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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	
)	NO. 48175-2020
Plaintiff-Respondent,)	
)	Ada County
v.)	Case No. CR01-19-29497
)	
DANNY JOE KRUEGER)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Danny Joe Krueger failed to show that the district court abused its sentencing discretion when it imposed aggregate sentences totaling 30 years with 13 years determinate upon his convictions for aggravated battery with use of a deadly weapon enhancement?

ARGUMENT

Krueger Has Failed to Show that the District Court Abused Its Discretion

A. Introduction

Danny Joe Krueger lay in wait for the return of his estranged wife, Kelly Krueger, and her boyfriend, Quinn Palone, in the front room of Kelly's home. (PSI, pp. 3, 333, 610). Krueger waited with a kitchen knife with a 20 centimeter long blade which he had taken from his

girlfriend's house, a sharpening tool he had taken from Kelly's kitchen, and another blade in his shorts pocket. (PSI, pp. 7, 252, 282; State's Exhibit 1-2.) When Quinn entered the darkened hallway, Krueger attacked him with the knife, stabbing him and forcing him into the hallway bathroom, saying, "I'm going to kill you fucker." (PSI, pp. 282-83.) Hearing the ruckus, Kelly entered the bathroom and attempted to get Krueger off of Quinn and secure the knife. (PSI, pp. 257, 280-81.) Krueger used the knife to cut a massive, deep laceration spanning Quinn's shoulder, triceps and elbow, and puncture a 4-6 centimeter wide hole into his abdomen. (PSI, pp. 471-72, 565-71, 847; State's Exhibit 6-8.) "The laceration was so significant that a large piece of muscle was hanging out of the wound." (PSI, p. 210.) The two struggled in the bathroom and hallway, with Quinn fading in and out of consciousness from blood loss, when Krueger grabbed him by the face and said, "Look at me." (PSI, p. 283). After Krueger dropped Quinn on the floor and told her, "He's dead anyway," Kelly fled outside, screaming for help. (PSI, p. 281.) Kelly came back to the house and watched as Krueger stood over Quinn and stabbed him in the neck, leaving the knife in his throat. (PSI, p. 208, 281; State's Exhibit 5.) A short time later, Krueger pulled the knife out of Quinn's throat, saying again, "he is dead anyway." (PSI, p. 281.)

Neighbors and passerby reacted quickly to Kelly's cries for help. A neighbor ran toward the house and could see Krueger standing over Quinn's body, "bloodied and curled up in a ball." (PSI, p. 249.) When Krueger saw the neighbor, he began to leave and the neighbor grabbed Krueger by the neck and held him against an interior wall, securing him until police arrived. (PSI, p. 194, 249.) While held against the wall, Krueger repeatedly told the neighbor, "I killed him. He's gonna die." (PSI, p. 249.) The neighbor told Krueger that Quinn was "still moving," to which Krueger replied, "nah, he'll be dead." (PSI, p. 194.) He told the neighbor that Quinn was "banging [my] wife" and "I stabbed him in the neck." (PSI, p. 194, 249.) A couple passing by in

their vehicle also heard Kelly's cries for help and stopped to assist. (PSI, 194, 248, 251.) The passerby and the neighbor took turns assisting Quinn and securing Krueger. (PSI, pp. 248-49.) "What did you do? What is going on?" the passerby asked Krueger. Krueger replied, "I killed him, he has been fucking my wife." (PSI, p. 203-04, 208, 251.)

Police arrived to a scene covered in Quinn Palone's blood, sprayed across the bathroom, smeared across the walls, pooled in the hallway, and soaked through the clothing of Quinn, Krueger, and Kelly. (PSI, pp. 192, 195, 515-21, 524-61, 647-48, 669-72, 677-78, 695-97, 702-04, 707-19; State's Exhibit 4.) Believing it was "highly likely" Quinn would die en route to the hospital, police joined Quinn in the ambulance and questioned him about the attack. (PSI, pp. 192, 209, 211.) At the hospital, staff transferred Quinn to the trauma room and then to the operating room. (PSI, p. 192, 209, 211, 248.) The attending physician noted Quinn came in, "covered in blood, pale and diaphoretic and obviously in hemorrhagic shock." (PSI, p. 846.) In the operating room, the physician "activated a massive transfusion protocol," examined his neck wound "with obvious visible trachea," and explored the shoulder and triceps which "demonstrated a very complex wound, which appeared to be quite deep." (PSI pp. 846-49.) During surgery, physicians observed nerve damage. (PSI, pp. 851, 857-58, 861-64.)

