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### State v. Hennig Respondent's Brief Dckt. 48502

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48502-2020
Plaintiff-Respondent,	)	
	)	Kootenai County Case No.
v.	)	CR28-19-11962
	)	
BRANDON WILLIAM HENNIG,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Hennig failed to show that the district court abused its discretion when it sentenced him to twenty-five years with ten years fixed for aggravated battery, with a deadly weapon enhancement?

ARGUMENT

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

A. Introduction

Law enforcement responded to a report of a man with blood on him yelling for help. (R., p.25.) An officer made contact with Joseph Coby at his residence. (R., p.25.) Coby was sitting in a patio chair with a large amount of blood on himself and his clothing. (R., p.25.) Officers

observed that Coby seemed scared and in shock, with blood covering his head and neck from what appeared to be a serious head laceration. (R., p.25.) Coby's hands were covered in blood and his pinky finger appeared broken and severely split open. (R., p.25.) He appeared to have at least one missing or broken tooth. (R., p.25.) Coby made repeated statements about dying. (R., p.25.)

Coby told law enforcement that he had come home from work in the evening; when he entered his home, he saw a man in a mask he later identified as his friend Hennig. (R., pp.25, 174, 305.) Hennig immediately attacked Coby with a baseball bat, striking him several times in the head and upper body. (R., p.25.) Hennig then placed Coby in a chokehold and said "[s]hfff stop" as he applied pressure to Coby's neck. (R., p.25.) Coby resisted, biting one of Hennig's fingers. (R., p.25.) After Coby got away, Hennig fled. (R., p.25.) Coby reported that he had no idea why Hennig attacked him. (R., p.25.)

At the scene, officers observed blood on the concrete stairs leading down to the residence, blood smeared on the railing, blood on the inside door jam, and blood on the walls on either side of the entrance. (R., pp.29, 125.) They observed two bloody handprints and blood on the toe of Coby's right shoe. (R., p.29.) The officers located a baseball bat with blood smeared on the end and a black mask with two eye holes cut out. (R., p.29.)

After multiple attempts, officers were able to make contact with Hennig at his grandparent's residence. (R., pp.26, 34.) Officers noted Hennig appeared to have injuries consistent with being involved in a fight. (R., pp.34-35.) In Hennig's vehicle, officers observed what appeared to be blood on the steering wheel and on the cloth armrest, with apparent efforts made to clean the blood off the armrest, two rolls of paper towels, some type of cleaner in a spray bottle. (R., p.35; Conf. Ex., pp.110-22.) Officers also saw a black sweatshirt, binoculars, a headlamp, a flashlight, and an opened box of latex gloves. (R., p.35; Conf. Ex., pp.128-36.)

During a search of Hennig's residence and vehicle, officers also located garbage bags, a stun gun, cleaning supplies, gloves, duct tape, hammers, knives, a bat, a flashlight, binoculars, pepper spray, a padlock, lock picks, mutilated dolls, drawings, a training dummy, a fictional book about a serial killer, masks, and a bone saw. (R., p.176; see Conf. Ex., pp.144-284.)

The state charged Hennig by indictment with attempted first degree murder, aggravated battery, and burglary, with a deadly weapon enhancement. (R., pp.43-44, 97-98.) Pursuant to a plea agreement, Hennig pleaded guilty to aggravated battery with a deadly weapon enhancement and the state dismissed the remaining charges. (R., p.255; 9/29/2020 Tr., p.9, L.18 – p.10, L.14.) The district court sentenced Hennig to twenty-five years with ten years fixed. (R., pp.321-24.) Hennig filed a timely notice of appeal. (R., pp.326-28.)

#### 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)). 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 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. Hennig 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 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). “When reviewing the reasonableness of a sentence, this Court conducts an independent review of the record, giving consideration to the nature of the offense, the character of the offender and the protection of the public interest.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015). 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. “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 (2018) (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

The sentence is reasonable in light of the conduct underlying the crime. Coby came home from work in the evening, only to be brutally attacked by a man he considered a friend. (R., p.25.) Hennig, who had been lying in wait wearing a mask, beat Coby in the head and upper body with a baseball bat. (R., pp.25, 305.) Coby tried to flee but Hennig caught him and placed him in a chokehold; Hennig continued to choke Coby, telling him to stop resisting, until Coby was able to bite Hennig's finger and break free. (R., pp.25, 305-306.) When Coby made his way to his neighbor's for help, Hennig fled. (R., pp.25, 306.) As a result of Hennig's attack, Coby suffered

serious injuries, including significant damage to his jaw, teeth, and pinky finger, and accrued tens of thousands of dollars in medical expenses from multiple procedures. (R., pp.25, 265-302, 306-07.) There was no apparent motive for the attack. (R., p.25.)

