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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48569-2021
Plaintiff-Respondent,)	
)	Boise County Case No.
v.)	CR08-19-1091
)	
SHAYNA RELANE DAVIS,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Shayna ReLane Davis failed to show that the district court abused its sentencing discretion when it imposed a unified sentence of fourteen years, with three years fixed, upon her conviction for grand theft?

ARGUMENT

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

A. Introduction

Between 2014 and 2019, Davis embezzled approximately \$434,753.72 from her employer. (Conf. Docs. Vol. II, pp.1-2.) The state charged Davis with six counts of grand theft. (R., pp.33-36.) Pursuant to a plea agreement, she pled guilty to one count of grand theft. (R., pp.52-60;

9/18/20 Tr., p.11, Ls.6-24; p.16, Ls.4-19.) The remaining counts were dismissed. (R., p.71.) The district court imposed a unified sentence of fourteen years, with three years fixed. (R., pp.71-73; 12/18/20 Tr., p.57, Ls.18-22.) Davis timely appealed. (R., pp.76-77.)

On appeal, Davis asserts that the district court abused its sentencing discretion by imposing an excessive sentence. (Appellant’s brief, pp.3-9.) Davis is incorrect. The district court did not abuse its sentencing discretion. The court imposed a reasonable sentence after weighing 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 and that reasonable minds could not conclude the sentence was appropriate to accomplish the sentencing goals of protecting society, deterrence, rehabilitation, and retribution. Id.; State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007); State v. Toohill, 103 Idaho 565, 568, 50 P.2d 707, 711 (Ct. App. 1982). In determining whether the district court imposed an excessive sentence, this Court considers the entire sentence but presumes that the determinate portion will be the period of actual incarceration because the decision to release the defendant on parole is exclusively the province of the executive branch. State v. Bailey, 161 Idaho 887, 895, 392 P.3d 1228, 1236 (2017) (citing State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007)). “In 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 (quotation marks omitted).

On appeal, Davis does not contend that her sentence “exceeds the statutory maximum.” (Appellant’s brief, p.3.) Nor could she. Davis pled guilty to grand theft pursuant to Idaho Code § 18-2407(1)(b)(1). (R., pp.33-34; 9/18/20 Tr., p.16, Ls.4-19.) Grand theft committed in the manner prescribed by I.C. § 18-2407(1)(b)(1) is “a felony punishable by ... imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years.” I.C. § 18-2408(2)(a). Here, the district court imposed and executed a unified sentence of fourteen years, with three years fixed. (R., p.72; 12/18/20 Tr., p.57, Ls.18-22.) Because the sentence imposed fits within the statutory limits, Davis “must show that the 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). She cannot do so.

The district court imposed a reasonable sentence. To prepare for sentencing, the district court reviewed the presentence investigation report, Davis’s written statements, the Level of Service Inventory - Revised (LSI-R) printout, the Global Assessment of Individual Needs (GAIN) evaluation, Davis’s relevant medical records, the mental health assessment, a financial expert’s report, and two victim impact statements. (12/18/20 Tr., p.25, L.22 – p.27, L.21.¹) In fashioning Davis’s sentence, the district court considered and weighed the aggravating and mitigating information contained in these documents as well as the arguments and recommendations of counsel. (12/18/20 Tr., p.50, L.22 – p.57, L.14.) Additionally, the court expressly considered and applied the four necessary objectives of criminal sentencing, correctly acknowledged that protection of society is the primary goal of sentencing, and considered the factors identified in I.C. § 19-2521. (12/18/20 Tr., p.48, L.25 – p.50, L.7.)

¹ These documents are contained in the various volumes of confidential documents. (See Conf. Docs. Vol. I, pp.1-29; Conf. Docs. Vol. II, pp.4, 12-14, 36-43, 52-175, 188-221; Conf. Docs. Vol. III, pp.1-6.)

The court found that Davis was a “thief and a liar” who stole her employer’s money “for greed and for the thrill” and then used a “sophisticated technological plan” to cover up the fact that she was stealing vast sums of money from the business. (12/18/20 Tr., p.53, L.17 – p. 54, L. 17.) The court also found that Davis lavishly spent her ill-gotten gains on cars, boats, clothes, a breast enhancement surgery, as well as trips to Europe, Hawaii, and Disneyland. (12/18/20 Tr., p.53, L.25 – p.54, L.6.) The court found that Davis had betrayed the trust of the business owners who considered her family and caused them extreme mental and financial distress. (12/18/20 Tr., p.54, Ls.7-14.) In light of all of the information before the court, it emphasized the need to impose a sentence that would deter Davis specifically and the community generally from committing similar crimes. (12/18/20 Tr., p.56, L.17 – p.57, L.14; p.58, Ls.5-21.) The court sensibly concluded that “it sends the wrong message to society that somebody can steal \$400,000 and not go to prison. I think it sends the wrong message.” (12/18/20 Tr., p.56, Ls.23-25.) Accordingly, the court imposed a unified sentence of fourteen years, with three years fixed, which it considered to be a “fair, just and reasonable” sentence given the objectives of criminal sentencing. (12/18/20 Tr., p.57, L.15 – p.58, L.22.) The record supports the court’s reasonable sentencing determination.

