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### State v. Stinson Respondent's Brief Dckt. 48408

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48408-2020
Plaintiff-Respondent,	)	
	)	
v.	)	Kootenai County Case No.
	)	CR28-20-5770
	)	
DANIEL VERNON STINSON,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Daniel Vernon Stinson failed to show that the district court abused its discretion by sentencing him to an aggregate term of life, with thirty-four years determinate, and by denying his Rule 35 motion?

ARGUMENT

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

A. Introduction

Daniel Vernon Stinson approached Timothy Maher at a residence in Coeur d’ Alene. (PSI, p. 3 (citations to electronic file named “Confidential Documents – Volume 1”).) Stinson hit

Timothy over the head with a firearm, and took items from his pocket as Timothy was on the ground. (PSI, p. 3.) Stinson asked Timothy if should shoot him. (PSI, p. 3.) Stinson left the residence in Timothy's black Ford Explorer with a trailer attached. (PSI, p. 3.) Timothy's trailer and cell phone were discovered in Post Falls a short time later. (PSI, p. 3.)

While investigating the incident with Timothy, authorities were dispatched to a shooting. (PSI, p. 3.) Stinson had approached Jeremy Pardue in an alleyway, and asked to borrow a cell phone. (PSI, p. 3.) Jeremy didn't have a working cellphone, so he entered his home to ask his roommate, Noah Peterson, to speak with Stinson. (PSI, p. 3.) After a short conversation between Stinson and Noah, Stinson shot both Noah and Jeremy, and then fled from the scene. (PSI, p. 3.) Noah died on scene from the gunshot injuries, and Jeremy was taken to the hospital where he ultimately recovered. (PSI, pp. 3-4.) Authorities pursued Stinson as he recklessly drove the Ford Explorer on an interstate and highway. (PSI, p. 4.) Authorities performed a PIT maneuver on the vehicle, causing it to land upside down. (PSI, p. 4.) Law enforcement observed that Stinson appeared to be under the influence of a central nervous stimulant, as he could not remain still or stop speaking. (PSI, p. 4.) Stinson was extremely emotional, and had to be put in a helmet and a spit hood. (PSI, p. 4.)

The state charged Stinson with first degree murder, attempted first degree murder, unlawful possession of a firearm, robbery, aggravated battery, burglary, three counts of concealment of evidence, and eluding a peace officer. (R., pp. 64-68.) Pursuant to a plea agreement Stinson pled guilty to first degree murder, attempted first degree murder, unlawful possession of a firearm, robbery, and eluding a peace officer. (R., pp. 71-72, 75-82, 94.) For unlawful possession of a firearm, the district court sentenced Stinson to five years determinate. (R., pp. 121-122.) For robbery, the district court sentenced Stinson to life, with fifteen years determinate. (R., pp. 121-

122.) For first degree murder, the district court sentenced Stinson to life, with thirty-four years determinate. (R., pp. 121-122.) For attempted first degree murder, the district court sentenced Stinson to fifteen years determinate. (R., p. 122.) For eluding a peace officer, the district court sentenced Stinson to five years determinate. (R., p. 122.) The district court ordered that all five sentences run concurrent with each other, and credited Stinson for 147 days served. (R., p. 122.) Stinson then filed a timely appeal, and a Rule 35 motion. (R., pp. 124-126; Aug. pp. 1-3.) The district court subsequently denied Stinson's Rule 35 motion. (Aug. p. 9.)

On appeal, Stinson argues that "his sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts," and that "the district court abused its discretion in failing to reduce his sentence in light of the additional information submitted in conjunction with" his Rule 35 motion. (Appellant's brief, p. 1.) Stinson has failed to show that the district court abused its discretion by sentencing him to an aggregate term of life, with thirty-four years determinate, for unlawful possession of a firearm, robbery, first degree murder, attempted first degree murder and eluding a peace officer, or by denying Stinson's Rule 35 motion.

#### 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).

“If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). 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, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

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

The sentences imposed are within the statutory limits of I.C. §§ 18-3316, 18-6503, 18-4004, 18-306, 49-1404<sup>1</sup> and 18-112. 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 “the PSI and the sentencing materials in this matter,” and the “recommendations by the prosecuting attorney and those by defense counsel.” (09/10/2020 Tr., p. 45, Ls. 17-18, p. 46, Ls. 1-3.) The district court stated that

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<sup>1</sup> The Judgment of Conviction (R., pp. 121-122) cites I.C. § 49-1401(2) for Count X, eluding a peace officer, which statute covers punishment for misdemeanor reckless driving. I.C. §§ 49-1404 and 18-112 cover punishment for eluding a peace officer.

the “first and most important factor the Court has to consider when it sentences anyone is the protection of society,” and “that weighs heavily on the Court in this case because the Court finds that [Stinson is] a danger to society.” (09/10/2020 Tr., p. 46, Ls. 21-25.) The district court stated that it “is weary [sic] about rehabilitation in this case. [Stinson hasn’t] shown that that’s possible previously.” (09/10/2020 Tr., p. 47, Ls. 8-10.) The district court stated that it “has to fashion a sentence that’s a deterrent to [Stinson], and the Court will do so, but also a deterrent to others.” (09/10/2020 Tr., p. 47, Ls. 12-14.) The district court stated that punishment “is the least of the factors, but the more that a person comes before the Court the greater that factor grows, and [Stinson] having had at least five felonies prior, [the district court believes], that factor is large to the Court as well. (09/10/2020 Tr., p. 47, Ls. 19-23.)

