack on Ms. Quinn has much better support in the evidence." (Tr. Vol. II, p. 148, Ls. 4-7.)

Falk was living on very little income and claimed that he funded his trip to Idaho by borrowing money from his son. (PSI, p. 22.) When interviewed by police, though, his son denied loaning Falk any money. (PSI, p. 157.) Instead, as the district court recognized, "it seems likely that the defendant's brother may have had a role" in funding the trip. (Tr. Vol. II, p. 149, Ls. 9-19.)

Falk then flew into Salt Lake City, rented a hotel for four days, rented a car, and drove back and forth between Salt Lake City and Boise each day, all allegedly to save money and because he did not realize the distance between Salt lake City and Boise. (PSI, pp. 22-24; Tr. Vol. II, p. 66, L. 18 – p. 70, L. 6; Exs. 5-6 (cell phone tracking data showing that Falk's phone travelled back and forth between Salt Lake City and Boise repeatedly between November 27-29).) A search of Falk's computer showed that he researched the distance from Salt Lake City to Boise prior to his trip. (Tr. Vol. II, p. 57, Ls. 19-25.) Rather than an attempt to save money and an inadvertent error regarding the distance to Boise, his bizarre travel arrangements suggest an attempt to minimize "clear items of evidence that he was in Boise, which tends to support the idea that something more than putting a scare into Ms. Quinn was part of the plan." (Tr. Vol. II, p. 150, Ls. 5-15.)

Next, Falk purchased a new cell phone when he arrived in Salt Lake City that he used during his trip, which he claimed that he did because he forgot his cell phone. (PSI, p. 24.) But he provided no explanation why he also suddenly started calling Roger on a different number,

found written on a note in his rental car, that turned out to be for a separate "burner" cell phone associated with Roger. (Tr. Vol. II, p. 56, L. 11 – p. 57, L. 7; p. 62, Ls. 4-20.) As the district court noted, "they are both using means of communication that seemingly they're hoping will be difficult to trace back to them." (Tr. Vol. II, p. 148, Ls. 9-19.) In addition, cell phone data showed that they were communicating regularly right up until the attack on Ms. Quinn and were frequently at or near the same location. (Tr. Vol. II, p. 66, L. 18 – p. 77, L. 16.)

As the district court also recognized (Tr. Vol. II, p. 148, L. 20 – p. 149, L. 8), the notes found in Falk's rental car—directions to Ms. Quinn's home, a description of her car, her license plate number, the nickname used by Roger for her boyfriend and his cell phone number, the address where Roger would meet Ms. Quinn for visitation with his daughter, etc.—was information that he would likely have received from Roger and for the purpose of locating and tracking her (Tr. Vol. II, p. 108, L. 1 – p. 111, L. 5; PSI, pp. 136-37, 147-48). Other notes—"Gloves, hat coat, Barbell knife, pick/Philips"; "big bags, change of clothes"; "get phone in Utah charge"; "call Roger, take out battery, and get envelope"—clearly suggest a plan to disguise himself, attack Ms. Quinn with the barbell, and cover-up the attack, all in coordination with Roger. (Id.)

Finally, the court noted that Falk stated that he "taped up the end" of the metal bar so as to have a better grip, which certainly suggests that he intended to swing it, and that there was no plausible explanation why he would suddenly start swinging the bar at Ms. Quinn if he had no intent to attack her. (Tr. Vol. II, p. 150, L. 16 – p. 151, L. 11; PSI, p. 101.)

In short, the district court had very good reason to doubt Falk's credibility and whether he had been candid regarding the purpose of his trip, the involvement of his brother, and the extent to which he had planned the attack on Ms. Quinn. The court found that it was "highly likely,

based on all the information that has been accumulated, that the defendant intended to physically harm Ms. Quinn" and that he did so "in coordinated fashion" with his brother. (Tr. Vol. II, p. 151, Ls. 12-24.) On appeal, though he cites to his own account, he has not challenged (or even acknowledged) the district court's credibility determinations or its findings. State v. Detweiler, 115 Idaho 443, 447, 767 P.2d 286, 290 (Ct. App. 1989) ("It is the trial judge's task to weigh disputed evidence and, where applicable, to make credibility determinations."); State v. Kinser, 141 Idaho 557, 560, 112 P.3d 845, 848 (Ct. App. 2005) ("The appellant has the burden of establishing that the trial court's factual findings were clearly erroneous."). Having determined that Falk was not being candid with the court and had not taken full responsibility for his conduct, including by entering Alford pleas, the court determined that it was not appropriate to impose a lesser sentence than would otherwise be warranted by the nature and severity of the crime. (Tr. Vol. II, p. 151, L. 25 – p. 152, L. 25.) See State v. Wheeler, 129 Idaho 735, 740, 932 P.2d 363, 368 (Ct. App. 1997) (in rejecting excessive sentence claim, noting that district court concluded that defendant's account of events and expression of remorse were not credible); State v. Leon, 142 Idaho 705, 711, 132 P.3d 462, 468 (Ct. App. 2006) (in rejecting excessive sentence claim, noting that appellant entered an Alford plea and had not taken full responsibility).

