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State v. Ford Respondent's Brief Dckt. 48420

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. CODY EUGENE FORD, Defendant-Appellant.	NO. 48420-2020 Ada County Case No. CR01-19-41056 RESPONDENT'S BRIEF

Has Cody Eugene Ford failed to show that the district court abused its sentencing discretion when it imposed a sentence of five years with one and a half years determinate upon his conviction for battery on a correctional officer?

ARGUMENT

Ford Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

On February 22, 2019, Ford, an inmate at the Idaho State Correctional Center, punched Correctional Officer James Huffield with a closed fist several times. (PSI, pp. 1-2.) Officer Huffield had just discovered contraband during a search of Ford's cell. (PSI, p. 2.) Ford did not

halt his attack until Officer Huffield deployed his Oleoresin Capsicum spray. (PSI, pp. 1-2.) Officer Huffield was transported to the emergency room for medical treatment. (PSI, p. 2.) He sustained injuries to the nose and mouth and required stitches on his chin. (Id.) The state charged Ford with battery on a correctional officer in violation of Idaho Code §§ 18-915(2), 18-903, 19-2520F. (R., pp. 42-43.) Ford pled guilty. (R., p. 77.) The district court imposed a sentence of five years, with one and a half years determinate. (R., p. 78.)

Ford timely appealed. (See R., pp. 77-79, 82-83.)

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)). 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. Ford Has Shown No Abuse Of The District Court's 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 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.'" Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

The district court properly considered the I.C. § 19-2521 criteria and the goals of sentencing—protection of the community, rehabilitation, punishment and deterrence. (Tr., p. 21, Ls. 7-16.[1])

The sentence imposed is reasonable. The court stated that punching a correctional officer in the face multiple times, when the officer was just doing a standard search, required deterrence and punishment. (See Tr., p. 21, Ls. 17-23; p. 23, Ls. 1-6; p. 24, L. 20 – p. 25, L. 6.) While Ford's childhood may have been difficult, Ford should be held accountable for his choices as an adult.

[1] The state references the internal page and line citations for the transcript from the October 21, 2020, sentencing hearing.

(See Tr., p. 22, Ls. 16-24.) The court reasoned that the sentence imposed protected the public, stating that the "bottom line" was that "[h]ow you act in prison equals when you get out of prison." (Tr., p. 22, Ls. 14-15.) Ford had 44 disciplinary offense reports while incarcerated, some for violent conduct and for helping organize a "revolt" in the prison. (See PSI, pp. 15, 30-35; Tr., p. 23, Ls. 17-18.) Four of the disciplinary offense reports were imposed after Ford's battery of Officer Huffield. (PSI, pp. 4, 30.) In the court's words, until Ford learns to appropriately respond to situations he does not like, he "present[s] a danger to the community when . . . released." (Tr., p. 24, Ls. 12-15.) The court appropriately considered rehabilitation, recommending to the Idaho Department of Correction that Ford "take Thinking for a Change and an anger management class." (Tr., p. 24, Ls. 10-12.)

Ford argues that the district court abused its sentencing discretion by failing to appropriately consider Ford's (1) troubled childhood, (2) substance abuse issues, (3) amenability to treatment, and (4) family support. (Appellant's brief, pp. 3-4.) Ford is incorrect. As a threshold matter, the trial court is not obligated to impose a lighter sentence based on the defendant's presentation of potential mitigating factors. See State v. Coffin, 146 Idaho 166, 171-72, 191 P.3d 244, 249-50 (Ct. App. 2008) (affirming sentence when trial court had stated that it had considered mitigating circumstances); State v. Ball, 149 Idaho 658, 663-64, 239 P.3d 456, 461-62 (Ct. App. 2010) (affirming sentence when the trial court had considered mitigating circumstances and decided they did not warrant a lesser sentence).

Contrary to Ford's contention, the trial court appropriately considered the mitigating factors presented. First, the court acknowledged Ford's difficult childhood at sentencing, (Tr., p. 22, Ls. 14-24), after hearing argument from Ford's counsel regarding how Ford's teenage mother's neglect and substance abuse harmed him, (Tr., p. 14, L. 17 – p. 15, L. 20). But there was also

evidence before the court that Ford was raised by his grandparents, who were like parents to him and had "always been there for [him]." (PSI, p. 16.) His grandparents "always took [him] camping and fishing" and gave him whatever he wanted in his childhood. (PSI, pp. 16-17.) Ford reported that he had never been abused in childhood and was never in foster care. (PSI, p. 17.) The trial court determined that Ford's childhood could not excuse his behavior as an adult, specifically striking a correctional officer when he knew the consequences of such conduct. (See Tr., p. 22, Ls. 14-24.)

Second, Ford has not met his burden to show that the trial court erred by insufficiently considering his substance abuse problems. See State v. Quintana, 155 Idaho 124, 134, 306 P.3d 209, 219 (Ct. App. 2013) (rejecting defendant's argument that the trial court not discussing each mitigating factor meant that the court had insufficiently considered such factors). The trial court stated that it had considered the mitigating factors. (Tr., p. 21, Ls. 7-16.) The only mention of substance abuse issues at the sentencing hearing was a passing comment from Ford's counsel stating, "And, of course, he has made some choices, but I think most of his issues are drugs." (Tr., p. 18, Ls. 23-24.) The court evaluated the entirety of the circumstances and determined that the main goal of sentencing—protecting the public—must be given precedence. (See I.C. § 19-2521(1)(a) (stating with respect to sentencing goals that the "primary consideration" is "protection of society"); Tr., p. 21, Ls. 7-16; p. 24, Ls. 10-19.)

Third, the trial court appropriately considered Ford's amenability to treatment. The court concluded that treatment would make Ford less of a danger to the public once released and recommended two courses for Ford during his remaining period of confinement. (See Tr., p. 24, Ls. 10-19.) Ford's statements about taking responsibility and moving forward with his life were

also duly considered, with the court concluding that those statements did not militate toward a lesser sentence. (See Tr., p. 14, Ls. 2-12; p. 23, Ls. 7-20.)

Fourth, this Court should reject the contention that a lesser sentence should have been imposed due to Ford's family support. (See Appellant's brief, p. 6 (citing State v. Shideler, 103 Idaho 593, 651 P.2d 527 (1982)).) The trial court was not required to consider or discuss Ford's support network. See State v. Biggs, ___ Idaho ___, ___, 480 P.3d 150, 153 (Ct. App. 2020) ("While a defendant's support network may be considered as part of a sentencing determination, such is not a requirement under Shideler."); Quintana, 155 Idaho at 134, 306 P.3d at 219 (trial court need not expressly discuss each mitigating factor). Further, this case is distinguishable from Shideler, the case on which Ford relies. In Shideler, while the court considered the defendant's support network, it also reasoned that the "overwhelming impression from th[e] record [was] that except for this particular incident [armed robbery], the defendant's character was good," and he had no prior criminal history. 103 Idaho at 595, 651 P.2d at 529. In contrast, Ford had five prior felonies in Idaho and 44 disciplinary offense reports from his misconduct in prison. (PSI, pp. 4, 30-35.)

CONCLUSION

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

DATED this 25th day of March, 2021.

/s/ Jennifer Jensen
JENNIFER JENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of March, 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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JJ/dd