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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48673-2021
Plaintiff-Respondent,)	
)	Ada County Case No. CR01-20-31952
v.)	
)	
RICK JOSEPH ANDERSON,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Rick Joseph Anderson failed to show that the district court abused its sentencing discretion when it imposed a sentence of five years with two and one-half years determinate upon his conviction for aggravated assault?

ARGUMENT

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

A. Introduction

After ending her relationship with Anderson, his girlfriend L.Y. obtained a no-contact order. (PSI, pp. 8-9, 143, 145-46.) Anderson “showed up” at the business where L.Y. was, stole her phone, “punched” her, and “slammed her hand and forearm” in a car door. (PSI, pp. 12, 143.)

The state charged Anderson with aggravated assault, violation of a no-contact order, and malicious injury to property. (R., pp. 51-52.) As part of a settlement covering two cases, Anderson pled guilty to aggravated assault and violation of a no-contact order. (R., pp. 60-61, 72-74; Tr., p. 14, L. 23 – p. 18, L. 13.) The district court imposed concurrent sentences of five years with two and one-half years determinate on the aggravated assault conviction and 168 days for violation of the no-contact order. (R., pp. 81-83; Tr., p. 56, L. 22 – p. 57, L. 20.) Anderson filed a timely notice of appeal. (R., pp. 90-91.)

On appeal Anderson argues that the district court abused its sentencing discretion by imposing an excess sentence, contending “the district court should have sentenced him to probation in light of the mitigating factors, including his community support, mental condition, substance abuse issues, and expressions of remorse for his actions.” (Appellant’s brief, p. 4.) The record shows that the district court did not abuse its sentencing discretion.

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)). It is presumed that the fixed portion of the sentence will be the defendant’s probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). 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 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, 270, 429 P.3d 149, 158 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Anderson 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, because the decision to release the defendant on parole is exclusively the province of the executive branch, 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). 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. 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.’” Bailey, 161 Idaho at 895-96, 392 P.3d at 1236-37 (quoting State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015)).

The district court applied the correct legal standards to the sentencing decision before it. (Tr., p. 54, Ls. 9-19.) The district court found that rehabilitating Anderson “has been tried repeatedly in the past.” (Tr., p. 54, Ls. 20-24.) Anderson has “an extraordinarily long history of criminal behavior” that was “largely a product of antisocial and criminal thinking.” (Tr., p. 54, L. 24 – p. 55, L. 2.) Anderson’s history revealed not only crimes related to drug possession or use,

but of profiting from drug transactions. (Tr., p. 55, Ls. 3-6.) He also had “a history of ignoring court orders.” (Tr., p. 55, Ls. 7-14.) The “threat of incarceration” had not proved a deterrent, and incarceration was required to protect society. (Tr., p. 56, L. 13 – p. 57, L. 2.) The district court thus reasoned that execution of the aggravated assault sentence, instead of probation, was reasonable because of Anderson’s history of failed rehabilitation and disobedience to orders and laws.

The district court’s analysis is well supported by the record. Anderson has a lengthy criminal record spanning decades. (PSI, pp. 14, 153, 155-59.) The current crime is Anderson’s “fifth known” felony conviction and he had pending charges in two other cases, one a felony. (PSI, p. 14.) He was on probation several times and frequently violated the terms thereof. (PSI, pp. 155-59.) The victim reported additional batteries Anderson committed upon her after she obtained the no-contact order. (PSI, pp. 143 (Anderson “choked [her] unconscious” a week before current crimes), 147 (Anderson “attacked her and her passenger with a metal object and struck them both” in Boise County).) Anderson’s lengthy criminal history, including several probation violations and his repeated crimes against the victim and complete disregard of the no-contact order, supports the district court’s determination that protection of society weighed in favor of executing rather than suspending the aggravated assault sentence.

Anderson argues the district court’s decision to not grant probation was unreasonable in light of his community support, mental condition, substance abuse, and expressions of remorse. (Appellant’s brief, pp. 4-11.) His arguments fails to withstand scrutiny.

Anderson points out that he received letters of support. (Appellant’s brief, pp. 4-5 (citing PSI, pp. 57-68, 173-76).) The characterizations of Anderson in these letters are in remarkable

contrast to his record and the facts of this case. The district court did not abuse its discretion in weighing the letters of support against evidence that Anderson was a threat to community safety.

Anderson next points to evidence of his mental condition as mitigating, discussing extensively evidence of a car accident and resulting concussion. (Appellant's brief, pp. 5-9.) He acknowledges that the district court rejected this argument when made below and found that Anderson's "'criminal thinking'" predated his accident. (Appellant's brief, p. 9 (quoting Tr., p. 56, Ls. 13-16).) Anderson has not claimed that the district court's factual findings are clear error. (Appellant's brief, pp. 5-9.) The district court's determination that Anderson's history disproved his claims that the accident changed his thinking or behaviors (Tr., p. 55, L. 15 – p. 56, L. 21) must be accepted on appeal.

Anderson next cites to evidence of his substance abuse and claims it is mitigating. (Appellant's brief, pp. 10-11.) The district court did consider this evidence, but concluded it was undercut by evidence that Anderson's criminal history included crimes not directly explained by addiction. (Tr., p. 55, Ls. 3-6.) There is no evidence that drugs played any role in his current crimes, one of which is a crime of violence. Ultimately the court found that Anderson's criminal conduct was "largely the product of antisocial and criminal thinking," not drug addiction. (Tr., p. 54, L. 20 – p. 55, L. 2.) Again, this finding is not challenged on appeal.

Finally Anderson points out that he expressed remorse. (Appellant's brief, p. 11.) Remorse is easy to claim. Anderson did not feel enough remorse after his first act of violence, in violation of the no-contact order, to avoid repeating that violence, however. (PSI, pp. 143, 145-47.)

The district court's determination that societal protection weighed in favor of executing the sentence of five years with two and one-half years determinate for aggravated assault was

reasonable and is supported by the record, which shows a lengthy criminal history, anti-social and criminal thinking, a generalized failure to follow orders, and failed past rehabilitative efforts.

CONCLUSION

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

DATED this 12th day of July, 2021.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th 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/ Kenneth K. Jorgensen
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