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LAWRENCE G. WASDEN
Attorney General
State of Idaho

MARK A. KUBINSKI
Deputy Attorney General
Chief, Criminal Law Division

JUSTIN R. PORTER
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48695-2021
Plaintiff-Respondent,)	
)	Minidoka County Case No.
v.)	CR34-18-4108
)	
JUSTIN EARL CLAYBORN,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Justin Earl Clayborn failed to show that the district court abused its sentencing discretion when it imposed a unified sentence of ten years, with five years fixed, upon his conviction for felony eluding?

ARGUMENT

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

A. Introduction

The state charged Clayborn with felony eluding a peace officer, aggravated battery on a law enforcement officer (by striking a police car with his pickup truck), misdemeanor driving

under the influence, and a persistent violator enhancement. (47554 R., pp.65-70.¹) Pursuant to a plea agreement, Clayborn pled guilty to felony eluding and admitted to being a persistent violator. (47754 R., pp.91-92.) The remaining charges were dismissed. (47554 R., p.121.) The district court imposed a unified sentence of ten years, with five years fixed. (47554 R., pp.120-24.) The district court also entered several restitution orders. (47554 R., pp.148-62.) Clayborn unsuccessfully appealed the restitution orders. State v. Clayborn, Docket No. 47554 (Ct. App. Nov. 12, 2020) (unpublished).

Thereafter, Clayborn initiated post-conviction proceedings. (See 1/19/21 Tr., p.6, Ls.6-10.) Clayborn's post-conviction counsel discovered an Idaho State Police crash report that the state had inadvertently failed to disclose in the underlying criminal case. (2/23/21 Tr., p.17, Ls.8-18.) The crash report related to the dismissed aggravated battery charge and corroborated the opinion of the defense's expert witness who concluded that Clayborn did not strike a police car with his pickup but that the police car struck Clayborn's vehicle. (2/23/21 Tr., p.17, L.19 – p.18, L.22.) Based on the discovery of the previously undisclosed crash report, the district court vacated Clayborn's sentence and granted his post-conviction request for resentencing. (48695 R., p.11.)

During resentencing, Clayborn argued that he was entitled to a more lenient sentence in light of the information in the ISP crash report and based on his good behavior while in custody. (2/23/21 Tr., p.29, L.18 – p.34, L.6.) The state argued that the information in the crash report did not justify a different sentence because it related to a charge that Clayborn did not plead guilty to and that the state had dismissed before the initial sentencing hearing. (2/23/21 Tr., p.19, L.4 – p.26, L.17.) Thus, the state contended that the previously imposed ten-year sentence was

¹ The clerk's record and transcripts filed in Docket No. 47554-2019 (Clayborn's prior appeal) were augmented into the record in this case.

appropriate based on Clayborn's underlying conduct and his criminal history. (Id.) The district court re-imposed a unified sentence of ten years, with five years fixed. (48695 R., pp.38-41; 2/23/21 Tr., p.38, Ls.13-16.) Clayborn timely appealed. (48695 R., pp.42-44.)

On appeal, Clayborn asserts that the district court imposed an excessive sentence in light of certain mitigating information such as "his acceptance of responsibility, family support, good behavior while in custody, and a corrected understanding of the underlying facts of his criminal conduct." (Appellant's brief, p.5.) Clayborn's arguments lack merit. The district court imposed a reasonable sentence after weighing the aggravating and mitigating information and properly considering the relevant goals of sentencing.

B. Standard Of Review

"When evaluating whether a sentence is excessive, [the] Court considers the entire length of the sentence under an abuse of discretion standard." State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of its discretion; (3) acted consistently with any legal standards applicable to the specific choices available to it; and (4) reached its decision by an exercise of reason. State v. Smith, 168 Idaho 463, ___, 483 P.3d 1006, 1019 (2021).

C. The District Court Did Not Abuse Its Sentencing Discretion

"When a trial court exercises its discretion in sentencing, 'the most fundamental requirement is reasonableness.'" McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting State v. Hooper, 119 Idaho 606, 608, 809 P.2d 467, 469 (1991)). "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. See id. at 9, 368 P.3d at 629 (holding the district court imposed a reasonable sentence where it considered and weighed the objectives of criminal punishment and both mitigating and aggravating factors); State v. Moore, 131 Idaho 814, 824-25, 965 P.2d 174, 184-85 (1998) (holding the district court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation).

Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). Where a sentence fits within statutory limits, the appellant bears the burden of demonstrating that the sentence imposed is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628. To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id.; State v. Toohill, 103 Idaho 565, 568, 50 P.2d 707, 711 (Ct. App. 1982). 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. State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007). However, “[i]n deference to the trial judge, [the] 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)).

Clayborn concedes that his sentence “does not exceed the statutory maximum.” (Appellant’s brief, p.4.) Felony eluding is punishable by a term of imprisonment not to exceed

five years. Idaho Code §§ 49-1404(2), 18-112. However, because Clayborn admitted that he was a persistent violator of the law, he was subject to a five-year mandatory minimum sentence and a maximum sentence of life imprisonment. I.C. § 19-2514. The district court imposed a unified sentence of ten years, with five years fixed, which falls well within the statutory limits. (48695 R., pp.42-44.) Because the sentence imposed fits within the statutory limits, Clayborn “must show that [his] sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002). He cannot do so.

The district court imposed a reasonable sentence. During both sentencing hearings, the district court considered the necessary sentencing factors as well as the factors set forth in I.C. § 19-2521. (7/15/19 Tr., p.24, L.13 – p.25, L.4; 2/23/21 Tr., p.37, Ls.6-16.²) The district court considered Clayborn’s criminal history, which began when he was a juvenile and included convictions for possession of controlled substances, grand theft, burglary, arson, and eluding. (7/15/19 Tr., p.26, L.2 – p.27, L.15; 2/23/21 Tr., p.20, L.1 – p.22, L.3.) The court found that Clayborn’s criminal conduct “consistently causes or threatens harm to others.” (7/15/19 Tr., p.26, Ls.1-2.) The court also correctly found that Clayborn was a “multiple offender” based on his “extensive” criminal record. (7/15/19 Tr., p.25, L.5; p.26, Ls.21-22.) The court concluded that probation or a period of retained jurisdiction was “out of the question” because Clayborn continued to reoffend despite prior prison sentences and several previous “chances” to complete riders, “therapeutic community,” drug court, probation, and parole. (7/15/19 Tr., p.26, L.21 – p.27, L.16; 2/23/21 Tr., p.20, L.1 – p.22, L.3.)

² During the resentencing hearing, the district court based its decision in part on the comments and findings it made during the initial sentencing hearing. (2/23/21 Tr., p.34, Ls.16-19.)

Additionally, the district court considered the underlying criminal conduct. (7/15/19 Tr., p.25, Ls.6-14.) According to the prosecutor, officers attempted to pull Clayborn over on I-84, but he fled at over 100 miles per hour while passing other cars on the interstate. (2/23/21 Tr., p.22, Ls.19-23); see also State v. Clayborn, Docket No. 47554 (Ct. App. Nov. 12, 2020) (unpublished). He crossed into the median, lost control of his vehicle before somehow recovering, and then drove into oncoming traffic. (2/23/21 Tr., p.22, L.19 – p.23, L.2.) After exiting the interstate, he drove over 100 miles per hour in a 55-miles-per-hour zone, drove in the barrow pit, and again drove in the median. (2/23/21 Tr., p.23, Ls.3-15.) Officers pursued Clayborn for over 50 miles and were only able to stop him after they performed four separate pit maneuvers on his car. (2/23/21 Tr., p.23, L.16 – p.24, L.25.) During the chase, Clayborn injured police officers and damaged three police vehicles and a building. (7/15/19 Tr., p.25, Ls.15-20.) The court justifiably found Clayborn’s conduct to be “extremely dangerous” and that he was “very fortunate that other innocent people were not injured.” (7/15/19 Tr., p.25, Ls.21-25.)

The district court also considered the mitigating information presented by Clayborn such as his expression of remorse and his familial support. (7/15/19 Tr., p.28, L.22 – p.29, L.4; p.29, Ls.24-25.) Weighing this mitigating information against such aggravating factors as the nature of the offense and Clayborn’s criminal history, the court determined that all of the sentencing factors pointed towards incarceration and supported the state’s “measured and considered” recommendation of ten years, with five years fixed. (7/15/19 Tr., p.28, L.9-21; p.30, Ls.3-15.) The district court rationally determined that a lesser sentence would depreciate the seriousness of the offense given Clayborn’s criminal record. (7/15/19 Tr., p.27, L.16 – p.28, L.8.) The court expressly stated that it was imposing the unified sentence of ten years, with five years fixed, to protect society and to punish Clayborn. (7/15/19 Tr., p.29, L.25 – p.30, L.15.) The court also

indicated that the sentence imposed was intended to deter Clayborn from future criminal conduct, which could result in a life sentence given his criminal history. (7/15/19 Tr., p.29, Ls.5-23.) Because the court imposed Clayborn's sentence in order to achieve the goals of sentencing in light of both aggravating and mitigating factors, the sentence imposed was reasonable. The district court did not abuse its sentencing discretion.

