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### State v. Bauer Respondent's Brief Dckt. 48393

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 48393-2020 & 48394-2020
Plaintiff-Respondent,	)	
	)	
v.	)	Bonneville County Case Nos.
	)	CR-2018-8208 & CR10-2019-1085
	)	
RAWDY ALAN BAUER,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Rawdy Alan Bauer failed to show that the district court abused its discretion by sentencing him to seven years, with two years determinate for grand theft, and ten years, with two years determinate for burglary?

ARGUMENT

Bauer Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

In August of 2018, authorities responded to a report of two suspicious men wandering around a new housing development. (PSI, p. 4.) Authorities located Rawdy Alan Bauer and

Charlie Becerril inside a Toyota truck, parked in a garage of a home under construction. (PSI, p. 4.) Deputies noticed a butane torch on the dash, and asked why Bauer and Becerril why they had parked in the garage. (PSI, p. 4.) Bauer indicated that Becerril had been too intoxicated to drive, so they parked in the garage and walked around to get Becerril sober. (PSI, p. 4.) A K-9 unit alerted to the presence of drugs in the vehicle, and deputies located six different cell phones, bank cards, credit cards, a methamphetamine pipe, and an I.D. belonging to Shaeleigh Chambers. (PSI, p. 4.)

Under case number CR-2018-8208, the state charged Bauer with one count of grand theft by possession of stolen property, one count of possess with intent to use drug paraphernalia, and one count of unlawful entry. (48393 R., pp. 58-59.) On January 29, 2019, Bauer pleaded guilty to one count of grand theft by possession of stolen property, and the state agreed to dismiss the drug paraphernalia and unlawful entry charges, along with three other criminal cases. (48393 R., pp. 86-89, 95-96.)

In February of 2019, while out on bond, Bauer broke into two vehicles belonging to Watkins Distributing. (48393 R., p. 94; 48394 R., pp. 9-10.) Bauer stole a knife, flashlight, vehicle registrations, a set of keys, and an orange jump box. (48394 R., p. 10.) Bauer also had a methamphetamine pipe in his vehicle, and stated that he had just smoked meth when authorities arrived on scene. (48394 R., p. 10.) Under case number CR10-19-1085, the state charged Bauer with two counts of burglary, and one count of possession of drug paraphernalia. (48934 R., pp. 52-53.) Bauer pleaded guilty to one count of burglary, and the state agreed to dismiss the remaining charges. (48394 R., pp. 69-71, 78-79.)

In CR-2018-8208, the district court sentenced Bauer to seven years, with two years determinate for grand theft. (48393 R., pp. 128-129.) In CR10-19-1085, the district court

sentenced Bauer to ten years, with two years determinate for burglary, and ordered the sentence to run concurrent to that imposed in CR-2018-8208. (48394 R., pp. 83-85.) Bauer filed Rule 35 motions in each case, which the district court denied. (48393 R., pp. 132, 137; 48394 R., pp. 88, 93.)

Bauer filed untimely appeals in both cases, and the Supreme Court dismissed the appeals under Docket Numbers 47239-2019 and 47240-2019. (48393 R., pp. 141-143, 150-151; 48394 R., pp. 97-99, 106-107.) Pursuant to an order of post conviction relief in CV10-19-6364, the district court entered amended judgments of conviction to allow Bauer to file timely appeals. (48393 R., pp. 157-158, 161-163; 48394 R., pp. 113-115, 119-125.)

On appeal, Bauer argues that “the district court abused its discretion by imposing excessive sentences in both cases.” (Appellant’s brief, p. 1.) Bauer has failed to show that the district court abused its discretion by imposing concurrent sentences of seven years, with two years determinate for grand theft, and ten years, with two years determinate for burglary.

B. Standard Of Review

“Appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion.” State v. Schiermeier, 165 Idaho 447, 451, 447 P.3d 895, 899 (2019) (internal quotations and citations omitted). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case. Id. at 454, 447 P.3d at 902. “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion.” Id. (internal quotations omitted). “In deference to the trial judge, this Court will not substitute its view of a

reasonable sentence where reasonable minds might differ.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2019) (citation omitted).

