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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 48640-2021 & 48641-2021
Plaintiff-Respondent,)	
)	Cassia County Case Nos.
v.)	CR16-20-3935 & CR16-20-3977
)	
COLLIN SKIP H. FUKUJI,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Collin Skip H. Fukuji failed to establish that the district court abused its sentencing discretion?

ARGUMENT

Fukuji Has Failed To Establish That The District Court Abused Its Discretion

A. Introduction

Cassia County Sheriff’s Deputies were surveilling Collin Fukuji in August of 2020. (Conf. Ex., p.2.) Over the course of several days they saw Fukuji associating with individuals under

investigation for drug crimes, and, and one point, in a car parked by a house under “active federal investigation” for drug trafficking. (Id.)

On August 13, 2020, an officer saw Fukuji, who himself “had been charged recently in Nevada” for trafficking, leave the home of an individual with an active drug delivery case. (Conf. Ex., p.3.) The officer observed Fukuji fail to signal on two occasions. After the officer attempted to initiate a traffic stop, Fukuji “failed to pull over and a pursuit started.” (Id.) As the 17-minute chase went on, Fukuji threw what appeared to be clear baggies out of the driver’s side window, ran “numerous stop lights and stop signs,” and hit another vehicle after attempting to pass it. (Id.) Fukuji did not stop after hitting the vehicle; instead “he powered through the accident and kept going.” (Id.)

Fukuji drove to the Kodiak America manufacturing building, where he was formerly employed, and ran inside. (Conf. Ex., pp.3, 10.) As Fukuji ran through the building he threw “a black case across the floor to another employee,” who hid the case on a shelf. (Conf. Ex., p.4.) After officers arrested Fukuji they recovered the black case and searched it, and found “two glass pipes with white residue and a clear baggie containing a white crystal-like substance weighing 1.7 gram,” which tested presumptive positive for methamphetamine. (Id.) Officers also searched Fukuji’s vehicle and recovered a loaded AR-15, a Sig Sauer 1911 handgun, multiple loaded magazines, a digital scale with residue, multiple plastic baggies, and “[s]everal other weapons including a baton, brass knuckles, a large bowie knife, a [balaclava], and tactical gloves.” (Id.)

The state charged Fukuji with one count of felony leaving the scene of an injury accident in case no. CR16-20-3977. (48641 R., pp.25-27.) In case no. CR16-20-3935, now consolidated on appeal (*see* 48640 R., p.106; 48641 R., p.92), the state charged Fukuji with felony fleeing or attempting to elude an officer, possession of methamphetamine, felony concealment or destruction

of evidence, possession of paraphernalia, and misdemeanor resisting and obstructing an officer. (48640 R., pp.23-26.) Pursuant to a plea agreement with the state, Fukuji pleaded guilty to felony eluding in case no. CR16-20-3935, and every other charge in that case was dropped. (48640 R., pp.40-56.) Fukuji also pleaded guilty to felony leaving the scene of an accident. (48641 R., pp.34-50.) The district court sentenced Fukuji to five years, with one year fixed, in the eluding case, and a consecutive five years, with one year fixed, in the leaving the scene case. (48640 R., pp.64-67; 48641 R., pp.54-59.) The court retained jurisdiction in both cases. (48640 R., p.67; 48641 R., p.57.) Fukuji timely appealed. (48640 R., pp.85-87, 101-05; 48641 R., pp.70-72, 87-90.)

Fukuji argues on appeal that the district court abused its discretion by imposing an excessive sentence. (Appellant's brief, pp.6-9.) Review of the record and application of the relevant legal standards shows no abuse of discretion.

B. Legal Standard

Where “a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion by the court imposing the sentence.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015) (internal quotation marks omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. 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. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). “In deference to the trial judge, this 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 State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)). “Furthermore, ‘[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.’” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

C. Fukuji Has Shown No Abuse Of The District Court’s Discretion

Fukuji argues the lower court “did not act consistently with the applicable legal standards” when it sentenced him because it “did not adequately consider mitigating factors.” (Appellant’s brief, p.7.) Specifically, Fukuji claims the court “did not give adequate consideration” to his prior criminal history, his “remorse and acceptance of responsibility,” and his “support from his friends and family.” (Appellant’s brief, pp.7-8.)

