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### State v. Ashton Respondent's Brief Dckt. 48437

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 48437-2020 & 48438-2020
Plaintiff-Respondent,	)	
	)	Shoshone County Case Nos.
v.	)	CR40-18-1503 & CR-2015-60
	)	
WILLIAM JAMES ASHTON,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Ashton failed to show that the district court abused its sentencing discretion when it revoked his probation and imposed concurrent sentences of four years with two years determinate upon his convictions for possession of methamphetamine?

ARGUMENT

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

A. Introduction

Police found methamphetamine and paraphernalia in Ashton’s car during the course of a traffic stop. (48438 R., pp. 18-20.) The state charged Ashton with possession of methamphetamine and possession of paraphernalia. (48438 R., pp. 57-58.) Aston pled guilty to

possession of methamphetamine as part of a plea agreement. (48438 R., pp. 53, 68.) The district court imposed a suspended sentence of four years with two years determinate and ordered a period of two years probation. (48438 R., pp. 67-72.)

Ashton did not report for probation supervision. (48438 R., pp. 83-84.) He was brought back before the district court after being absent for over three years when the state charged him with possession of methamphetamine and possession of paraphernalia after police found him in possession of loaded syringes. (48437 R., pp. 12-13, 59-60.) Ashton admitted violating his probation and pled guilty to possession of methamphetamine. (48437 R., p. 89; 48438 R., p. 99; 1/9/19 Tr., p. 5, L. 13 – p. 10, L. 15.) The district court revoked probation and executed the original sentence and imposed a concurrent sentence of four years with two years determinate on the new conviction. (48437 R., pp. 107-11; 48438 R., pp. 115-16; 11/4/20 Tr., p. 16, L. 18 – p. 17, L. 6.) Ashton filed notice of appeal timely from the district court’s judgments. (48437 R., pp. 99-101; 48438 R., pp. 107-09.)

On appeal Ashton “contends the district court abused its discretion in both cases considering the substantial mitigating factors that exist.” (Appellant’s brief, p. 1.) Review of the record shows no abuse of 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)). “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. Ashton 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)).

At sentencing the district court considered the goals of protecting society, deterrence, punishment and rehabilitation. (11/4/20 Tr., p. 14, Ls. 8-14.) It reviewed the materials submitted for sentencing. (11/4/20 Tr., p. 14, Ls. 15-19.) The district court specifically recognized the legal

“preference” for probation, but found that overridden by Ashton’s criminal record and the fact Ashton had already absconded once and refused to turn himself in. (11/4/20 Tr., p. 15, L. 3 – p. 16, L. 1; p. 17, Ls. 14-18.) The “most mitigating” factor Ashton presented was his desire to parent his son. (11/4/20 Tr., p. 15, Ls. 14-16.) The district court rejected retained jurisdiction because that would not be a good use of resources given Ashton’s history. (11/4/20 Tr., p. 16, Ls. 2-10.)

The record supports the district court’s exercise of discretion. Ashton has an extensive criminal history dating back to at least 1997 and including multiple opportunities to rehabilitate under supervision. (PSI, pp. 3-5, 10-16.<sup>1</sup>) The convictions in this case are, respectively, Ashton’s fifth and sixth felony convictions. (See PSI, p. 16.) While on probation in the initial case Ashton moved out of state and repeatedly refused any cooperation with his probation officer. (PSI, p. 5.) As set forth above in more detail, Ashton had been absconded from probation for three years when he committed the latest felony. The district court’s sentences and rejection of probation and retained jurisdiction were reasonable and well within its discretion.

Ashton has failed to show an abuse of discretion. He first argues that he successfully completed probation in Washington while he was absconded from probation in Idaho, and was therefore successfully rehabilitated. (Appellant’s brief, p. 5 (citing 11/4/20 p. 11, Ls. 6-10, 16-20).) Although Ashton’s counsel made this claim at sentencing, there is no evidence in the record to support it. The PSI reports a Washington probation imposed in 2002 and a probation violation in Washington in 2013 (PSI, p. 15), but does not have any information on any probation in Washington at any time relevant to this case. Moreover, Ashton’s claims that he lived continuously in the same house in Spokane are contradicted by his statements to the presentence investigator that he was living in Montana. (PSI, p. 3.) Moreover, when his probation officer sent

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<sup>1</sup> All citations to the PSI are to the electronic file containing the March 23, 2019 update.

a letter to Ashton in Spokane it was returned as undeliverable. (PSI, p. 5.) This claim, unsupported by any evidence, and even if true, does not show an abuse of discretion.

Ashton next argues that the presentence investigator recommended retained jurisdiction. (Appellant's brief, p. 5.) The district court, however, concluded that it did not need further evaluation to conclude that Ashton was not a suitable candidate for another probation. (11/4/20 Tr., p. 16, Ls. 2-10.) The district court therefore properly exercised its discretion. See State v. Jones, 141 Idaho 673, 676, 115 P.3d 764, 767 (Ct. App. 2005) ("The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant's rehabilitative potential and suitability for probation.").

Finally, Ashton asserts he had good reasons for absconding from probation. (Appellant's brief, p. 5.) The district court specifically rejected those reasons as grounds for a lesser sentence. (11/4/20 Tr., p. 15, Ls. 14-19; p. 17, Ls. 14-18.)

Ashton has failed to show an abuse of discretion. The district court's sentence is supported by the record and is reasonable.

### CONCLUSION

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

DATED this 29th day of October, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of October, 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  
KENNETH K. JORGENSEN  
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KKJ/dd