

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

11-30-2021

State v. Malm Respondent's Brief Dckt. 48674

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Malm Respondent's Brief Dckt. 48674" (2021). *Not Reported*. 7289.
https://digitalcommons.law.uidaho.edu/not_reported/7289

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

KENNETH K. JORGENSEN
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48674-2021
Plaintiff-Respondent,)	
)	
v.)	Kootenai County Case No.
)	CR28-20-17334
)	
AARON WARREN MALM,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Aaron Warren Malm failed to show that the district court abused its discretion by declining to retain jurisdiction?

ARGUMENT

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

A. Introduction

Brystle Montee and her boyfriend Aaron Warren Malm got into an argument. (R., p. 10.) Malm punched a hole in a wall. (R., p. 10.) Brystle attempted to leave the residence, but Malm stood in front of the door, preventing her from leaving. (R., pp. 10-11.) When Bristle tried to use

her phone, Malm took it from her. (R., p. 11.) Malm threw Brystle to the floor and covered her mouth as Brystle began to yell for help. (R., p. 11.) Malm told Brystle that neighbors were going to hear her, and pinched her nose, preventing Brystle from breathing for about ten seconds. (R., p. 11.) Brystle calmed Malm down enough to be able to position herself close to the back door of the apartment, and again attempted to flee the residence. (R., p. 11.) Brystle got half way through the sliding door before Malm grabbed her and attempted to pull her back into the apartment. (R., p. 11.) Brystle yelled for help, resisting Malm's efforts to pull her back inside. (R., p. 11.) Malm then released her and Brystle ran to a neighbor, who drove her to a friend's house where she made the 911 call. (R., p. 11.)

Police accompanied Brystle back to her apartment, noticed the damage to the apartment, and stayed with Brystle while she retrieved some clothing before she left to stay with her friend. (R., p. 11.) Later that day, Brystle returned to her apartment with friends to get some more items, and Malm appeared at the residence. (R., p. 11.) Brystle and her friends were able to escape through the back door, and Malm kicked in the front door. (R., pp. 10-11.) Police arrived and noticed Malm appeared to be intoxicated, and that he had scuff marks and blood on his knuckles. (R., p. 11.)

The state charged Malm with one count of attempted strangulation, one count of domestic battery, one count of malicious injury to property, and one count of false imprisonment. (R., pp. 44-46.) Pursuant to a plea agreement, the state filed an amended information, charging Malm with one count of felony domestic battery. (R., pp. 49, 55-56.) Malm pleaded guilty, and the district court sentenced him to five years, with two and one-half years determinate for felony domestic battery. (R., pp. 50, 61-62.) Malm then filed a timely appeal. (R., pp. 66-69.)

On appeal, Malm argues that “the district court abused its discretion by failing to retain jurisdiction.” (Appellant’s brief, p. 1.) Malm has failed to show that the district court abused its discretion by declining to retain jurisdiction.

B. Standard Of Review

The decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

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

The record shows the district court perceived its discretion, employed the correct legal standards to the issue before it, acted reasonably, and imposed a sentence within the scope of its discretion.

At the sentencing hearing, the district court considered how to “best protect society,” “deter [Malm] from future criminal conduct,” “deter others,” “address punishment,” and “help any rehabilitation that can be aided by a sentence.” (Tr., p. 40, Ls. 10-16.) About the crime the district stated, “[T]hese incidents don’t happen in just a few minutes usually. They’re usually the culmination of an ongoing argument, and lots of things happened. They’re fluid. There’s a lot of movement. There’s escalating and deescalating anger.” (Tr., p. 40, Ls. 20-25.) The district court noted Brystle’s “recollection of the incident is really focused on the covering of her mouth and the pinching of her nose and her inability to breathe,” and “what a helplessness that is and a dominance that is.” (Tr., p. 41, Ls. 2-6.) The district court stated that “feeling has led her to some significant security measures, cameras, ... counseling ... for herself and her children, her family is traumatized by this. And also this physical injury, she says a compressed disc in her back.” (Tr., p. 41, Ls. 12-18.)

The district court stated “this is made worse by the fact that [Malm has] a history of violence and this is [his] third offense.” (Tr., p. 42, Ls. 10-12.) The district court found that Malm quit outpatient treatment for his alcohol problem “in February of 2020,” which was a “sad decision because from ... April through of July of 2020, the drinking is just out of control it sounds like.” (Tr., p. 43, Ls. 14-20.) The district court noted that those who love Malm describe him as a “violent person” when he’s drinking, someone they are “frightened by” and “put at risk by.” (Tr., p. 43, Ls. 22-24.) The district court stated Malm has “had opportunities at rehabilitation. And here we are on a third felony. I think the time has now come for the focus to be on protection of society and to let the parole board determine whether and when [Malm] may be a safe risk to be returned to the community.” (Tr., p. 44, Ls. 11-16.) The district court determined it “is not satisfied that a community supervision on a probation is a safe risk right now and this Court is not satisfied that a

retained jurisdiction will create that safety as well.” (Tr., p. 44, Ls. 17-21.) The district court concluded there “needs to be some time for that safety to be developed.” (Tr., p. 44, Ls. 21-22.) Rehabilitation is “not all about programming, which is an important component, but it is about that person’s depth of the need for themselves to change.” (Tr., p. 45, Ls. 2-5.)

Without disputing the district court’s factual findings, Malm argues that the mitigating factors—service in the United States Army, substance abuse issues, previous treatment efforts and willingness to undergo treatment, employment issues, family support, acceptance of responsibility and remorse for his actions—show an abuse of discretion. Malm’s argument does not show an abuse of discretion. His LSI score is twenty-four, placing him in the moderate risk to reoffend category. (PSI, p. 18.) Malm’s criminal history began in 2015, with a DUI charge that led to two years on probation. (PSI, p. 25.) His criminal history also contains another domestic violence conviction and two convictions for violation of a no contact order, in which he received one year on probation. (PSI, p. 25.) The presentence investigator stated that “[w]hile [Malm’s] willingness to seek help with his addiction issues is admirable, there are several aspects of [his] life that are alarming. (PSI, pp. 27-28.) Those aspects include that Malm (1) “committed the instant offense while already on community supervision in Washington,” (2) “seemed to rationalize his past crimes,” (3) “minimized his violent behavior during the instant offense,” and (4) “has a history of becoming violent when consuming alcohol,” to the point that his own mother “fears he may kill himself or someone else if he does not stop drinking.” (PSI, p. 28.) The presentence investigator noted that Brystle “suffered physically, emotionally, and financially, and she feels [Malm] would have killed her if she would not have been able to escape his brutal attack.” (PSI, p. 28.) Due to his history of violence and his lack of accountability for his crimes, the presentence investigator

stated Malm “presents as a risk to the community and the victim in this case,” and recommended Malm “be sentenced to the physical custody of the Idaho Department of Correction.” (PSI, p. 28.)

The sentence in this case provides appropriate punishment for Malm’s violent criminal conduct, and a lesser sentence would depreciate the seriousness of the instant offense. Malm’s criminal history and previous opportunities on probation show that he was not amenable to community supervision, and a period of retained jurisdiction was not needed to determine his unsuitability for probation. Malm has shown that he can be a significant risk to Brystle and the community, and the sentence imposed provides appropriate protection to society, and an opportunity for Malm to abstain from alcohol for a considerable amount of time. Malm has failed to show that the district court abused its discretion by declining to retain jurisdiction.

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
KENNETH K. JORGENSEN
Deputy Attorney General

ZACHARI S. HALLETT
Paralegal

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:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

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