

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

7-2-2021

### State v. Smith Respondent's Brief Dckt. 48435

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Smith Respondent's Brief Dckt. 48435" (2021). *Not Reported*. 7146.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/7146](https://digitalcommons.law.uidaho.edu/not_reported/7146)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

MARK A. KUBINSKI  
Deputy Attorney General  
Chief, Criminal Law Division

JUSTIN R. PORTER  
Deputy Attorney General  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48435-2020
Plaintiff-Respondent,	)	
	)	Kootenai County Case No.
v.	)	CR28-20-5555
	)	
DENNIS GREGORY SMITH,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Dennis Gregory Smith failed to show that the district court abused its sentencing discretion when it imposed a unified sentence of twenty years, with six years determinate, upon his conviction for trafficking in heroin?

ARGUMENT

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

A. Introduction

An officer stopped Smith for speeding and arrested him for DUI. (PSI, pp.3-4, 18-19.) A search of Smith’s car uncovered heroin, methamphetamine, various pills, and numerous items of drug paraphernalia. (Id.)

The state charged Smith with trafficking in heroin, possession of methamphetamine, DUI, possession of buspirone hydrochloride without a prescription, possession of cyclobenzaprine hydrochloride without a prescription, and possession of paraphernalia. (R., pp.94-96.) The state also alleged that Smith was a persistent violator of the law. (R., p.96.) Pursuant to a plea agreement, Smith pled guilty to trafficking in heroin and DUI. (6/29/20 Tr., p.17, Ls.10-25; see R., pp.108-09; Aug., pp.1-3.) In exchange for Smith's guilty pleas, the state dismissed the remaining charges and the persistent violator enhancement. (R., p.114.)

For trafficking in heroin, the district court imposed a unified sentence of twenty years, with six years determinate. (10/21/20 Tr., p.32, Ls.9-22; R., pp.141-42.) The court imposed 180 days of jail with 180 days credit for time served for driving under the influence. (10/21/20 Tr., p.32, Ls.2-8; R., p.143.) Smith timely appealed. (R., pp.144-46.)

On appeal, Smith asserts the district court abused its sentencing discretion by imposing an excessive sentence for trafficking in heroin. (Appellant's brief, pp.3-5.<sup>1</sup>) Specifically, he argues the district court did not exercise reason because it failed to properly consider mitigating factors. (Id.) Smith's argument is unavailing. Application of the relevant legal standards shows that the district court did not abuse its sentencing discretion.

#### B. Standard Of Review

“When evaluating whether a sentence is excessive, [the] Court considers the entire length of the sentence under an abuse of discretion standard.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016) (citation omitted). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court:

---

<sup>1</sup> Smith does not challenge his misdemeanor sentence on appeal. (Appellant's brief, p.3 n.3.)

(1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of its discretion; (3) acted consistently with any legal standards applicable to the specific choices available to it; and (4) reached its decision by an exercise of reason. State v. Smith, 168 Idaho 463, \_\_\_, 483 P.3d 1006, 1019 (2021) (citations omitted).

C. Smith Has Shown No Abuse Of The District Court's Sentencing Discretion

The district court did not abuse its sentencing discretion when it imposed a unified sentence of twenty years, with six years fixed. “When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting State v. Hooper, 119 Idaho 606, 608, 809 P.2d 467, 469 (1991)). “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.” Id. (citing State v. Lundquist, 134 Idaho 831, 836, 11 P.3d 27, 32 (2000)). The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. See id. at 9, 368 P.3d at 629 (holding the district court imposed a reasonable sentence where it considered and weighed the objectives of criminal punishment and both mitigating and aggravating factors); State v. Moore, 131 Idaho 814, 824-25, 965 P.2d 174, 184-85 (1998) (holding the district court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation).

Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982) (citation omitted). Where a sentence fits within statutory limits, the appellant bears the burden of demonstrating that the sentence imposed is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant

must show the sentence is excessive under any reasonable view of the facts. Id.; State v. Toohill, 103 Idaho 565, 568, 50 P.2d 707, 711 (Ct. App. 1982). 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. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007) (citations omitted). However, “[i]n deference to the trial judge, [the] Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

Smith concedes that his sentence “does not exceed the statutory maximum.” (Appellant’s brief, p.4.) Trafficking in more than two but less than seven grams of heroin is punishable by a mandatory minimum fixed term of imprisonment of three years and a maximum term of life imprisonment. Idaho Code §§ 37-2732B(a)(6)(A), 37-2732B(a)(6)(D). In this case, the district court imposed a unified sentence of twenty years, with six years fixed. (R., pp.120-23.) Because the sentence imposed fits within the statutory limits, Smith “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002). He cannot do so.

