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### State v. Phillips Respondent's Brief Dckt. 48679

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48679-2021
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-20-29388
	)	
TIMMY PRESTON PHILLIPS,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Phillips failed to show that the district court abused its discretion when it sentenced him to seven years with one year fixed for possession of a controlled substance?

ARGUMENT

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

A. Introduction

Law enforcement conducted a traffic stop of a vehicle for making an illegal u-turn. (R., p.12.) Phillips was the driver and sole occupant of the vehicle. (R., p.12.) A drug dog alerted to the vehicle. (R., p.12.) Inside, officers located drug paraphernalia, including small plastic baggies

and a digital scale. (R., p.12.) Phillips consented to a search of his person; officers found a glass pipe with burnt residue and a small plastic baggie containing methamphetamine. (R., pp.12, 50.)

The state charged Phillips with possession of a controlled substance and possession of paraphernalia. (R., pp.50-51.) Pursuant to a plea agreement, Phillips pleaded guilty to possession of a controlled substance in this case; in exchange, the state dismissed the paraphernalia charge in this case and the entirety of another pending case against Phillips, and agreed not to seek a persistent violator enhancement.<sup>1</sup> (R., pp.65-67; Tr., p.14, L.9 – p.15, L.18.) The district court sentenced Phillips to seven years with one year fixed. (R., pp.73-75; Tr., p.33, L.25 – p.34, L.3.) Phillips filed a timely notice of appeal. (R., pp.83-84.)

#### 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.

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<sup>1</sup> The state agreed to dismiss case number CR01-20-35978, in which Phillips was charged with possession of heroin, possession of methamphetamine, possession of paraphernalia, and providing false information to law enforcement. (R., pp.65-66.)

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. Phillips 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 Phillips’ pattern of criminal behavior. Phillips has nine prior felony convictions for crimes including trafficking in a controlled substance, possession of a controlled substance with the intent to deliver, possession of a controlled substance, theft by deception, grand theft, and burglary. (PSI, pp.8-11.) In addition, he has seventeen prior misdemeanor convictions, many of which were drug related, including possession of a controlled

substance and possession of drug paraphernalia. (PSI, pp.9-11.) Phillips had been in and out of custody in the years preceding his conviction in this case. Phillips was incarcerated from 2009 until his release in December of 2016. (PSI, p.12.) In August of 2017, he was incarcerated again and remained in custody until October of 2018. (PSI, p.12.) Two months later, Phillips violated the terms of his parole and he returned to custody from April of 2019 to May of 2020. (PSI, p.12.) In July of 2020, Phillips was arrested for possession of methamphetamine in this case; in September, Phillips was arrested for possession of heroin, methamphetamine, and drug paraphernalia in the case that was dismissed pursuant to the plea agreement. (PSI, pp.12, 55.) He was on parole at the time. (PSI, p.3.) During the pendency of this case, Phillips violated his pre-trial release conditions by, among other things, failing to report for urinalysis testing multiple times and testing positive for amphetamine and methamphetamine. (R., pp.28-30.) Unsurprisingly, Phillips scored as a high risk to reoffend. (PSI, p.2.) The PSI noted that “Phillips has an extensive criminal record and has proven to be unsuccessful when supervised in the community” and therefore he did “not appear to be a candidate for community supervision.” (PSI, p.14.)

The district court properly considered the objectives of criminal sentencing. The district court noted that Phillips failed to comply with the terms of his parole and pretrial release and failed to take advantage of available treatment opportunities. (Tr., p.32, Ls.7-23.) The district court concluded that Phillips posed a risk to the community, given that he “tend[s] to manifest [drug] addiction in ways that harm others,” such as committing property theft crimes to support his drug habit. (Tr., p.33, Ls.1-6.) It also noted that Phillips had been undeterred from continued criminal behavior despite past criminal sentences and rehabilitative opportunities. (Tr., p.33, Ls.7-11.) The district court emphasized that the sentence imposed was necessary to protect the community, and

not merely to punish Phillips. (Tr., p.33, Ls.12-14.) The district court did not abuse its discretion when it imposed a sentence of seven years with one year fixed.

Phillips argues that the sentence is excessive “in light of the mitigating factors, including his substance abuse issues and acceptance of responsibility.” (Appellant’s brief, pp.4-7.) These mitigating factors do not warrant a lesser sentence. Phillips’ substance abuse was documented in the PSI, as was the fact that he had completed numerous substance abuse treatment programs in the past but continued to use drugs. (PSI, pp.5, 7-8, 15.) The district court noted that Phillips would have access to treatment while in custody. (Tr., p.33, Ls.14-16.) Moreover, the PSI noted that Phillips “[e]xpressed remorse for his action,” but “justifies his actions and takes minimal responsibility.” (PSI, p.4.) The district court considered these mitigating factors and reasonably concluded that a period of incarceration was appropriate. Phillips has failed to show any abuse of the district court’s sentencing discretion.

#### CONCLUSION

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

DATED this 31st day of August, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st 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/ Kacey L. Jones  
KACEY L. JONES  
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KLJ/dd