These arguments fail. The district court understood the “goals of sentencing” and the criteria for placing defendants on probation, and it reviewed the PSI and the “attached letters from [Fukuji’s] parents, former employer,” and ex-wife. (1/11/21 Tr., p.22, L.3 – p.23, L.4.) And the court considered all of the mitigating evidence on offer, including Fukuji’s prior history, his “meaningful” remorseful comments made at sentencing, and his family and community support. (1/11/21 Tr., p.22, L.8 – p.28, L.15.) Indeed, the court noted that it was “incredible how well respected” Fukuji was. (1/11/21 Tr., p.24, Ls.19-20.)

Nevertheless, the court also understood that Fukuji committed serious crimes. Fukuji was fleeing from police, running red lights and stop signs, when he caused a car accident (from which he also fled). (Conf. Ex., p.3.) One of the passengers in the car Fukuji hit was a “young man being dropped off at football practice,” who ended up in the hospital. (1/11/21 Tr., p.24, Ls.7-9; Conf. Ex., p.5.) Fukuji had methamphetamine, loaded firearms, tactical gloves, a balaclava, drug paraphernalia, and a cache of other weapons in his car at the time of his arrest. (Id.)

And while true that Fukuji's former employer spoke highly of him, that support letter also demonstrated a concerning downward spiral that preceded the arrest. Kodiak America's general manager reported that Fukuji "became associated with a local motorcycle gang" after his divorce. (Conf. Ex., p.20.) "[H]e started using drugs," started missing work, "became more angry and belligerent with his crew members," and "seemed to be coming apart at the seams." (Id.) Fukuji was given "chance after chance to recover and shape up" to no avail; "it became obvious that his drug dependency was destroying his [judgment], his commitment, his behavior and his character." (Id.) "Some concluding incidences of anger and violence toward another Kodiak employee" were the last straws that led to Fukuji's termination. (Id.)

The same worsening trend can be seen in Fukuji's criminal history. Fukuji went from having only one decade-old misdemeanor on his record, to accruing the two felonies in the instant case, as well being charged with felony drug trafficking in Nevada. (Conf. Ex., pp.12-13.) The PSI also notes there "was a threat report from July 16, 2020, where [Fukuji] was the suspect in a possible threat," and had commented that "he had purchased an AR-15 rifle." (Conf. Ex., p.3.) And in this case, Fukuji violated his conditions of release by having prohibited contact with his ex-wife. (Conf. Ex., p.13.) That is particularly troubling because, on August 5, 2020, Fukuji and his ex-wife "had been in a domestic" situation, "where he used or had a firearm resulting in a protection order being issued out of Cassia County." (Conf. Ex., p.3.) According to his ex-wife's request for that order, Fukuji had "threatened to kill her and himself." (Conf. Ex., p.8.)

Thus, the district court well considered the mitigating factors before it, but properly weighed those against the aggravating factors. (1/11/21 Tr., p.22, L.3 – p.25, L.12.) The court also correctly perceived that protection of society was the "number one," "paramount concern," and in light of all the facts, concluded that a lesser sentence "would depreciate the seriousness of

the offense.” (1/11/21 Tr., p.22, L.5 – p.25, L.12.) And Idaho’s appellate courts do “not presume the district court did not consider the information before it, as the district court said it did,” nor will they “reweigh the evidence on appeal from a discretionary sentencing decision.” State v. Deboer, 168 Idaho 520, 484 P.3d 204, 208 (Ct. App. 2021) (citing State v. Windom, 150 Idaho 873, 879, 253 P.3d 310, 316 (2011)). This Court should not do so here.

Finally, the presentence investigator recommended, “based on the level of assessed need and risk, and other protective factors,” that Fukuji “be sentenced to a period of retained jurisdiction.” (Conf. Ex., p.14.) Given that recommendation, and the record that well supported it, the district court reasonably concluded that a retained jurisdiction—which offered classes, skills for Fukuji to learn, and “a forced period of sobriety”—was appropriate. (1/11/21 Tr., p.27, L.21 – p.28, L.2.) In light of the facts of this case and the information in the record Fukuji fails to show the district court abused its sentencing discretion.

CONCLUSION

The state respectfully requests this Court affirm Fukuji’s judgment of conviction and sentence.

DATED this 15th day of September, 2021.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of September, 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/ Kale D. Gans
KALE D. GANS
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KDG/dd