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### State v. Conser Respondent's Brief Dckt. 47736

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47736-2020
Plaintiff-Respondent,	)	
	)	
v.	)	Madison County Case No.
	)	CR-2018-1367
	)	
JESSICA ARLEEN CONSER,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Jessica Arleen Conser failed to show that the district court abused its discretion by imposing a determinate term of eighteen years as part of a unified sentence of life?

ARGUMENT

Conser Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

On June 2, 2018, Jessica Arleen Conser contacted Idaho Child Protective Services and reported that she believed she was drugged and sexually and physically abused by her father, Mathew Travao, and that her two children were living with Mathew. (PSI, p. 3.) Conser stated

that she worried for her children's safety, and that she was homeless and had contacted her children telepathically. (PSI, p. 3.) Conser reported that she took medication to enhance the power, and that she had learned telepathically that her father accessed her bank accounts. (PSI, p. 3.) A few days later, Conser contacted the Butte Police Department in Montana, requesting a welfare check at Mathew's residence in Madison County, Idaho. (PSI, p. 3.)

On June 5, 2018, Conser drove from Montana to Mathew's residence, and shot Mathew in his eye. (PSI, p. 3.) Mathew's wife, Barbara, reported that Conser and Mathew were in the living room of the home while she was in another room with the two grandchildren. (PSI, p. 3.) Barbara heard yelling and gun fire and saw Conser running out of the house and fleeing the scene in a 2005 Chevrolet pickup. (PSI, p. 3.) Authorities found Mathew slumped on the couch, with a wound to his eye and facial area. (PSI, p. 3.) An ambulance transported Mathew to a medical center, where he died that evening from the gunshot wound. (PSI, p. 3.) Authorities pulled Conser over in Clark County, and located a 9mm Glock 26 under the driver's seat of Conser's vehicle. (PSI, p. 3.)

Conser told authorities that she came to Idaho with the intent to kill her father, because she believed that Mathew had killed her children. (PSI, pp. 3-4.) Conser admitted to loading a 9mm round in to the chamber of the pistol, entering the residence, and shooting Mathew in the face as he sat on the couch. (PSI, p. 4.)

The state filed a criminal complaint on June 6, 2018, charging Conser with one count of murder in the first degree, with a weapons enhancement. (R., pp. 15-17.) On June 29, 2018, the magistrate judge issued an order for commitment under Idaho Code § 18-212, stating that Conser lacked the capacity to understand the proceedings against her and also lacked the capacity to assist in her own defense, and the magistrate judge suspended the criminal proceedings. (R., pp. 39-40.) The magistrate judge ordered that Conser be admitted to a facility of the Department of Health and

Welfare's choosing, and an evaluation of Conser's mental condition to determine when, or if she would be fit to proceed with the criminal case. (R., pp. 39-40.) On September 10, 2018, the magistrate judge issued an order to transport Conser for further proceedings following State Hospital South's Chief of Psychology Richard Baker's finding that Conser was fit to proceed. (R., pp. 50-51.)

The state filed an information, charging Conser with one count of murder in the first degree, with a weapons enhancement as part two of the information. (R., pp. 68-70.) Conser pleaded guilty to the amended charge of murder in the second degree, and agreed that the district court would give her an indeterminate life sentence, but the district court would decide the determinate portion of the sentence. (R., pp. 137-140.) The district court sentenced Conser to life, with eighteen years determinate. (R., pp. 156-158.) Conser then filed a Rule 35 motion and a timely appeal. (R., pp. 167-171.)

On appeal, Conser argues that "the district court abused its discretion when it imposed the fixed term of eighteen years as part of her unified life sentence." (Appellant's brief, p. 8.) Conser has failed to show that the district court abused its discretion by imposing a determinate eighteen-year period of incarceration for murder in the second degree.

#### B. Standard Of Review

"Appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion." State v. Schiermeier, 165 Idaho 447, 451, 447 P.3d 895, 899 (2019) (internal quotations and citations omitted). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution

applicable to a given case. Id. at 454, 447 P.3d at 902. “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion.” Id. (internal quotations omitted). “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 (2019) (citation omitted).

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

The sentence imposed is within the statutory limits of I.C. § 18-4004. The record shows the district court perceived its discretion, employed the correct legal standards to the issue before it, and acted reasonably and within the scope of its discretion.

