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### State v. MacDonald Respondent's Brief Dckt. 48432

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48432-2020
Plaintiff-Respondent,	)	
	)	
v.	)	Kootenai County Case No.
	)	CR28-20-6272
	)	
PEYTON CHARLES MACDONALD,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Peyton Charles MacDonald failed to show that the district court abused its discretion by imposing consecutive sentences of 365 days jail with 330 days suspended for possession of MDMA and 180 days with 118 days suspended for DUI, with probation on both convictions, and by denying a Rule 35 motion?

ARGUMENT

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

A. Introduction

In April of 2020, Post Falls Police responded to a report of a male driver hitting a post and a curb in a parking lot. (PSI, p. 5.) The reporting party expressed concerns that the driver, Peyton

Charles MacDonald, may have been unfit to drive, and that MacDonald was attempting to drive away from the scene after hitting various items. (PSI, p. 5.) Authorities administered a field sobriety tests and determined that MacDonald's driving ability was impaired. (PSI, p. 5.) Officers found a small plastic bag containing a white crystal substance believed to be methamphetamine on MacDonald's person, and when questioned about the substance, MacDonald stated that a friend had given him MDMA, commonly referred to as molly. (PSI, p. 5.) MacDonald stated that he placed the MDMA in his vehicle, and upon search of his vehicle, authorities found a glass pipe with residue. (PSI, p. 5.) MacDonald admitted that he had previously smoked marijuana products from the pipe. (PSI, p. 5.)

The state charged MacDonald with possession of MDMA, driving under the influence drugs and/or an intoxicating substance, leaving scene of accident, and possession of paraphernalia. (R., pp. 50-52.) MacDonald pleaded guilty to possession of a controlled substance and DUI, and the state agreed to dismiss the remaining charges. (R., pp. 53-54, 57-58.) For the possession conviction, the district court sentenced MacDonald to one year in jail, with 330 days suspended, two days credit, thirty days of discretionary jail time, and two years on probation. (Tr., p. 23, Ls. 12-21; p. 24, Ls. 9-11; R., p. 67.) For the DUI conviction, the district court sentenced MacDonald to 180 days in jail, with 118 days suspended, two days credit, thirty days of discretionary jail time, thirty days to serve, and two years on probation to run consecutive to the PCS sentence. (Tr., p. 23, L. 22 – p. 24, L. 16; R., p. 68.) The district court granted MacDonald a five day early release from jail, and MacDonald filed a Rule 35 motion. (R., pp. 73-77.) The district court denied his Rule 35 motion, and MacDonald subsequently filed a timely appeal. (R., pp. 81-89.)

On appeal, MacDonald argues that “the district court abused its discretion by imposing an excessive sentence and denying his Rule 35 motion.” (Appellant's brief, p. 1.) MacDonald has

failed to show that the district court abused its discretion. Additionally, MacDonald has failed to show that the district court abused its discretion by denying his 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. MacDonald Has Shown No Abuse Of The District Court's Discretion

The sentences imposed are within the statutory limits of I.C. §§ 18-8005 and 37-2732. 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 stated that it “could no more consider unsupervised probation than the man in the moon.” (Tr., p. 27, Ls. 10-11.) The district court noted that MacDonald “decided after using Molly, and apparently quite a bit, to go to Taco Bell,” which demonstrated “how selfish and self-centered” MacDonald is. (Tr., p. 27, Ls. 11-14.) He drove “stoned out of [his] gourd,” ran into mailboxes, “a citizen [had] to call law enforcement,” and he doesn’t “even remember any of this.” (Tr., p. 27, Ls. 14-17.) MacDonald stated that he “wasn’t on Molly when [he] was driving,” and that someone that lives in his apartment building told him that it was Xanax. (Tr., p. 27, Ls. 20-24.) The district court stated that it stood “corrected” and that MacDonald “took an unknown pill form a neighbor while [he] had point two grams of Molly with [him] and ran into things on the road, going to Taco Bell,” and that Macdonald is “a danger to the public.” (Tr., p. 28, Ls. 2-5.)

The district court further found that MacDonald “continued to drink” after being ordered not to, and “tested positive for alcohol on July 13th and positive again for alcohol on August 17th.” (Tr., p. 28, Ls. 16-21.) The district court stated that “there is no indication” that MacDonald was “going to do well on probation.” (Tr., p. 28, Ls. 22-24.) The district court did “hope that [MacDonald] surprise[s] [the district court] and that [he] will abide by all the terms and conditions of probation.” (Tr., p. 28, L. 25 – p. 29, L. 1.)

In the district court’s order denying MacDonald’s Rule 35 motion, the district court stated that “[a]t the sentencing hearing, MacDonald was not contrite, he did not take accountability for

his actions, and he was argumentative with the Court.” (R., p. 84.) The district court stated that there "is no evidence presented that the sentence imposed is too great given the offenses for which MacDonald was sentenced. There is no evidence presented that somehow in the past 10 days MacDonald is now an acceptable risk to be placed only on two years of supervised probation.” (R., p. 84.) The district court determined that the “sentences imposed on September 1, 2020, were and are an appropriate sentence given Macdonald’s social and criminal history and the crime for which sentence were imposed. Any lesser sentences would depreciate the seriousness of Macdonald’s crimes.” (R., p. 85.)

On appeal, MacDonald argues that the mitigating factors—his age, lack of criminal history, mental health issues, loss of his mother, employment history, LSI score, remorse and acceptance of responsibility—show an abuse of discretion. (Appellant’s brief, pp. 5-6.) MacDonald’s argument does not show an abuse of discretion. His LSI score is sixteen, placing him in the moderate risk to reoffend category. (PSI, p. 6.) MacDonald struck numerous objects, including a parked GMC Envoy that then struck a Chevy truck parked next to the Envoy, while driving under the influence of an unknown pill. (PSI, p. 16.) MacDonald was so inebriated that he doesn’t remember the instant offenses, stating that he “was heading to Taco Bell and the next thing [he] remember[ed] was that [he] woke up in jail.” (PSI, p. 6.) While THC can take up to thirty days to become undetectable in a person’s system, MacDonald’s cannabinoid concentrate increased from May 5, 2020 to May 13, 2020, while he was on pretrial release. (R., pp. 26, 46-47.) Additionally, MacDonald self-reported that he consumed alcohol on his twenty-first birthday while on pretrial release after being ordered not to consume alcohol. (R., p. 26; PSI, p. 9.)

MacDonald’s continued substance use while on pretrial release shows that he does not legitimately consider the seriousness of the instant offenses, nor the risk his criminal conduct

presents to the community. His decision to consume alcohol on his twenty-first birthday while on pretrial release shows that he does not regard the district court's orders, or the law. MacDonald places his own interests above the safety of society, and he's failed to demonstrate remorse or acceptance of responsibility. Four years of supervised probation with suspended sentences provides proper punishment and deterrence to MacDonald's criminal behavior. A lesser sentence would depreciate the seriousness of the instant offenses, and fail to provide appropriate structure and accountability for MacDonald's rehabilitative efforts during his term of community supervision. MacDonald has failed to show that the district court abused its sentencing discretion. MacDonald has also failed to show that the district court abused its discretion by denying his Rule 35 motion.

#### CONCLUSION

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

DATED this 26th day of April, 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 26th day of April, 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  
KENNETH K. JORGENSEN  
Deputy Attorney General