Meanwhile, police detained Krueger and conducted a pat down search and found a wooden handled steak knife with a three inch blade in his shorts pocket. (PSI, pp. 197-98.) Covered in blood, Krueger appeared "very calm and polite." (PSI, p. 198.) After seeing Kelly talking with police, Krueger shouted, "you should've listened last night" and then apologized to the police officer for his outburst. (PSI, p. 198.) At the police station, Krueger again appeared "calm," "polite and respectful" while dealing with police. (PSI, pp. 279-80.)

The state charged Krueger with aggravated battery, burglary, use of a deadly weapon enhancement, and inflicting great bodily injury enhancement. (R., pp. 37-38.) Krueger pleaded guilty pursuant to a plea agreement in which the state agreed to drop the burglary charge and inflicting great bodily injury enhancement. (R., pp. 52-63.) The district court imposed a sentence of 30 years, with 13 fixed for aggravated battery with the deadly weapon enhancement. (R., pp. 77-79.)

Krueger filed a timely notice of appeal. (R., pp. 81-82.) He also filed a Rule 35 Motion, which the district court denied. (Aug., pp. 1-2, 5-10, 32-35).

Krueger challenges the district court's decision to sentence him to 30 years with 13 years determinate and challenges the district court's denial of his Rule 35 motion. Krueger has failed to show an abuse of 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)). 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)).

“A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court.” State v. Bakke, 481 P.3d 1197, 1203 (Idaho Ct. App. 2020), review denied (Jan. 20, 2021). The denial of a Rule 35 motion for reduction of sentence is reviewed for an abuse of discretion. State v. Dabney, 159 Idaho 790, 798, 367 P.3d 185, 193 (2016).

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. Krueger Has Shown No Abuse of the 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)).

Considering the severity of the crime and the lifelong detrimental effects on Quinn Palone and his children, the sentence is reasonable. At the sentencing hearing, the district court considered

Toohill¹ factors including protection of society, deterrence of crime, the rehabilitation of an offender, and punishment. (Tr., p. 43, Ls. 18-22.) The district court considered a withheld judgment order under Idaho Code § 19-2601 and considered the possibility of probation under Idaho Code § 19-2521. (Tr., p. 43, L. 24 – p. 44, L. 13.) The district court considered the mitigating factors of Krueger’s limited criminal history and the opinion expressed in the psychological evaluation that he is at a low risk of reoffending balanced against aggravating factors including the seriousness of the crime he committed. (Tr., p. 44, L. 22 – p. 45, L. 11.) The district court addressed Krueger stating, “so while there may be a lower risk that you would stab someone with an inch of their life ... this crime was of such a serious nature that in looking at all the factors, just deterring future crime – and I’m talking about deterring you from future crime – protecting society and not diminishing the seriousness of the offense that you were engaged in weigh in favor of this court imposing a sentence which would be an institutional sentence within a prison. (Tr., p. 45, Ls. 11-23.) The record shows no abuse of discretion.

In support for his argument for abuse of discretion, Krueger states that his “limited criminal history, employment and education, community support, acceptance of responsibility, expression of remorse, and significant mental health issues warranted a more lenient sentence.” (Appellant’s brief, p. 6.) Krueger’s claims are not persuasive.

Krueger’s criminal history consists of one charge of attempted unlawful issuing a bad check and one charge of driving under the influence. (PSI, p. 8-9.) For the first charge Krueger claimed a misunderstanding with a client regarding a “promissory note.” (PSI, p. 9-10.) Police arrested Krueger for DUI, who claimed he drank after learning of his mother’s cancer recurrence to “clear his mind.” (PSI, p. 10.) He evoked his mother’s cancer diagnosis again when he received

¹ State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

a probation violation on the DUI charge when, Krueger claimed he “missed a day of community service because of [his] mother’s cancer treatment,” though, perplexingly, she resided in Nebraska while he resided in Idaho. (PSI, pp. 10, 68.) In fact, Krueger received the probation violation because he failed to serve four days in jail, failed to complete a substance abuse evaluation, and failed to pay fines and fees. (PSI, p. 10)