Clayborn contends his sentence is excessive in light of mitigating factors including his expression of remorse and acceptance of responsibility; the support he has from his wife; his good conduct while in custody; and the mitigating information contained in the ISP crash report. (Appellant's brief, pp.4-7.) According to Clayborn, proper consideration of these mitigating factors warranted a more lenient sentence. (Appellant's brief, p.7.) Clayborn's argument is unavailing for several reasons.

First, as shown above, the district court properly considered Clayborn's acceptance of responsibility, expression of remorse, and his family support. (7/15/19 Tr., p.23, L.25 – p.24, L.12; p.28, L.24 – p.29, L.4.) Even considering this mitigating information, the court sensibly determined that the sentence imposed was necessary to protect society due to the aggravating factors present in this case. (7/15/19 Tr., p.24, Ls.13-23; p.29, L.25 – p.30, L.15.) In other words, the court determined that the mitigating information was outweighed by the aggravating nature of Clayborn's extensive criminal history and the nature of his underlying criminal conduct. Clayborn has failed to show that the district court abused its sentencing discretion simply because it gave less weight to this mitigating information than he desired. See State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010) (finding no abuse of discretion upon a weighing of mitigating and aggravating factors in sentencing); State v. Stover, 140 Idaho 927, 932, 104 P.3d 969, 974 (2005) (emphasizing the discretionary nature of weighing mitigating and aggravating factors).

Second, Clayborn's behavior in custody does not justify a more lenient sentence. During resentencing, Clayborn presented the testimony of his case manager who testified that he had not received any disciplinary offense reports or infractions while incarcerated, and that he had a job and volunteered at the facility. (2/23/21 Tr., p.13, L.15 – p.14, L.20.) The district court acknowledged that Clayborn's conduct in prison had been "excellent." (2/23/21 Tr., p.36, Ls.18-25.) However, the court correctly concluded that it is not required to reduce his sentence based upon good behavior in prison. (2/23/21 Tr., p.37, Ls.1-5) After all, good behavior in prison is the expectation. See Cobler, 148 Idaho at 773, 229 P.3d at 378 ("[T]he district court did not abuse its discretion in giving little or no weight to Cobler's good behavior while in prison."); State v. Copenhaver, 129 Idaho 494, 496, 927 P.2d 884, 886 (1996) ("The district court further did not abuse its discretion in refusing to view Copenhaver's good behavior in prison between his sentencing and the Rule 35 hearing as a mitigating factor."). Clayborn's potential reward for good behavior in prison is parole, not a more lenient sentence.

Third and finally, the information contained in the ISP crash report did not justify a more lenient sentence. Prior to resentencing, Mr. Clayborn submitted three exhibits relating to the collision between Clayborn's pickup and the law enforcement vehicle. (48695 R., pp.13-35.) Clayborn included an affidavit from an accident reconstructionist who opined that an officer intentionally ran into Clayborn's vehicle, not the other way around. (48695 R., pp.15-21.) Clayborn also submitted the expert's curriculum vitae. (48695 R., pp.22-28.) Clayborn also submitted the ISP crash report, which indicated that the officer drove into Clayborn. (48695 R., pp.29-35.) Even after considering this new information, the court concluded that Clayborn's criminal record and the underlying conduct supported the original sentence and could have justified a much higher sentence. (2/23/21 Tr., p.38, Ls.6-12.)

Because the district court properly considered and applied the goals of sentencing and weighed the aggravating circumstances against any mitigating information in fashioning Clayborn's sentence, the sentence imposed was reasonable. Smith has failed to show that the district court abused its sentencing discretion.

CONCLUSION

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

DATED this 27th day of September, 2021.

/s/ Justin R. Porter
JUSTIN R. PORTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th 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:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Justin R. Porter
JUSTIN R. PORTER
Deputy Attorney General

JRP/dd