C. Bauer Has Shown No Abuse Of The District Court’s Discretion

The sentences imposed are within the statutory limits of I.C. §§ 18-1403 and 18-2408. The record shows the district court perceived its discretion, employed the correct legal standards to the issue before it, and acted reasonably and within the scope of its discretion.

At the sentencing hearing, the district court considered “protection of society, deterrence, rehabilitation, and punishment, as well as the criteria set forth in Idaho Code 19-2521.” (Tr., p. 45, Ls. 6-12.) The district court stated that “it’s clear that there’s a history of theft cases,” and “substantial drug issues.” (Tr., p. 45, Ls. 13-16.) The district court stated that Bauer has “not done well once [he has] been released.” (Tr., p. 45, Ls. 18-19.) The district court noted that Bauer had been “arrested on this [instant] offense in August of 2018,” was “in jail for about a month before bonding out” and “then got new charges.” (Tr., p. 45, Ls. 23-25.) He “[w]ent back to jail for about two weeks,” then “bonded out again,” but “missed a court date.” (Tr., p. 45, L. 23 – p. 46, L. 3.) The district court went on, stating Bauer “had some dirty UAs. Once again, [his] release was revoked. Once again, [he] got new charges. Then [Bauer] spent a couple more months in jail. [He] bonded out again,” and “missed [his] presentence investigation interview and [was] arrested on a warrant.” (Tr., p. 46, Ls. 4-8.)

The district court noted that Bauer’s “UA tests were more positive than they were negative. Frequently, [Bauer] didn’t do [his] testing. [He] continued to use methamphetamine regardless of the consequences. [He has] not participated in treatment during supervision, and [his] thinking is highly criminal.” (Tr., p. 46, Ls. 15-20.) The district court acknowledged Bauer’s criminal history, stating he “had 27 adult convictions, 14 juvenile convictions, done one retained jurisdiction, over

five years in prison, and most of [his] crimes involve theft.” (Tr., p. 46, Ls. 23 – p. 47, L. 1.) The district court acknowledged Bauer’s “serious substance-abuse-related issues” as “both an aggravating and mitigating factor.” (Tr., p. 47, Ls. 2-6.) The district court determined that Bauer is “not a good candidate for probation,” and that “a rider is [not] appropriate at this point . . . [Bauer] need[s] more drug treatment than what it has.” (Tr., p. 47, Ls. 7-12; p. 48, Ls. 2-4.)

Bauer argues that the mitigating factors—mental health issues, substance abuse issues, acceptance of responsibility, and support from his friends and family—show an abuse of discretion. (Appellant’s brief, pp. 5-8.) Bauer’s argument does not show an abuse of discretion. His LSI score is thirty-six, placing him in the high risk to reoffend category. (PSI, p. 29.) Bauer’s extensive criminal history consists of numerous theft charges, felony convictions, and opportunities on probation. (PSI, pp. 5-21.) The presentence investigator stated that Bauer “was on misdemeanor probation when he committed the instant offense and he was highly non-compliant.” (PSI, p. 31.) The presentence investigator added that Bauer “continued to use substances and produce positive UA tests or miss his UA tests,” and stated that “[h]is probation officer has recommended him for revocation.” (PSI, p. 31.) The presentence investigator stated Bauer’s “failure to take responsibility for his actions in this case is concerning in terms of his commitment to making the necessary changes in his life,” and determined that Bauer is not “amenable to community supervision at this time.” (PSI, p. 31.)

Bauer’s extensive criminal history and opportunities on probation show that he is not amenable to alternative treatment. His criminal thinking is not deterred by periods on probation, or short terms of incarceration. The sentences imposed provide proper deterrence to Bauer, and protection to society. Bauer’s LSI score and conduct while on pretrial release shows there is undue risk that he will commit a subsequent offense without a substantial period of incarceration. Lesser

sentences than those imposed would depreciate the seriousness of the instant offenses, and fail to deter Bauer's criminal conduct. Bauer has failed to show that the district court abused its discretion by sentencing him to seven years, with two years determinate for grand theft, and ten years, with two years determinate for burglary.

CONCLUSION

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

DATED this 28th day of September, 2021.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

ZACHARI S. HALLETT  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of September, 2021, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

KILEY A. HEFFNER  
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/s/ Kenneth K. Jorgensen  
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