Even if it had credited Falk's account of events, the district court stated that it would still have believed it was appropriate impose and execute a sentence of significant time in prison. (Tr. Vol. II, p. 147, Ls. 10-25.) The district court made that determination while explicitly considering the mitigating factors to which Falk now points on appeal—his age, his health, his lack of criminal history, and the fact that evaluators judged him to be a low risk to reoffend. (Tr. Vol. II, p. 153, Ls. 1-22.) As the court concluded, even if this offense was "one-off," it was "an extremely serious" one-off that warranted a serious sentence. (Id.)

While acknowledging that his crimes "were horrific" and have permanently scarred both Ms. Quinn and her daughter, who watched Falk attack her mother with a pipe (see Tr. Vol. II, p. 79, L. 15 – p. 93, L. 17 (Ms. Quinn's testimony describing the lasting effects of Falk's attack on her and her daughter)), Falk argues there is no reasonable view of the facts under which the sentence in this case was necessary for any of the goals of sentencing (Appellant's brief, pp. 5-8).

He claims that, due to his age, the sentence cannot be reasonably viewed as necessary to serve the goal of retribution. (Appellant's brief, p. 7.) But a defendant's advanced age in no way diminishes the state's interest in retribution and in ensuring that "horrific" criminal conduct is met with commensurate punishment. See State v. Anderson, 119 Idaho 204, 206, 804 P.2d 933, 935 (Ct. App. 1990) (affirming sentence of fifteen years fixed after [redacted] with health problems was convicted of sexual abuse of a child, and stating that "even a fixed life sentence may be deemed reasonable if the offense is so egregious that it demands an exceptionally severe measure of retribution and deterrence"); State v. Roseman, 122 Idaho 934, 935, 841 P.2d 1085, 1086 (Ct. App. 1992) (affirming sentence of two years fixed for [redacted] with health problems). "[T]he nature and gravity of the underlying offense may, standing alone," justify an extended sentence, and "considerations of societal retribution and general deterrence are not decided on the basis of the unique characteristics of the offender; rather these considerations are decided upon the characteristics of the offense." State v. Windom, 150 Idaho 873, 880, 253 P.3d 310, 317 (2011).

He claims that the sentence cannot be justified by deterrence because he "was adamant that he never intended to harm [Ms. Quinn] and could not recall exactly what occurred." (Appellant's brief, p. 5.) But of course that is *precisely* the narrative that the district court

rejected below. In addition, notwithstanding his Alford pleas and his claim that he did not intend to harm Ms. Quinn, Falk was properly sentenced for convictions that necessarily involved such intent. (Tr. Vol. II, p. 17, L. 18 – p. 19, L. 3 (district court clarifying during plea colloquy that the crimes for which he was entering Alford pleas would require the state to show that he intended to batter Ms. Quinn when he entered her garage and that he willfully caused her great bodily injury).) See State v. Howry, 127 Idaho 94, 96, 896 P.2d 1002, 1004 (Ct. App. 1995) ("[O]nce the Alford plea is entered, the court may treat the defendant, for purpose of sentencing, as if he or she were guilty."). In addition, though, he simply ignores the distinction between individual or specific deterrence, on the one hand, and general deterrence, on the other. Whether or not it would have deterred Falk, a sentence may be imposed "in order to deter others from committing similar offenses. General deterrence is one of the several objectives of criminal punishment and has been held to be a sufficient reason for imposing a prison sentence." State v. Adams, 99 Idaho 75, 76, 577 P.2d 1123, 1124 (1978). See also State v. Carper, 116 Idaho 77, 80, 773 P.2d 1164, 1167 (Ct. App. 1989) ("When we speak of deterrence under *Toohill*, we mean general deterrence—that is, deterrence of the public generally").

The district court here was expressly concerned with the severity and violence of this attack, and the harm caused to its victims, and determined that the sentence was necessary for retribution and punishment, so as not to diminish the severity of the crime, and for purposes of deterrence. See State v. Sheahan, 139 Idaho 267, 285, 77 P.3d 956, 974 (2003) (where crime was "egregious" and sentence was based on the goals of punishment and deterrence, affirming term of twenty years fixed); State v. Sanchez, 115 Idaho 776, 777, 769 P.2d 1148, 1149 (Ct. App. 1989) ("To the extent that a minimum period of confinement represents the judicially determined

'price' of a crime, the criteria of retribution and deterrence are particularly important."). Falk has not shown that the district court abused its discretion.

CONCLUSION

The state respectfully requests this Court to affirm Falk's sentence.

DATED this 16th day of June, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of June, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Andrew V. Wake
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