The sentence imposed was reasonable. In fashioning Smith’s sentence, the district court reviewed the presentence investigation materials and considered the necessary sentencing factors. (10/21/20 Tr., p.22, Ls.19-23; p.36, Ls.3-13; see R., pp.138-40.) The court found Smith’s criminal record to be “quite extensive.” (10/21/20 Tr., p.33, L.5; see PSI pp.8-14.) Smith’s criminal history began in 1985 with a felony conviction for attempting to elude. (PSI, p.9.) The court found that Smith had consistently engaged in criminal conduct ever since, and was subsequently convicted

of approximately twenty felonies. (10/21/20 Tr., p.33, Ls.6-11; see PSI, pp.8-14.) Smith had also been charged with nearly thirty misdemeanors, resulting in numerous convictions. (PSI, pp.8-14.)

The district court also considered Smith's underlying conduct. The court noted that Smith was stopped with a loaded syringe in the car and exhibited signs of being under the influence. (10/21/20 Tr., p.33, L.22 – p.34, L.5.) Additionally, based on Smith's guilty pleas the court found that he knew there were drugs in the vehicle and that he knew he was driving under the influence. (Tr., p.35, L.24 – p.36, L.3.) Given the nature of the offense and Smith's character, the court concluded that he had not shown "any indication ... that [he] could change [his] behavior" and thus posed a "huge risk to the public." (10/21/20 Tr., p.36, Ls.3-13.) Accordingly, the court stated that the sentence imposed was intended to achieve the primary sentencing goal of protecting the public. (Id.) Because the court imposed Smith's sentence in order to achieve the primary sentencing goal based on Smith's underlying conduct and his extensive criminal history, the sentence imposed was reasonable.

Smith contends his sentence is excessive in light of certain mitigating factors. (Appellant's brief, pp.3-4.) Specifically, Smith refers to his expression of remorse and acceptance of responsibility, his career aspirations, the fact that he's a moderate risk of reoffending, an alleged commitment to sobriety, and the fact that he claims to have support from friends. (Appellant's brief, p.5.) According to Smith, proper consideration of these mitigating factors warranted a more lenient sentence. (Id.) He is incorrect.

The district court properly weighed any mitigating factors when it originally imposed Smith's sentence. In fashioning Smith's sentence, the court considered his expression of remorse. (10/21/20 Tr., p.30, L.18 – p.31, L.5.) The court sensibly gave it little weight, if any, because Smith merely expressed remorse for getting caught rather than expressing sincere remorse for his

criminal conduct. (10/21/20 Tr., p.34, L.8 – p.35, L.7.) The court also considered Smith's acceptance of responsibility, and reasonably gave it little weight as Smith had repeatedly blamed others for the crime. (10/21/20 Tr., p.33, Ls.12-24; p.35, L.8 – p.36, L.3.) The court also considered mitigating information in the PSI such as Smith's employment, support from friends, and his alleged commitment to sobriety. (See 10/21/20 Tr., p.22, Ls.19-23; PSI, p.14.) Finally, any mitigating weight warranted by the fact that Smith was assessed to be a moderate risk to reoffend was substantially outweighed by the aggravating nature of his extensive criminal history and history of substance abuse. (PSI, pp.6, 8-14.) Even considering this mitigating information, the court determined that the sentence imposed was necessary to protect society due to the aggravating information presented in this case. (10/21/20 Tr., p.36, Ls.3-13.)

In sum, Smith has failed to show that the court did not exercise reason simply because it gave less weight to mitigating information than he desired. See State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010) (finding no abuse of discretion upon a weighing of mitigating and aggravating factors in sentencing); State v. Stover, 140 Idaho 927, 932, 104 P.3d 969, 974 (2005) (emphasizing the discretionary nature of weighing mitigating and aggravating factors). Because the district court properly considered and applied the goals of sentencing and weighed the aggravating circumstances against any mitigating information in fashioning Smith's sentence, the sentence imposed was reasonable. Smith has failed to show that the district court abused its sentencing discretion.

CONCLUSION

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

DATED this 2nd day of July, 2021.

/s/ Justin R. Porter  
JUSTIN R. PORTER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of July, 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:

EMILY M. JOYCE  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

/s/ Justin R. Porter  
JUSTIN R. PORTER  
Deputy Attorney General

JRP/dd