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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48368-2020
Plaintiff-Respondent,)	
)	Ada County Case No. CR01-19-53721
v.)	
)	
BERNARDO BRAVO-VAZQUEZ,)	
aka BERNARDO BRAVO-VASQUEZ,)	RESPONDENT'S BRIEF
aka BERNARDO BRAVO,)	
)	
Defendant-Appellant.)	
_____)	

Has Bernardo Bravo-Vazquez failed to show that the district court abused its sentencing discretion when it imposed a unified sentence of ten years, with four years fixed, upon his third conviction for felony driving under the influence?

ARGUMENT

Bravo-Vazquez Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The state charged Bravo-Vazquez with felony DUI. (R., pp.29-30.) He pled guilty pursuant to a plea agreement. (R., pp.33-44; 2/27/20 Tr., p.4, L.6 – p.5, L.9; p.20, L.4 – p.21,

L.11; p.25, Ls.4-14.) In exchange for his guilty plea, the state agreed not to file a persistent violator enhancement. (R., p.43; 2/27/20 Tr., p.6, Ls.5-6.) During sentencing, the state recommended a ten-year sentence, with five years fixed. (10/13/20 Tr., p.10, L.24 – p.11, L.2.) Bravo-Vazquez recommended a suspended sentence of seven years, with two years fixed. (10/13/20 Tr., p.18, Ls.20-24.) The district court imposed a unified sentence of ten years, with four years fixed. (R., pp.59-69; 10/13/20 Tr., p.26, L.23 – p.27, L.8.) Bravo-Vazquez timely appealed. (R., pp.78-80.)

On appeal, Bravo-Vazquez asserts the district court abused its sentencing discretion by imposing an excessive sentence. (Appellant’s brief, pp.3-8.) Specifically, he argues the district court did not exercise reason because it failed to give proper consideration to certain mitigating evidence. (Id.) His argument is unavailing. The court properly considered the mitigating evidence presented and imposed a reasonable sentence.

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). When a trial court’s discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason. State v. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018).

C. Bravo-Vazquez Has Shown No Abuse Of The District Court's Sentencing Discretion

“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).

Bravo-Vazquez concedes that his sentence does not exceed the statutory maximum. (Appellant's brief, pp.3-4.) He was charged with felony DUI, which is punishable by imprisonment “not to exceed ten (10) years.” I.C. § 18-8005(6)(a). The district court imposed a

unified sentence of ten years, with four years fixed. (R., pp.59-69.) Because the sentence imposed fits within the statutory limits, Bravo-Vazquez “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 Bravo-Vazquez’s sentence, the court considered the necessary goals of sentencing—including the protection of society, rehabilitation, punishment, and deterrence—as well as the nature of the offense, Bravo-Vazquez’s character, mitigating and aggravating factors, and the criteria for sentencing established in I.C. § 19-2521. (10/13/20 Tr., p.21, Ls.1-13.) The court primarily considered the need to protect society. After being refused alcohol at a gas station, Bravo-Vazquez drove away in a truck. (PSI, p.1.) As he drove away, he was “swerving all over the road.” (PSI, p.1; 10/13/20 Tr., p.23, Ls.8-11.) He met decision points on all three standardized field sobriety tests and provided breath alcohol samples of .204 and .210. (PSI, p.2.) The court noted that despite the state not charging Bravo-Vazquez with excessive DUI, his blood alcohol level was excessive. (10/13/20 Tr., p.23, Ls.9-14.) Given his dangerous conduct and the high level of alcohol in his system, the court concluded that Bravo-Vazquez posed a risk to the community. (10/13/20 Tr., p.23, Ls.17-21.)

The court also considered Bravo-Vazquez’s criminal history as it related to the need to protect society and the related goal of deterrence. This case constituted Bravo-Vazquez’s fifth lifetime DUI conviction. (PSI, pp.2-3; see 10/13/20 Tr., p.24, Ls.20-21.) He was first convicted of felony DUI in 2010 and then again in 2014. (PSI, pp.3-5.) In each of those cases he completed a rider and was placed on probation. (PSI, pp.2-5; see also 10/13/20 Tr., p.13, Ls.14-18.) He performed poorly on probation. He failed to maintain formal employment, moved without approval, did not report for scheduled office visits, made no payments towards the cost of his

supervision, and absconded. (PSI, p.3.) He was still on probation in both the 2010 and 2014 cases when he committed the instance offense. (PSI, pp.2-5; 10/13/20 Tr., p.23, Ls.22-25.) Because this case was Bravo-Vazquez's fifth lifetime DUI and prior sentences had not "gotten [his] attention," the court concluded that a term of incarceration was the only way to effectively protect the community. (10/13/20 Tr., p.24, Ls.20 – p. 25, L.1.)

