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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48528-2020
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-20-32991
)	
MICHAEL RAY DOBSON,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
)	

Has Dobson failed to demonstrate that the district court abused its sentencing discretion when it imposed a unified 10-year sentence with four years fixed upon Dobson’s guilty plea to felony DUI?

ARGUMENT

Dobson Has Failed To Demonstrate That The District Court Abused Its Sentencing Discretion

A. Introduction

In August 2020, in Boise, Dobson sideswiped a parked Amazon delivery vehicle as he was driving down the street, and then started to drive away. (PSI, p.90.¹) The driver of the

¹ Citations to page numbers of the PSI refer to the page numbers of the electronic file containing the PSI and other documents.

delivery vehicle followed Dobson and called the police. (Id.) Apparently because he saw that the delivery driver was following him, Dobson stopped his vehicle. (Id.) There, the delivery driver asked Dobson if he was drunk, to which Dobson responded in the affirmative. (Id.) Dobson then tried to give the delivery driver containers of alcohol that he had in his vehicle, but the delivery driver refused. (Id.) Just before the police arrived, Dobson became angry, prompting the delivery driver to call the police again to express that he was concerned that Dobson would escalate his behavior. (Id.)

Dobson admitted to a responding officer that he had been drinking that day. (Id.) The officer also noted that Dobson had glassy and bloodshot eyes, emitted the odor of alcohol, had impaired speech, and had some instability in his walking. (PSI, pp.90-91.) Dobson refused the standard field sobriety tests and indicated that he would also refuse a breath test. (Id.) Dobson was arrested on suspicion of driving under the influence. (PSI, p.91.) A warrant for a blood draw was obtained, and subsequent testing revealed a .202 BAC. (PSI, pp.91, 94.)

Because Dobson had a prior felony DUI conviction, the state charged him with felony DUI. (R., pp.25-26.) Because Dobson's driver's license was suspended, and because he left the scene after sideswiping the Amazon delivery vehicle, the state also charged him with driving without privileges and failing to provide info at the scene of an accident. (Id.)

Pursuant to a plea agreement with the state, Dobson pled guilty to felony DUI, and the state dismissed the other two charges. (R., pp.27, 30-41.) The state agreed to recommend a unified 10-year sentence with four years fixed, and Dobson was free to argue for a lesser sentence. (R, pp.27, 40-41.) At the sentencing hearing, Dobson recommended that the district court retain jurisdiction or impose an intensive probationary period. (Tr., p.10, L.2 – p.11, L.14.) Noting that this was Dobson's fifth DUI conviction, and expressing concern for the safety of the

community, the district court instead followed the state's sentencing recommendation and imposed a unified 10-year sentence with four years fixed. (R., pp.45-49; Tr., p.12, L.9 – p.16, L.3.) The district court subsequently denied Dobson's I.C.R. 35 motion for reconsideration of sentence. (R., pp.50, 55-57.) Dobson timely appealed from the judgment of conviction. (R., pp.51-53.) On appeal, Dobson challenges the district court's sentencing determination. (Appellant's brief, pp.3-7.)

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)). The abuse of discretion test looks to whether the district 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." Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

C. The District Court Acted Well Within Its Sentencing 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). 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. Id. 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.” State v. Bailey, 161 Idaho 887, 895-96, 392 P.3d 1228, 1236-37 (2017) (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)). It is well established that the primary sentencing consideration is protection of society, and that all other factors must be subservient to that end. State v. Hunnel, 125 Idaho 623, 627, 873 P.2d 877, 881 (1994).

Prior to imposing sentence in this case, the district court referenced the appropriate sentencing factors, and noted that it had reviewed and considered the PSI and Dobson’s sentencing argument and statement. (Tr., p.12, L.18 – p.13, L.4.) After acknowledging that Dobson was not an “irredeemable person,” and discussing the dangerousness of Dobson’s conduct in this case and his extensive criminal record of driving under the influence, the district court imposed a unified 10-year sentence with four years fixed. (Tr., p.13, L.5 – p.16, L.3.) A review of the record supports the court’s sentencing determination.

This was Dobson’s second felony DUI conviction, and fifth DUI conviction overall. (PSI, pp.7-8.) Dobson was still on probation for his prior DUI, and his license was still suspended, at the time he drove drunk again and sideswiped the Amazon delivery vehicle. (PSI, pp.7-8, 30-37.) Drinking alcohol and refusing the field sobriety and breathalyzer tests were all violations of his felony probation. (PSI, pp.30-37.) His prior felony DUI resulted in a 75-day jail sentence with 10 years probation (PSI, p.7) – it was not unreasonable for Dobson’s new

felony DUI sentence to include significantly more incarceration, particularly considering that the prior supervised probation did not prevent Dobson from driving drunk again.

The district court was appropriately concerned with the severe danger to the community created by Dobson's conduct in this case. During the sentencing hearing, the delivery driver stated that if Dobson had sideswiped his vehicle three second later than he did, he would have been smashed against his vehicle while he was getting out of it. (Tr., p.7, Ls.3-10.) The district court properly recognized that these few seconds were the difference between the property damage that occurred and Dobson instead causing severe injury or death. (Tr., p.14, Ls.5-8.) Further, both of Dobson's felony DUI convictions involved an enhanced BAC (.202 and .268, respectively). (PSI, pp.94, 97.) In the prior felony DUI incident, Dobson was so intoxicated that he stumbled and fell onto the officer when he left his vehicle. (PSI, p.97.)

On appeal, Dobson does not take issue with any of the stated analyses as set forth by the district court, but instead simply asserts the existence of certain mitigating factors – including his substance abuse, remorse, amenability to treatment, a history of stable employment, and family support. (Appellant's brief, pp.4-7.) However, nothing in the record indicates that the district court failed to consider any of these things, or chose to disregard the information about these factors presented in the presence investigation report and Dobson's sentencing argument and statement. Instead, the court noted several times that it did not believe that Dobson was a bad person, but that his poor judgment when drinking endangered the community, even while on supervised probation after a previous exercise of poor judgment, and even after periods of time of apparent sobriety. (Tr., p.13, Ls.5-14; p.14, L.18 – p.15, L.12; p.16, L.24 – p.17, L.5.) The court also noted that while it understood that relapsing is a part of addiction, the pressing question is whether an addict can use the tools they have been given to deal with the relapse in a

way that does not endanger the community or themselves, or whether, as in Dobson's case, they fail to do so. (Tr., p.14, Ls.9-17.)

In light of all of the factors discussed above, the district court acted well within its discretion to impose a unified 10-year sentence with four years fixed upon Dobson's conviction for felony DUI, his fifth DUI conviction. Dobson has therefore failed to demonstrate that the district court abused its sentencing discretion. This Court should affirm the judgment of conviction.

CONCLUSION

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

DATED this 25th day of August, 2021.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of August, 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/ Mark W. Olson
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MWO/dd