In the “Danny Krueger Sentencing Brochure” (hereafter, “Brochure” (PSI, pp. 54-87)), a loquacious and self-aggrandizing autobiography in which Krueger refers to himself in both the first- and third-person, Krueger writes he “took classes on a pre-med track at College of Western Idaho and also took classes through Harvard Extension School to further advance his learning. He became a tutor for some of the most challenging and rigorous biology, chemistry, and anatomy and physiology classes offered at CWI.” (PSI, p. 66.) Krueger claims he attended CWI for two years, up until the present offense. (Appellant’s brief, p. 7; PSI, p. 15.) However, Krueger’s account of his accomplishments may be aggrandized. The former Director of Tutoring Services at CWI confirmed that Krueger was a science tutor for pre-nursing students from October 2017 until May 2019 and did an “excellent job.” (PSI, p. 87.) However, the unofficial transcript from CWI, issued May, 2020, shows Krueger enrolled in the workforce development program at CWI in the summer of 2017, received an “A” in his biology course of human anatomy and physiology, attended a zero-credit math course called “college readiness,” and withdrew from his fall 2017 anatomy course of human anatomy and physiology, receiving no credit. Krueger appears to have received a total of four credits during his time at CWI. (PSI, p. 127.)

Krueger claims he “has a strong work history” (Appellant’s brief, p. 7) but the presentence investigator was unable to find any record confirming the existence of the company he claimed to own and operate in the years preceding the attack. (PSI, p. 16, 20.) He claims to have pursued an

architectural internship in Nebraska and “completed this process, with the exception of the test for his architectural license” and worked as a residential designer and contractor. (PSI, p. 61.) In his Brochure, Krueger states he was sued by his “partner²” in a design business which resulted in a garnishment of Kelly’s wages. (PSI, pp. 16, 66.) He claims his longest term of employment was with a construction company that “went bankrupt.” (PSI, pp. 17, 63-64.) During her interview with the presentence investigator, Kelly stated Krueger “lacked follow-through and thus struggled to maintain numerous self-made businesses.” (PSI p. 13) She claimed she spent her entire 401k, an estimated \$100,000.00, “in an attempt to save [his] failing businesses” and she alone bore the burden of supporting the two financially. (PSI, p. 13-14). Despite his assertion to the contrary, the record suggests Krueger has a very poor work history.

Krueger claims he accepted responsibility for his crime and expressed remorse for the emotional trauma he caused Kelly and the traumatic event his neighbors and community experienced. (Tr., p. 42, Ls. 3-6.) He mentions his victim Quinn Palone twice, once when he refers to his “hatred of Quinn” (Tr., p. 37, L. 1) and again when he concedes he could “never repair the physical and mental scars that [he] inflicted on Quinn” (Tr., p. 42, Ls. 2-3). Krueger spent the majority of his time before the judge talking about his love for Kelly, their dogs, his Autism Spectrum Disorder diagnosis, his “academic research,” and his new business venture, “Redemption Foundation.” (Tr., p. 34, L. 16 – p. 43, L. 12.) In his version of the attack to the presentence investigator, Krueger refers to Quinn Palone as a “piece of shit” twice. (PSI, pp. 4, 6.) In his victim impact statement, Quinn Palone pointed out that “[n]ot once has [Krueger] ever

² Krueger claims “nearly seven years ago” he “started the business in Boise, Dwelling Design.” (PSI, p. 65.) According to the Idaho Secretary of State, that business’s initial filing was in 2002 by Mike Belt, who won a default judgment against the Kruegers for an unpaid promissory note for an initial amount of \$7,316.14. iCourt, Dwelling Design, LLC, v. Krueger, Case No. CV01-17-4426

expressed any sympathy for what he has done,” and “I am not a human being to him, only ... something to be dealt with like emptying the garbage.” (Sealed, p. 10.) Krueger was “very well aware” that his actions would have left Palone’s children orphans. (Sealed, p. 10.)

Appellant errs when he claims that he suffers from a “severe emotional disorder.” (Appellant’s brief, p. 9.) The forensic psychologist rejected that conclusion outright, stating Krueger has “functional behavior consistent with autism spectrum disorder,” a “neurodevelopmental disorder that constitutes a serious mental condition,” but expressly rejected, or did not rate highly, the alternative that Krueger “has a significant emotional disorder.” (PSI, p. 169.) The psychologist’s “evaluation supports no diagnosis of a mental condition” but instead suggested Krueger “has experienced situational depression and anxiety related to marital issues,” has “limited insight into his mental condition” and “presents himself in a favorable light regardless of context,” has “little capacity to recognize personal limitations” and these “beliefs may border on delusional in terms of having special and unique talents,” and he “may be viewed a self-centered and narcissistic.” (PSI, p. 169.)