Hennig asserts that the attack was an unfortunate result of his undiagnosed post-traumatic stress disorder (PTSD). (Appellant's brief, pp.2-3, 8-9.) While there is no dispute that Hennig suffers from PTSD, as the prosecutor pointed out below, that explanation simply does not fit the facts of this case. (See 12/10/2020 Tr., p.39, Ls.18-22.) Hennig claims he carried a baseball bat with him for protection from cougars and he had the mask with him because wearing a mask is a sexual fetish he enjoys. (See Conf. Doc., pp.135, 455.) Those explanations do not make sense in the context of what occurred; there was no basis to carry protection from cougars for the short walk up to the entrance of Coby's residence, nor does it make sense that Hennig would be carrying a sexual fetish mask, given that he was allegedly going to Coby's house to print his resume and not intending to have a sexual encounter with Coby. Hennig asserts that he was waiting outside Coby's door, Coby pushed past him, and then when Coby pulled out his keys, Hennig thought it was a knife and went into self-defense mode. (Conf. Doc., p.135; Appellant's brief, pp.2-3.) That is contradicted by Coby's account—that he did not see Hennig as he approached his door, that he opened it and got one foot inside before he was attacked. (See R., pp.25, 305.) Moreover, Hennig's PTSD explanation for seeing the keys as a knife and using the bat in self-defense does not explain why Hennig pursued and attempted to choke Coby after beating him. As the district court noted, “[t]here are a lot of people in this society who have suffered trauma” but “[t]hey don't, as a general rule, go around beating people with baseball bats.” (12/10/2020 Tr., p.61, Ls.5-10.)

The items in Hennig's vehicle and room, as well as those found in a tote, also call into question his version of events and suggest a much more sinister intent. In Hennig's vehicle,

officers observed blood with evidence that Hennig had attempted to clean it up and they located cleaning supplies, a flashlight, a headlamp, binoculars, duct tape, an opened box of latex gloves, knives, and a stun gun; in Hennig's room, officers located more weapons, a hammer, knives, a bat, pepper spray, lock picks, a training dummy, mutilated dolls, masks, and a bone saw. (R., pp.35, 176; see Conf. Ex., pp.128-284.) Further, officers found a tote connected to Hennig in a secluded wilderness area on someone's property. (Conf. Doc., p.258.) Inside, officers found a backpack, numerous knives (both in a set and loose), zip ties, plastic wrap, duct tape, a face shield, a staple gun, a roll of black garbage bags, clear plastic, cloth, and cleaning supplies. (Conf. Doc., p.258.)

The district court considered the objectives of criminal sentencing and the information prepared for and presented at sentencing, including testimony given on Hennig's behalf. (12/20/2020 Tr., p.57, L.18 – p.58, L.7.) The district court specifically recognized the mitigating factors in Hennig's case, such as his substance abuse issues, past trauma, his mental health, his lack of prior criminal behavior, and his remorse. (12/10/2020 Tr., p.59, L.10 – p.60, L.3.) However, as the PSI noted, Hennig's crime "involved significant violence" and "caused serious physical injury, permanent physical injury, unknown future medical treatment, and emotional trauma." (Conf. Doc., p.146.) "After considering all of the information that has been presented, considering all of the mitigating factors that have been brought up quite completely by the defense, in order to deter [Hennig] and others, in order to protect society and in order to give Mr. Hennig an opportunity to try and continue his rehabilitation without causing any risk to society, a prison sentence is appropriate in this case." (12/10/2020 Tr., p.61, Ls.11-18.) The district court reasonably followed the PSI's recommendation of incarceration and concluded a sentence of twenty-five years with ten years fixed "does address the goals of sentencing" and "recognizes the

mitigating factors that Mr. Hennig has, yet still holds him accountable and will protect society.” (12/10/2020 Tr., p.61, L.25 – p.62, L.3; Conf. Doc., pp.146-47.)

Hennig argues that the district court abused its discretion and its decision runs contrary to the applicable legal standards because the court’s decision “fails to promote rehabilitation as the first means to achieve the protection of society” and fails to take into consideration his numerous mitigating circumstances. (Appellant’s brief, pp. 6-12.) As discussed above, the district court specifically recognized and considered Hennig’s many mitigating circumstances. (See 12/10/2020 Tr., p.59, L.10 – p.60, L.3.) However, the district court also considered the severity of Hennig’s crime, the brutal beating he inflicted upon Coby, and the risk that his actions pose to society. (12/10/2020 Tr., p.60, L.4 – p.61, L.10.) The district court specifically considered rehabilitation, as well as Hennig’s request that the court retain jurisdiction, and concluded that a period of incarceration would act as a deterrent and afford Hennig the opportunity to seek treatment and be rehabilitated in a secure setting, while also providing protection for the community. (12/10/2020 Tr., p.58, L.13 – p.59, L.5; p.61, L.11 – p.62, L.6.) Hennig has failed to show that the district court abused its sentencing discretion.

#### CONCLUSION

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

DATED this 19th day of July, 2021.

/s/ Kacey L. Jones  
KACEY L. JONES  
Deputy Attorney General



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th 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:

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/s/ Kacey L. Jones  
KACEY L. JONES  
Deputy Attorney General

KLJ/dd