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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45048
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR01-2016-32723
)
 JESUS GEORGE AYALA,)
)
 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 DEBORAH A. BAIL
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

KIMBERLY A. COSTER
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature Of The Case

Jesus George Ayala appeals from his conviction for possession of methamphetamine and possession of drug paraphernalia. He challenges the denial of his suppression motion and the length of his sentence.

Statement Of The Facts And Course Of The Proceedings

The state charged Ayala with felony possession of methamphetamine, with a persistent violator enhancement, and misdemeanor possession of drug paraphernalia. (R., pp. 39-40, 78-79.) Ayala filed a motion to suppress the evidence. (R., pp. 58-59.) Ayala claimed that he was improperly arrested. (R., pp. 61-69.) The facts as found by the district court were that Ayala was on parole and arrested by law enforcement officers after his parole officer informed them that Ayala had absconded from parole and a parole warrant would be issued (and was in fact issued shortly after the arrest was effectuated). (Tr., p. 34, L. 7 – p. 36, L. 4.) The district court concluded that the arrest did not violate constitutional search and seizure requirements. (Tr., p. 36, L. 5 – p. 37, L. 12.)

After the district court denied his motion to suppress, Ayala conditionally pled guilty to the substantive charges, preserving the right to appeal the denial of suppression, and the enhancement was dismissed. (Tr., p. 37, L. 21 – p. 46, L. 17; R., p. 89.) The district court imposed a sentence of seven years with one year determinate on the felony and 30 days concurrent on the misdemeanor. (R., pp. 109-11.) Ayala filed a timely notice of appeal. (R., pp. 113-16.)

ISSUES

Ayala states the issues on appeal as:

- I. Did the district court err when it denied Mr. Ayala's motion to suppress?
- II. Did the district court abuse its discretion by imposing an excessive sentence?

(Appellant's brief, p. 5.)

The state rephrases the issues as:

1. Has Ayala failed to show error in the district court's conclusion that his arrest, supported by probable cause to believe he violated his parole, was constitutional?
2. Has Ayala failed to show the district court abused its discretion when it imposed a sentence of seven years with one year determinate upon his conviction for possession of methamphetamine?

ARGUMENT

I.

Ayala Has Failed To Show Error In The District Court's Conclusion That His Arrest Was Constitutional

A. Introduction

The district court concluded that the search of Ayala was incident to his constitutionally lawful arrest for violating the terms of his parole. (Tr., p. 34, L. 7 – p. 37, L. 12.) Ayala contends the district court erred, arguing that the constitution does not allow the arrest of parole violators unless there is a new crime; that the officers were not authorized by Idaho law to make arrests for parole violations except upon a written warrant; and that his reduced expectation of privacy did not justify the search. (Appellant's brief, pp. 6-13.) Ayala's arguments fail because the district court correctly found that the search of Ayala was incident to his constitutionally lawful arrest for absconding parole.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

C. The District Court Properly Concluded That Ayala's Arrest Was Constitutionally Lawful Because It Was Supported By Probable Cause To Believe He Violated His Parole By Absconding

A search incident to lawful arrest is an exception to the warrant requirement. Chimel v. California, 395 U.S. 752, 762-63 (1969). The constitutionality of a search

incident to arrest depends on a lawful arrest. See State v. Calegar, 104 Idaho 526, 529, 661 P.2d 311, 314 (1983); State v. Baxter, 144 Idaho 672, 680, 168 P.3d 1019, 1027 (Ct. App. 2007); State v. McIntee, 124 Idaho 803, 805, 864 P.2d 641, 643 (Ct. App. 1993). Warrantless arrests based on probable cause are lawful under the Fourth Amendment. Virginia v. Moore, 553 U.S. 164, 171 (2008); see also Maryland v. Pringle, 540 U.S. 366, 370 (2003); I.C. § 19-603. Probable cause is “the possession of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that such person is guilty.” State v. Julian, 129 Idaho 133, 136, 922 P.2d 1059, 1062 (1996) (citation omitted). In determining whether the State has met the standard of probable cause, the Court considers the totality of the circumstances. Pringle, 540 U.S. at 371.