The nature of the crime and its impact on the victims justified the sentence imposed. Shortly after being hired to work as a bookkeeper for Castle Mountain Homes, Davis began embezzling the company’s money by forging checks and depositing them into her personal bank account. (Conf. Docs. Vol. II, pp.1-4, 188-90.) She also used a company credit card to purchase tens of thousands of dollars’ worth of products for herself from Amazon. (Conf. Docs. Vol. II, pp.1-4, 190-91.) According to Davis, she initially stole between \$200 and \$300 at a time, but she grew more emboldened as time passed and eventually began writing checks to herself for thousands of dollars at a time. (Conf. Docs. Vol. II, pp.2-3; 9/18/20 Tr., p.17, L.23 – p.18, L.13.)

To conceal her crimes, she coded the forged checks in the company's accounting software as deposits to vendors and also sent inaccurate 1099 tax forms to subcontractors. (Conf. Docs. Vol. II, pp.1, 191; Conf. Docs. Vol. III, p.3.) Between 2014 and 2019, Davis stole more than \$400,000 from Castle Mountain Homes. (Conf. Docs. Vol. II, pp.1-2, 191-221.)

Davis's crimes had a devastating impact on the business and its owners. Castle Mountain Homes is a family business. (Conf. Docs. Vol. III, p.1.) The owners hired Davis to do bookkeeping for the company at a rate of \$20 per hour. (Id.) Because of Davis's thefts, the business owners could not give raises or bonuses to other employees. (Conf. Docs. Vol. III, pp.1, 5.) Additionally, while Davis was stealing from the business and lavishly spending the stolen money on herself, the owners of Castle Mountain Homes had to sell personal property to cover the business's bills. (Conf. Docs. Vol. III, p.1.) They also had to delay their retirement and sell their house. (Id.) According to one of the owners, the stress of dealing with the fallout from Davis's crimes took "the joy out of running [the] company." (Conf. Docs. Vol. III, p.3.) Moreover, despite the fact that the court ordered Davis to pay \$400,000 in restitution to the victims (R., pp.69, 72; 12/18/20 Tr., p.57, L.25 – p.58, L.1), the parties and the court recognized the improbability of Davis repaying the victims in full (Conf. Docs. Vol. III, pp.2, 6; 12/18/20 Tr., p.31, L.1 – p.32, L.18; p.55, Ls.14-22). Given the large amount of money that Davis stole from Castle Mountain Homes and the impact her crimes had on the business owners, reasonable minds could not conclude that the sentence imposed was inappropriate to accomplish the goals sentencing. Accordingly, the sentence imposed was not excessive.

Davis argues that the district court should have suspended her sentence and placed her on probation, retained jurisdiction, or imposed a lesser sentence in light of mitigating factors such as her employability, mental health issues, expression of remorse, lack of criminal history, and family

support. (Appellant’s brief, pp.4-8.) According to her, proper consideration of these mitigating factors shows that the district court did not exercise reason when it imposed and executed a unified fourteen-year sentence, with three years fixed. (Appellant’s brief, p.8.) Davis’s arguments are unavailing.

It is evident from the record that the district court took Davis’s status as a first-time offender, her expressions of remorse, her mental health, her employability, and her family support into account when it imposed the sentence. (12/18/20 Tr., p.53, L.2 – p.56, L.13.) With regard to Davis’s mental health, the court acknowledged that she had been diagnosed with anxiety, depression, and bipolar disorder and that she had adverse childhood experiences such as emotional and sexual abuse. (12/18/20 Tr., p.53, Ls.2-8.) To the extent Davis’s mental health carried any mitigating weight, that weight was diminished by the district court’s finding that her mental health issues stemmed from the fact that she was manipulating people who treated her as a friend in order to “[rob] them blind.” (12/18/20 Tr., p.55, Ls.2-7.) The court also suggested that the Idaho Standard Mental Health Assessment’s conclusion that Davis might have a personality disorder may have been reconsidered had the assessor known all of the information contained in the PSI regarding the nature of Davis’s crime. (12/18/20 Tr., p.56, Ls.2-13.)

