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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	
)	NO. 48787-2021
Plaintiff-Respondent,)	
)	Kootenai County
v.)	Case No. CR28-20-1394
)	
MATTHEW SHANE STEPHAN)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Matthew Shane Stephan failed to show that the district court abused its sentencing discretion when it imposed aggregate sentence totaling four years with two years determinate and retained jurisdiction upon his conviction for possession of a controlled substance?

ARGUMENT

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

A. Introduction

Subsequent to a traffic stop, police found various items of drug paraphernalia, several small glass containers of methamphetamine, a scale, and marijuana in the vehicle driven by Matthew Shane Stephan. (R., pp. 13-16.) During questioning, Stephan denied knowing the drugs were in

his vehicle and then told police they belonged to his brother. (R., p. 14.) Police arrested Stephan on an outstanding warrant and the possession charges. (R., pp. 13-14.)

The state charged Stephan with possession of methamphetamine, possession of marijuana, possession of paraphernalia, with a persistent violator enhancement. (R., pp. 59-61.)

Stephan was released on bond and agreed to submit to drug testing four times monthly. (R., p. 56.) He tested positive for amphetamines and/or marijuana on the first three tests and the state requested a hearing to revoke Stephan's release. (R., pp. 67-70.) The state asked for a continuance due to on-going negotiations and withdrew their application for revocation (R., p. 74) only to file a motion to reinstate bond amount when Stephan continued to test positive for drugs or did not show up for testing (R., pp. 75-78).

Still out of custody, Stephan pled guilty to possession of methamphetamine pursuant to a plea agreement in which the state agreed to drop all other charges and recommend probation *if* Stephan would enter treatment and provide proof of compliance prior to sentencing or, in the alternative, recommend a retained jurisdiction. (R., pp. 81-82; Plea Tr., p. 5, Ls. 8-20.)

The state filed another motion to reinstate bond amount when Stephan, despite being reminded on the record that testing was still a condition of his bond, continued to not show up for testing. (R., pp. 88-91.) At the hearing for that motion, the district court ordered Stephan to turn himself into the county jail. (R., pp. 94-95.) Stephan did not turn himself in (R., p. 98), nor did he appear for the PSI interview (R., p. 96), nor did he appear for sentencing (R., p. 98). Stephan was not heard from again until he was arrested nearly six months later, living in his car and using drugs. (R., p. 99; PSI, pp. 31, 41.)

The district court imposed a total unified sentence of four years, two fixed, and retained jurisdiction. (R., pp. 119-20.)

Stephan filed a timely notice of appeal. (R., pp. 125-27.)

Stephan challenges the district court's decision to sentence him to a unified sentence of four years with two fixed, and retained jurisdiction. Stephan 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)). 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. Stephan 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)).

The sentence imposed upon Stephan is reasonable. At the sentencing hearing, the district court considered the four factors in sentencing including how to best protect society, deter Stephan and others from criminal conduct, punishment, and rehabilitation. (Tr., p. 19, L. 23 – p. 20, L. 8.) The district court recognized that Stephan defaulted on a plea agreement with the state which, though non-binding on the district court, would have recommended probation if Stephan had entered a treatment program. (Tr., p. 20, Ls. 16-22.) In good conscience, the district court could not offer the best of the relinquished plea agreement – probation – to Stephan after he absconded for nearly six months. (Tr., p. 23, Ls. 17-21.) Considering the mitigating and aggravating factors, including support from Stephan’s parents and the possibility of treatment outside of prison, the district court retained jurisdiction and imposed a sentence of four years, two fixed. (Tr., p. 23, L. 22 – p. 25, L. 9.) The record thus establishes that the district court correctly perceived its discretion, acted within the bounds of that discretion and consistently with applicable legal standards, and by the exercise of reason.

Stephan argues that recognition of his need for substance abuse treatment, family support for housing and employment, and his acceptance of responsibility and show of remorse should have suggested a lesser sentence to the district court. (Appellant's brief, p. 4). Stephan's arguments are unpersuasive. At the time of his arrest, Stephan had been working for his father's construction company for over a decade while using methamphetamine every one of those days. (PSI, pp. 32-33, 42.) While the continued support from his parents to help Stephan recover from drug addiction is admirable, their influence was insufficient to help Stephan abstain, or even *consider* abstaining, in the decade prior to his arrest for the present offense. (PSI, p. 38; Tr., p. 13, Ls. 20-21.) Stephan's mother confirmed he was living with her and Stephan's father while not incarcerated but they clearly had limited control over their [REDACTED] son who continued to use drugs while released on bond and lived in a car to avoid capture on his outstanding warrant. (PSI, pp. 34, 41; Tr., p. 15, Ls. 1-2; p. 20, Ls. 21-22.)

Stephan never accepted responsibility for the methamphetamine and marijuana found in his vehicle for the present offense (PSI, p. 29), and despite claiming he took "full responsibility for [his] actions" (Tr., p. 13, Ls. 10-11), he absconded for months (R., pp. 98-99). Stephan's attorney concurred that Stephan was slow to "take responsibility" in the present case and that he "ran from it." (Tr., p. 17, Ls. 18-19.) The district court did not denigrate how hard it can be for an addict to seek treatment, but recognized that Stephan had only done so "at the 11th hour and the 59th minute." (Tr., p. 22, Ls. 16-21.)

The present case is Stephan's fourth felony conviction for crimes which include theft, possession of a controlled substance and attempted possession, and manufacture/delivery of a controlled substance. (PSI, pp. 37-38.) He has been arrested 16 times. (PSI, p. 37.) Although he has spent time incarcerated in jail (PSI, pp. 35-37), he has never participated in a retained

jurisdiction (Plea Tr., p. 8, Ls. 18-21). The district court explained the programming a rider offered and reiterated that the state would recommend probation if Stephan entered and was compliant with a substance abuse treatment program. (Plea Tr., p. 8, L. 22 – p. 10, L. 2.) Released on bond and ordered to submit to weekly drug screenings, Stephan did not show for any drug tests and the district court revoked his release. (R., pp. 82, 88-95.) On the district court’s order, Stephan agreed to turn himself into jail but instead “went on the run” for the next six months, continuing to use drugs and living in his car to avoid capture on his outstanding warrant. (R., p. 95; PSI, pp. 31, 41; Tr., p. 20, L. 24 – p. 21, L. 2.)

Stephan has a history of performing poorly when released upon his own recognizance, not taking advantage of proffered opportunities for rehabilitation, and not taking accountability for his actions. After finally being arrested and forced to sentencing he claimed he was then ready for treatment. The district court’s sentence provides him with that opportunity while also giving him the opportunity to “see, smell, taste, [and] hear what prison looks like” from the inside. (Tr., p. 24, L. 9-11.) The district court advised Stephan that “you get out of [any treatment program] exactly what you put into it.” (Tr., p. 24, Ls. 13-15.) The sentence imposed is specially tailored to assist Stephan’s rehabilitation under conditions he will comply with. The district court used proper discretion and considered the totality of all relevant facts and circumstances when it imposed sentence.

CONCLUSION

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

DATED this 3rd of December, 2021

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

MOLLY GARNER
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of December, 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:

JUSTIN M. CURTIS
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 /s/ Kenneth K. Jorgensen
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