At the sentencing hearing, the district court considered Conser’s “prior criminal record,” and noted “that [she has] no prior criminal record at all.” (12/16/2019 Tr., p. 92, Ls. 21-23.) The district court considered the recommendations contained in the PSI, and stated the “PSI recommends incarceration with continued treatment and medication to address [Conser’s] mental health diagnosis,” as well as “the mental health evaluation information that was submitted in the PSI.” (12/16/2019 Tr., p. 92, L. 24 – p. 93, L. 4.) The district court noted the report from Dr. Linda Hatzenbuehler, stating “she concluded a number of things, including that, one, at the time of the murder . . . Ms. Conser was experiencing a severe mental illness evidenced by psychotic

symptoms.” (12/16/2019 Tr., p. 93, Ls. 9-12.) The district court stated “there was no evidence to indicate that [Conser] felt any animosity toward [her] father prior to experiencing those psychotic symptoms, that [she has] been diagnosed with schizophrenia, paranoid type.” (12/16/2019 Tr., p. 93, Ls. 13-16.) The district court also noted that Dr. Jessica Waldron found Conser “meets the DSM-5 diagnostic criteria for schizophrenia,” and that Conser “presents a low risk of future violent behavior if she continues her treatment and medications.” (12/16/2019 Tr., p. 94, Ls. 10-14.)

The district court stated it “must consider the most important sentencing objectives to be the protection of society, deterrence of the individual and the public generally, the possibility of rehabilitation, and punishment or retribution for wrongdoing.” (12/16/2019 Tr., p. 94, Ls. 19-24.) The district court stated there “are multiple mitigating factors in [Conser’s] case,” including that she has “no prior criminal record. In addition, those three evaluations . . . all conclude that [Conser] would be a low risk with a proper ongoing treatment of medication compliance to address [her] schizophrenia diagnosis.” (12/16/2019 Tr., p. 95, Ls. 18-23.) The district also considered that Conser “is [REDACTED] without a prior criminal history. She has an LSI score of 24, which is a moderate risk category, according to that assessment,” and that “she appeared to have been a loving mother of two minor children and was a responsible person who had maintained employment and was seeking to further her education when she – by returning to college while she was in Montana.” (12/16/2019 Tr., p. 96, Ls. 20-23, p. 97, Ls. 5-9.)

The district court stated Conser “committed a murder, and the Court has a picture of the victim in this case, Mr. Travao. He was [her] father. And, perhaps, [Conser’s] brother said it best when he said that she took a father, a grandfather, husband, godfather, cousin, and friend . . .” (12/16/2019 Tr., p. 97, Ls. 18-23.) The district court stated “[t]hose actions have forever affected an entire family, and he can never be brought back.” (12/16/2019 Tr., p. 97, Ls. 23-25.) The

district court stated this “is a particularly and uniquely difficult case for this Court to consider because, really, it’s just a tragedy that something didn’t intervene to stop this from happening. But it didn’t, and Mr. Travao was murdered.” (12/16/2019 Tr., p. 98, Ls. 20-24.)

Conser argues that the mitigating factors—remorse and acceptance of responsibility, that the instant offense is her first felony conviction, and her amenability to treatment for her mental health issues—show an abuse of discretion. (Appellant’s brief, pp. 9-11.) Conser’s argument does not show an abuse of discretion. Conser’s LSI score is 24, placing her in the moderate risk to reoffend category. (PSI, p. 18.) Dr. Hatzenbuehler stated that Conser’s “future risk to act out violently toward others will decrease as she remains compliant with her medication.” (PSI, p. 14.) Dr. Engle stated “[i]n the community, or in an institution, she is likely to be at the ‘Low’ probability to behave violently if on her medications.” (PSI, p. 15.) Dr. Waldron stated “Conser’s risk of harm to others, related to her symptoms of mental illness, appears to be low as [long] as she remains compliant with prescribed medications and her symptoms of psychosis are being effectively managed with those medications.” (PSI, p. 16.) Dr. Waldron did, however, state that Conser’s “level of risk would increase if she were to stop taking her prescribed medications or if she were to have a relapse in symptoms.” (PSI, p. 16.) The presentence investigator stated that Conser “acted on ‘false beliefs’ associated with her deteriorating mental health, in order to kill the devil/demon in her father. Still, Ms. Conser was aware that action would also kill her father. [Conser] has entered a guilty plea, accepting responsibility for that murder,” and recommended “ongoing incarceration for Ms. Conser.” (PSI, p. 19.)

Conser’s LSI score, and the findings from the doctors who completed psychological evaluations, show that Conser’s criminogenic and mental health needs are best accommodated in a highly controlled setting, and the sentence imposed provides appropriate protection to society.

There's an undue risk that, without a significant period of incarceration, medication and treatment, Conser will commit another crime harmful to other people, and a lesser sentence would depreciate the seriousness of the instant offense. Conser is unable to compensate her father for murdering him, or his family members that are undoubtedly impacted by Conser's actions. Conser has failed to show that the district court abused its discretion by imposing a determinate term of eighteen years as part of a unified sentence of life for murder in the second degree.

CONCLUSION

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

DATED this 22nd day of October, 2021.

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

ZACHARI S. HALLETT  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of October, 2021, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

BEN P. MCGREEVY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
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/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General