The district court found probable cause for the arrest based on the officer’s knowledge that Ayala had absconded his parole. (Tr., p. 35, Ls. 15-22.) This finding is based on substantial evidence. (Tr., p. 15, L. 10 – p. 26, L. 17.) Because the arrest for the parole violation was supported by probable cause, the district court correctly found no constitutional violation in the arrest.

Ayala first argues that the constitution allows arrests for crimes, based on probable cause, but does not allow arrests for probation or parole violations that are not independent crimes. (Appellant’s brief, pp. 8-10.) Ayala cites cases holding that an arrest is constitutional if the officer has probable cause to believe a crime has been committed and extrapolates that those cases stand for the proposition that arrests based on probable cause to believe the defendant violated conditions of probation or parole are not constitutionally allowed. (Appellant’s brief, pp. 9-10.) Ayala has failed, however, to cite any authority

suggesting, much less holding, that only a crime justifies arrest, and that violators of probation and parole are entitled to remain at large indefinitely. Contrary to Ayala's argument, a parolee may be held on an arrest for a parole violation if "there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions." Morrissey v. Brewer, 408 U.S. 471, 485 (1972) (addressing due process requirement of post-arrest determination of probable cause in probation violation proceedings). There is no constitutional requirement that the parole violation for which officers have probable cause be an independent crime before an arrest may be made.

Ayala next argues that because the parole officer's direction to take him into custody was oral, and not written, the arrest was invalid under I.C. § 20-227. (Appellant's brief, pp. 10-12.) He argues that the district court erred by applying State v. Armstrong, 158 Idaho 364, 347 P.3d 1025 (Ct. App. 2015). (Appellant's brief, pp. 10-11.) The state generally agrees that Armstrong is inapplicable, but even so Ayala's argument shows no error because it is not based on the Fourth Amendment.

The issue in Armstrong was whether the search conducted by officers exceeded the scope of Armstrong's probationary consent to searches. Id. at 370-71, 347 P.3d at 1031-32. Specifically, Armstrong contended he had consented only to searches by probation or parole officers, not law enforcement officers, and therefore the search by law enforcement officers exceeded the scope of his consent. Id. at 370, 347 P.3d at 1031. It was clear, therefore, that the Fourth Amendment applied to the question presented. Id. at 370-71, 347 P.3d at 1031-32.

In this case the Fourth Amendment is not implicated by Ayala's claim that officers violated I.C. § 20-227 by arresting him on an oral, instead of written, request. To the contrary, the law is clear that the lawfulness of an arrest (and the search incident thereto) is measured by constitutional standards of probable cause, not upon any state-law restrictions on an officer's authority. Moore, 553 U.S. at 171; State v. Green, 158 Idaho 884, 354 P.3d 446 (2015). Ayala has failed to show that the Fourth Amendment required a particular state actor, such as a probation or parole officer rather than a law enforcement officer, to conduct the arrest, and the law is contrary to any such claim. He has also failed to show that the Fourth Amendment required a written warrant as opposed to conducting a warrantless arrest based on probable cause, and the law is contrary to any such claim. Because, as set forth above, the Fourth Amendment is satisfied by the finding of probable cause, Ayala's argument that law enforcement was not allowed under Idaho law to make a warrantless arrest for the parole violation is constitutionally irrelevant.

Finally, Ayala contends that his reduced expectation of privacy as a parolee did not justify his arrest. (Appellant's brief, pp. 12-13.) The state agrees.¹ As set forth above, the Fourth Amendment requirement for a valid arrest on a parole violation is the same as for a valid arrest on a crime: the existence of probable cause. Because the district court correctly

¹ Ayala apparently does not contest the district court's conclusion that the *search* of his person could be justified by his reduced expectation of privacy. Rather, Ayala merely argues that absent proof of the terms of his parole the state failed to show he had a reduced expectation of privacy justifying his *arrest*. (Appellant's brief, pp. 12-13.) However, a warrantless *search* of a parolee is justified upon suspicion he has violated the terms of his parole. Samson v. California, 547 U.S. 843 (2006). Here the district court properly concluded officers had probable cause to believe Ayala had violated the terms of his parole by absconding, and therefore the *search* of his person complied with constitutional requirements even if the *arrest* did not fully comply with I.C. § 20-227. This is an unchallenged alternate ground for affirming the district court.

found that officers had probable cause to believe that Ayala had violated his parole by absconding, however, Ayala has shown no error in the district court's denial of his suppression motion.