Krueger claims he suffered from suicidal ideations and checked himself into treatment when he was feeling “suicidal and emotionally destructive.” (PSI, pp. 148-49, 153, 156.) This claim is diminished by the fact that Krueger staged a suicide attempt and explained to first responders called to the scene to assist him that he was not suicidal, it was a “show” and that he “was upset with how his wife of 20 plus years had been having an affair.” (PSI, p. 244.) His claim is further diminished by the comparison between the actual intake paperwork from Intermountain Hospital, dated May 22, 2018, and the dubious “Image 7 Intermountain Hospital provider note from May 2018” Krueger includes in his Brochure. (PSI, p. 68, 148.) A side-by-side comparison

of the documents illustrate Krueger's willingness to deceive the court and others as a means to fit his narrative.

Intermountain Hospital Psychiatric Evaluation:

HISTORY OF PRESENT ILLNESS: The patient indicates he has been feeling depressed for a while. He got worse in the past 2 weeks when he discovered that his wife "cheated on me" for the second time. The patient does indicate they have an "open relationship," but that they have had an understanding that they would tell each other about the situations that came up. He felt like that did not happen. He admits to being depressed at times with low mood and feeling down. He has never attempted suicide. He said he wanted to try to carbon dioxide poison himself after drinking last night, but then his wife discovered him. The patient ended coming in here voluntarily. Patient says he is not suicidal right now. He denies manic symptoms, manic episodes voices or paranoia. He has tried Wellbutrin intermittently over the time with good results. He has never tried any other antidepressants. He has done 7 weeks' worth of psychotherapy in the past through his work.

(PSI, p. 148.)

Krueger's version, as submitted to the district court in his "Danny Krueger Sentencing Brochure."

HISTORY OF PRESENT ADMISSION: The patient in the hospital because he was suicidal. He and his wife of 24-1/2 years and no children, both very successful business people, had an argument about the agreement that they made 9 years ago to have an open marriage. Apparently, there are rules with open marriages and one of their rules was that if you are going to spend time with another person you have to let the spouse know. She did not do that because she had been seeing this person on and off for a number of years and did not think that was still a part of their agreement when she found out that it was and how upset her husband was. They were both extremely upset and decided that he should come here and be treated for his depression. He has had periods of depression in the past...

(PSI, p. 68.)

Krueger's mitigation claims are built on sand. He may believe he has an insignificant criminal history, an impressive curriculum vitae, took responsibility, expressed adequate remorse, and that his mental health issues, predominantly his autism spectrum disorder diagnosis, demand a lighter prison term. (Appellant's brief, p. 6-11.) An examination of the record supports the psychological evaluator's assessment that Krueger is "not able to think clearly about his

capabilities” and “these beliefs may border on delusional in terms of having special and unique talents.” (PSI, p. 169.) Krueger lies to maintain a façade, casting himself as the victim, the entrepreneur, and the intellectual. Beneath the surface is a man who “may be viewed as self-centered and narcissistic.” (PSI, p. 169.) Krueger is a man who lay in wait and attacked an unsuspecting victim in the dark, calling him a “fucking piece of shit” while he stabbed him and stood over him while he bled out, stating “you’re gonna die fucker.” (PSI, pp. 3, 7, 191.)

A widower and parent of two young children, Quinn Palone wrote the thing that upsets him most about Krueger’s attack was that Krueger “was very well aware that my children had no mother and [he] has no accountability nor concern about leaving my kids [parentless].” (Sealed, p. 10; PSI, p. 283.) He says, “the emotional and mental toll it took on my children; them thinking the world is a crazy and violent place. It will be years to cope with and that’s with optimal circumstances.” (Sealed, p. 10.) Quinn suffered permanent damage to his left arm, lost his job because he could no longer perform adequately, and took “a far lower paying job that allows [him] to work with one arm.” He is limited in daily activities from things as simple as tucking in his shirt or playing with his children. (Sealed, p. 10.) The care he received to save his life amounted to \$125,066.54, has risen to nearly \$200,000.00, and continues to grow. (Sealed, p. 10; PSI, pp. 770-78.) He said he could not attend the sentencing hearing because he “simply cannot afford to miss work.” (Sealed, p. 10.)