The district court stated that it’s “never a good day in [the] courtroom when somebody goes to prison. It is a net loss for society that we take someone out and place them away from society because we have to.” (09/10/2020 Tr., p. 48, Ls. 10-13.) The district court noted Stinson’s “mom and [his] sister and [his] stepfather,” taking “into account what they had to say in this case.” (09/10/2020 Tr., p. 48, Ls. 15-17.) The district court stated that “these were horrible acts,” and the “fact that [Stinson came] across Mr. Maher, someone [he didn’t] even know, it could be any person’s relative, it could be any person in this courtroom that [Stinson] could have come across and terrorized.” (09/10/2020 Tr., p. 48, Ls. 18-22.) The district court stated “that was an act of terror of [Stinson] going up to him and making him beg for his life.” ((09/10/2020 Tr., p. 48, Ls. 22-24.) The district court stated that the “fact that [Stinson] just pick[ed] someone at random is frightening,” and Stinson “killed a man in cold blood. Shot him in the head, shot him in the chest. And then when someone came to see what was going on, [Stinson] shot the other individual as well and could have killed him.” (09/10/2020 Tr., p. 48, L. 25 – p. 49, L. 7.) The district court

took “into account that [Stinson is] a habitual offender in fashioning these sentences,” and hopes “that any dangerousness that resides in [Stinson] is gone by [the time he is released] because these were horrible things that happened.” (09/10/2020 Tr., p. 50, Ls. 1-9.)

At the Rule 35 hearing, the district court stated that it “paid particular attention to this case because it’s not every day that this Court sentences someone to [an] indeterminate life with a fixed 34.” (01/29/2021 Tr., p. 13, Ls. 15-17.) The district court stated that it “recalled that first there was this robbery of an individual, and then there was a murder of an individual, and then there was a shooting of another individual in this case.” (01/29/2021 Tr., p. 13, Ls. 19-22.) The district court noted that “Stinson had quite a criminal record as well. We are dealing with a crime of first-degree murder. It is the ultimate crime in this case, and the Court understood that the State was actually asking for a fixed life in this matter.” (01/29/2021 Tr., p. 13, L. 23 – p. 14, L. 2.) The district court denied Stinson’s Rule 35 motion based on “all the matters in this case, that being the presentence investigation, Mr. Stinson’s prior record, the crime spree that took place that led to the murder and the robbery and the other shooting of the individual, along with the eluding of police in this matter.” (01/29/2021 Tr., p. 14, Ls. 5-11.)

Stinson argues that the mitigating factors—mental health issues, homelessness prior to the instant offenses, substance abuse issues, a year of sobriety after his last release from prison, family support, remorse and acceptance of responsibility—show an abuse of discretion. (Appellant’s brief, pp. 4-7.) Additionally, Stinson argues that new or additional information—that he was in administrative segregation, only able to speak to a clinician twice a month, reading mental health books, wants to learn a trade, and plans to take his mental health medications and participate in counseling—show an abuse of discretion. (Appellant’s brief, pp. 8-9.) Stinson’s arguments do not show an abuse of discretion. His LSI score is forty-four, placing him in the high risk to reoffend

category. (PSI, p. 5.) Stinson's extensive criminal history consists of numerous felonies, including violent offenses, and opportunities on community supervision and retained jurisdiction. (PSI, pp. 14-17.) Stinson has spent approximately thirteen years of his adult life incarcerated, and he has never successfully completed a term of community supervision. (PSI, pp. 6, 19.) While incarcerated, Stinson has received several disciplinary actions for oppositional behavior and fighting other inmates. (PSI, p. 19.) The presentence investigator stated that "Stinson appears to have an established felonious pattern of behavior which displays a lack of concern for the safety of others, or the legal repercussions of his actions." (PSI, p. 19.) The presentence investigator stated that Stinson "presented as unemotional and expressed his misanthropic perspective towards the general public," and that "Stinson's criminogenic thinking errors and antisocial behavior appear to have led to a lawless attitude towards the rights of others, with a seeming lack of guilt or remorse for those impacted by his crimes." (PSI, p. 19.) The presentence investigator recommended that "Stinson be sentenced to the physical custody of the Idaho Department of Correction." (PSI, p. 19.)

Stinson's egregious crimes in this case, LSI score, and extensive criminal history shows that he's a significant risk to society, and a lengthy prison sentence is necessary to protect the community. Stinson murdered Noah Peterson, shot and injured Jeremy Pardue, and beat and robbed Timothy Maher. The punishment factor, alone, justifies the aggregate sentence of life, with thirty-four years determinate, and a lesser sentence would gravely depreciate the seriousness of the instant offenses. Stinson's mitigating factors and new, or additional information, does not merit a reduction of sentence. Stinson has failed to show that the district court abused its discretion by sentencing him to an aggregate term of life, with thirty-four years determinate for unlawful

possession of a firearm, robbery, first degree murder, attempted first degree murder and eluding a peace officer, and by denying Stinson's Rule 35 motion.

CONCLUSION

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

DATED this 6th day of August, 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 6th day of August, 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:

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/s/ Kenneth K. Jorgensen  
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