The court also considered the need for rehabilitation. Even after completing two riders, Bravo-Vazquez failed to abstain from alcohol. Prior to his DUI conviction in this case, probation officers found Bravo-Vazquez in possession of alcohol on several occasions, he admitted that he had consumed alcohol several times on probation, and he provided multiple breath alcohol samples that confirmed he had consumed alcohol. (PSI, pp.3-5, 20.) The court found that Bravo-Vazquez did not "understand that he must stop drinking any alcohol." (10/13/20 Tr., p.24, Ls.8-13; see PSI, p.32.) Thus, the court concluded that another rider was not warranted because neither his four prior DUI convictions nor his two previous riders had not "gotten his attention." (10/13/20 Tr., p.26, Ls.14-22.) Nonetheless, the court recommended to the Idaho Department of Corrections (IDOC) that Bravo-Vazquez receive additional substance abuse treatment as well as the "Thinking for a Change Class" while in custody. (10/13/20 Tr., p.27, Ls.9-18.) Because the district court properly considered and applied the goals of sentencing, the sentence imposed is reasonable.

Despite the court's thoroughly reasoned analysis, Bravo-Vazquez contends the court failed to exercise reason and imposed an excessive sentence in light of mitigating factors such as his substance abuse, his alleged amenability to treatment, the language barrier that he argues impeded prior rehabilitative efforts, and his familial support. (Appellant's brief, pp.3-7.) According to Bravo-Vazquez, proper consideration of these mitigating factors supported a more lenient sentence. (Appellant's brief, p.7.) His argument is unavailing.

The district court properly considered and weighed these mitigating factors when it imposed Bravo-Vazquez's sentence. (10/13/20 Tr., p.21, Ls.2-13.) Prior to sentencing, Bravo-Vazquez filed several letters of support penned by family members. (Ex., pp.2-6.) Still, the court found that relatives were using alcohol in Bravo-Vazquez's house despite his need for a sober living environment thereby creating a "very difficult temptation for [him]." (10/13/20 Tr., p.28, Ls.6-10.) In addition, the court recommended to IDOC that when Bravo-Vazquez is eventually released into the community that he not be allowed to reside with relatives that are unwilling to follow the terms of probation. (10/13/20 Tr., p.24, Ls.14-19; p.28, Ls.1-6; PSI, p.5 (recommending Bravo-Vazquez not live with his brother because they consume alcohol together).)

The court also directly addressed Bravo-Vazquez's alcohol abuse and amenability to treatment in fashioning an appropriate sentence. Despite his claim that he was ready to maintain abstinence (PSI, p.32), the court found that he had minimized the amount of alcohol he consumes whenever he addressed the court and that he did not "understand that he must stop drinking any alcohol," (10/13/20 Tr., p.24, Ls.8-13). To address his substance abuse, the court recommended that he receive additional treatment while in custody. (10/13/20 Tr., p.27, Ls.9-18.)

Likewise, the court explicitly addressed Bravo-Vazquez's illiteracy and the language barrier. The court acknowledged that it was unclear how much of his prior treatment he actually understood given the language barrier. (10/13/20 Tr., p.21, Ls.17-20; p.22, Ls.11-17.) Notwithstanding the language barrier, the court found that treatment is a "two-way street" and that for his part, Bravo-Vazquez had failed seek help in order to make sure he understood the treatment he so clearly needed in order to make the necessary changes in his lifestyle. (10/13/20 Tr., p.22, L.18 – p.23, L.7.) Accordingly, the court recommended that IDOC make accommodations so that Bravo-Vazquez could complete substance abuse treatment and thinking for a change classes in

Spanish, or with a Spanish translator or tutor to ensure that he understands the rehabilitation programming. (10/13/20 Tr., p.27, Ls.8-18.)

Even considering all this mitigating information, the court determined that the sentence of incarceration was warranted in order for Bravo-Vazquez to receive necessary treatment and to protect the community. (10/13/20 Tr., p.24, L.20 – p.25, L.1.) Bravo-Vazquez has failed to show that his sentence is excessive or that the court did not exercise reason simply because it gave less weight than he desired to the mitigating evidence. See State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010) (finding no abuse of discretion upon a weighing of mitigating and aggravating factors in sentencing); State v. Stover, 140 Idaho 927, 932, 104 P.3d 969, 974 (2005) (emphasizing the discretionary nature of weighing mitigating and aggravating factors). Accordingly, he has failed to show that the sentence imposed was reasonable.

In sum, the court identified the correct legal standards, correctly perceived sentencing as a discretionary decision, acted within the boundaries of its discretion, and exercised reason in imposing Bravo-Vazquez's sentence. Thus, the court properly exercised its sentencing discretion. Bravo-Vazquez has failed to show otherwise.

CONCLUSION

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

DATED this 14th day of April, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th 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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/s/ Justin R. Porter
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JRP/dd