Palone asked that Krueger be “incarcerated for at least 20 years. His intent was to murder me...the only reason he stopped stabbing me is because he thought I was dead.” (Sealed, p. 10 (ellipses original).) “I know he will come after me again or my children and that scares me. With a longer sentence, that will ensure my kids have time to grow and move away at least, and slow him (Danny Krueger) down due to his older age.” (Sealed, p. 10.)

The district court considered the relevant legal standards, the relevant mitigating and aggravating factors, and imposed a reasonable sentence. Krueger has failed to show any abuse of discretion on the record.

Nor did the district court abuse its discretion in denying Krueger's Rule 35 motion. "In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion." State v. Yang, 167 Idaho 944, 949, 477 P.3d 998, 1003 (Ct. App. 2020). "In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence." State v. Del Critchfield, 167 Idaho 650, 654, 474 P.3d 1247, 1251 (Ct. App. 2020).

In his brief in support of his motion for reconsideration of sentence, Krueger argues his lack of prior felony convictions, diagnosis of autism spectrum disorder, his behavior in prison, and his expression of remorse support a reduction in his sentence for aggravated battery enhanced for use of a deadly weapon to 15 years, five fixed, with the enhancement reduced to 10 years, to run consecutively. (Aug. pp. 5-10.) The district court had those factors to consider before imposing sentence, with the exception of Krueger's behavior in prison, though it was aware of his similar behavior in jail. (Aug. p. 33-34; Tr., p. 30, Ls. 2-5; PSI, pp. 17, 23.) The only evidence not available at the time of sentencing is Krueger's new claim that brutal battery upon Quinn Palone was "an act of passion" (Aug., p. 9), an allegation the district court rejected based on the facts of the case, including that Krueger lay in wait to ambush Palone (Aug., pp. 34-35).

As "new evidence," Krueger submitted three news articles and their respective judgments of conviction in an effort to persuade the district court to reconsider its sentence to "promote judicial uniformity." (Aug. p. 8.) The district court did not find this argument persuasive. The

court noted Idaho criminal statutes provide a maximum and minimum sentence as a means to promote uniformity and “a bare recitation of facts found in a news article” is not comparable to the multitude of factors a judge considers in an individual case, including presentence reports, victim impact, relevant facts, and Toohill factors. (Aug., p. 36.) The district court’s conclusion is required by Idaho law categorically rejecting comparative sentencing analysis. State v. Seifart, 100 Idaho 321, 323, 597 P.2d 44, 46 (1979) (“It does not follow that disparity of sentences between multiple defendants involved in the same criminal activity, or between different defendants for committing similar crimes, constitutes excessiveness of sentence as to any particular defendant.”); State v. McFarland, 130 Idaho 358, 364–65, 941 P.2d 330, 336–37 (Ct. App. 1997). Krueger’s appellate argument relying on different sentences imposed in different cases (Appellant’s brief, pp. 12-14) must be rejected as legally unsound.

Society must be protected from Krueger who is a manipulative and violent criminal. He deludes others, and perhaps himself, into believing he is a “pacifist philosopher,” victim, intellectual, scholar, and artist. (PSI, pp. 7, 11-12, 55, 65, 88-90, 156, 160.) Krueger introduced Quinn Palone to Kelly under the guise of an “open marriage” but made frequent attempts to end their relationship by staging suicide attempts, instigating fights with Quinn, and eventually stabbing him repeatedly and leaving him to die. (PSI, p. 283) A lesser sentence would greatly diminish the seriousness of this crime and the lifelong deleterious effects Quinn Palone and his children will suffer for the remainder of their lives. If not for the quick action of neighbors, passerby, first responders, and Quinn Palone’s strong desire to live for “the love of [his] kids,” he most certainly would have died. (Sealed, p. 10.) The sentence imposed by the district court was carefully considered, within statutory guidelines, and appropriate.

CONCLUSION

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

DATED this 30th day of November, 2021

/s/ Kenneth K. Jorgensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of November, 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:

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/s/ Kenneth K. Jorgensen
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