A constitutionally valid search incident to arrest requires a constitutionally valid arrest. An arrest is constitutionally valid if based on probable cause. The district court correctly found that officers had probable cause to believe Ayala had violated his parole by absconding. Therefore the arrest of Ayala was constitutionally valid, and the search incident thereto was also constitutionally valid.

II.

Ayala Has Failed To Show The District Court Abused Its Discretion When It Imposed A Sentence Of Seven Years With One Year Determinate Upon His Conviction For Possession Of Methamphetamine

A. Introduction

The district court imposed a sentence of seven years with one year determinate upon Ayala's conviction for possession of methamphetamine. (R., pp. 109-11.) Ayala does not challenge the one-year determinate portion of his sentence (because he requested it below), but asserts that the six-year indeterminate portion of his sentence is excessive. Application of the relevant legal standards to the record shows that the district court did not abuse its discretion.

B. Standard Of Review

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of

the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

When considering whether the sentence was an abuse of discretion, “this Court considers: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of its discretion and consistently with the legal standards applicable; and (3) whether the trial court reached its decision by an exercise of reason.”

State v. Fisher, 162 Idaho 465, 398 P.3d 839, 842 (2017) (quoting State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011)).

C. The District Court Did Not Abuse Its Discretion

To bear the burden of demonstrating an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). In determining whether the appellant met his burden, the court considers the entire sentence but, because the decision to release him on parole is exclusively the province of the executive branch, presumes that the determinate portion will be the period of actual incarceration. Oliver, 144 Idaho at 726, 170 P.3d at 391. To establish that the sentence was excessive, he 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. The “primary objective” of sentencing is “the protection of society.” State v. Jimenez, 160 Idaho 540, 544, 376 P.3d 744, 748 (2016).

The district court concluded that the primary issue in sentencing Ayala was his “severe” addiction. (Tr., p. 60, L. 21 – p. 61, L. 3; p. 62, Ls. 5-7.) Given his history of drug use, genuine change by Ayala was “hard at this point to see.” (Tr., p. 61, Ls. 4-17.) The district court concluded that Ayala’s addiction had “not been successfully managed in the community” and that he had the best chance of rehabilitation “in a structured setting first.” (Tr., p. 62, L. 5 – p. 63, L. 19.) The court concluded, however, that Ayala should qualify “sooner rather than later for another parole.” (Tr., p. 63, Ls. 19-22.) This would give Ayala the opportunity to “earn[his] way out after getting structured treatment.” (Tr., p. 64, Ls. 5-13.) The district court’s findings and analysis are supported by the record. (See, e.g., PSI, pp. 3, 5-8, 11-14, 19, 29.)

Even though the sentence imposed by the district court was entirely based upon rehabilitation, Ayala asserts that the six-year indeterminate portion of the sentence was an abuse of discretion “given the mitigating circumstances of his case.” (Appellant’s brief, p. 14.) The mitigating circumstances are his “drug addiction and his strong potential for overcoming that addiction given his youth [and] strong family support.” (Appellant’s brief, p. 15.) Ayala’s confidence that he will achieve complete rehabilitation in less than seven years does not show the district court erred by being slightly less confident. Giving him the chance to get parole after one year, and six years thereafter to monitor his recovery if structured treatment is successful (or a longer time to treat him in a structured environment if it is less successful) was reasonable. Ayala has failed to show an abuse of discretion.

CONCLUSION

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

DATED this 13th day of March, 2018.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of March, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

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

KKJ/dd