The district court also considered Davis’s expression of remorse. (12/18/20 Tr., p.54, Ls.18-21.) However, the court gave this factor minimal weight because Davis had rationalized and justified her behavior by blaming her ex-husband, her stress, and her mental health for her decision making. (12/18/20 Tr., p.54, Ls.21-23.) The court also correctly concluded that this factor did not change the fact that she had devised and implemented a “sophisticated system” to perpetrate and hide her crimes. (12/18/20 Tr., p.54, L.23 – p.55, L.1.) The court also noted Davis’s choice not to address the court during the sentencing hearing. (12/18/20 Tr., p.48, Ls.16-20.)

The court acknowledged Davis's family support. (12/18/20 Tr., p.55, Ls.9-10.) However, the court noted that no letters of support had been submitted with the sentencing materials. (12/18/20 Tr., p.55, Ls.10-11.) And, with respect to Davis's employability, the court found that she had experienced housing instability and an unstable work history. (12/18/20 Tr., p.55, Ls.23-25.)

The court also considered Davis's lack of a criminal history. (12/18/20 Tr., p.53, Ls.17-18; p.56, Ls.17-20.) Although Davis had no prior convictions, the court balanced this mitigating factor against the aggravating nature of the underlying offense and the impact it had on the victims. (12/18/20 Tr., p.53, L.18 – p.54, L.17.) Davis forged hundreds of checks and lied to cover up her thefts "over and over," "again and again," "day after day, and week after week, and year after year." (12/18/20 Tr., p.53, Ls.17-25.) Nevertheless, the court debated placing Davis on probation given the prosecutor's recommendation and recommendation in the PSI. (12/18/20 Tr., p.55, Ls.12-14.) Ultimately, however, after weighing all of the aggravating and mitigating factors before it, the district court sensibly decided that execution of a prison term was necessary to satisfy the objectives of criminal sentencing – specifically the goal of deterrence – as well as the related goals of proportionality, predictability, and uniformity in sentencing. (12/18/20 Tr., p.51, Ls.18-24; p.56, L.17 – p.57, L.22.) The district court did not abuse its discretion in doing so.

Indeed, the sentence imposed in this case is supported by Idaho Supreme Court precedent. Like Davis, Chad Schiermeier was charged with grand theft pursuant to I.C. § 18-2407(1)(b)(1). State v. Schiermeier, 165 Idaho 447, 450, 447 P.3d 895, 898 (2019). At the time he was charged, Schiermeier was a deputy sheriff simultaneously serving as a middle school resource officer and

director of the DARE/PAL organization. Id. at 449, 447 P.3d at 897.² He had no criminal history. Id. at 455, 447 P.3d at 903. A jury convicted him of stealing approximately \$87,000 from the DARE/PAL organization over the course of six years. Id. at 449-50, 447 P.3d at 897-98. The district court imposed a unified sentence of fourteen years, with six years fixed. Id. at 451, 447 P.3d at 899. On appeal, the Idaho Supreme Court upheld his sentence, concluding that the district court did not abuse its sentencing discretion. Id. at 454-55, 447 P.3d at 902-03. Notwithstanding the facts that Schiermeier was a first-time offender who had expressed remorse and “had a lot of support from family and friends,” the Court determined that the district court properly exercised its sentencing discretion because it weighed the aggravating and mitigating information before it and based its sentencing decision on the objectives of criminal sentencing and the factors set forth in I.C. § 19-2521. Id.

The Court’s Schiermeier decision demonstrates that the district court did not abuse its sentencing discretion in this case. The facts of both cases are strikingly similar. Both Davis and Schiermeier stole significant sums of money from their respective organizations. In both cases the thefts occurred over a six-year period. Both Davis and Schiermeier were first-time offenders, both expressed remorse, and both had family support. Moreover, the sentences imposed in both cases were similar. In Schiermeier, the district court imposed a unified fourteen-year sentence, with six years fixed, whereas Davis was sentenced to fourteen years, with just three years fixed. Notably, Davis’s sentence is more lenient than Schiermeier’s despite the fact that she stole nearly five times more money from Castle Mountain Homes than Schiermeier did from DARE/PAL. In any event,

² DARE/PAL is a nonprofit organization that was created in order “to foster, promote, encourage and increase the knowledge, and understanding of alcohol and drug addictions or related problems.” State v. Schiermeier, 165 Idaho 447, 449, 447 P.3d 895, 897 (2019) (internal quotation marks omitted).

in this case, like in Schiermeier, the district court weighed the aggravating and mitigating information before it and based its sentencing decision on the objectives of criminal sentencing and the factors set forth in I.C. § 19-2521. Therefore, just as in Schiermeier, the district court did not abuse its sentencing discretion by imposing a fourteen-year sentence, with three years fixed. Davis has failed to show otherwise.

CONCLUSION

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

DATED this 6th day of October, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th 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/ Justin R. Porter
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JRP/dd