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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45829
Plaintiff-Respondent,)	
)	Shoshone County Case No.
v.)	CR-2017-614
)	
TRAVAS WAYNE BICKHART,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Bickhart failed to establish that the district court abused its discretion by imposing concurrent unified sentences of 20 years, with 10 years fixed, upon his guilty pleas to three counts of rape and three counts of sexual battery of a minor child 16 or 17 years of age?

Bickhart Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Bickhart pled guilty to three counts of rape and three counts of sexual battery of a minor child 16 or 17 years of age (in violation of I.C. § 18-1508A(1)(a)), and the district court imposed

concurrent unified sentences of 20 years, with 10 years fixed. (R., pp.102-08.) Bickhart filed a notice of appeal timely from the judgment of conviction. (R., pp.126-29.)

Bickhart asserts his sentences are excessive in light of his claim that the district court “downplayed the fact that [he] had no prior criminal record in this case because of the number of charges involved.” (Appellant’s brief, pp.4-6.) The record supports the sentences imposed.

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); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant’s probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. 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. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). “In deference to the trial judge, this 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 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits

prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The penalty for rape is not less than one year, up to life in prison. I.C. § 18-6104. The maximum penalty for sexual battery of a minor child 16 or 17 years of age in violation of I.C. § 18-1508A(1)(a) is also life in prison. I.C. § 18-1508A(4). The district court imposed a unified sentence of 20 years, with 10 years fixed, for each count of rape and sexual battery of a minor child 16 or 17 years of age, all of which fall well within the statutory guidelines. (R., pp.102-08.) On appeal, Bickhart claims that the district court “downplayed the fact that [he] had no prior criminal record in this case because of the number of charges involved,” and thereby “effectively sentenced him, a first time offender, as a persistent violator and failed to consider the possibility of rehabilitation in doing so.” (Appellant’s brief, pp.4-5.) To the contrary, the district court specifically articulated its consideration of the goal of rehabilitation, but appropriately determined that the goals of protecting society and retribution outweighed the goal of rehabilitation in this case due to the ongoing and egregious nature of the offenses. (Tr., p.43, L.2 – p.45, L.16.) The district court did not sentence Bickhart as a persistent violator, as it ordered that all of Bickhart’s sentences run concurrently with one another, and reasonably found that an aggregate unified sentence of 20 years, with 10 years fixed, was an appropriate sentence in light of Bickhart’s “selfish depraved actions,” the harm done to the victims, the risk Bickhart poses to the community, and the need for deterrence. (Tr., p.42, L.19 – p.43, L.20.)

At sentencing, the state addressed the egregious and ongoing nature of the offenses, Bickhart’s failure to accept full responsibility and attempts to blame the victims, and the risk he presents to society. (Tr., p.29, L.7 – p.34, L.22 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for

imposing Bickhart's sentence. (Tr., p.42, L.12 – p.46, L.5 (Appendix B).) The state submits that Bickhart has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Bickhart's convictions and sentences.

DATED this 5th day of September, 2018.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of September, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

BRIAN R. DICKSON
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 All right. I'll take any other evidence,
2 Mr. Smith.

3 MR. SMITH: No, Your Honor.

4 THE COURT: I'll take recommendations from
5 the State.

6 MR. ALLEN: Thank you, Your Honor.

7 Your Honor, what the Court just heard this
8 morning were the voices of two young girls and their
9 families, girls who are now torn, broken and hurting.

10 The defendant comes before this Court having
11 pled guilty to three counts of felony rape and three
12 counts of felony sexual battery of a minor, charges
13 which arose from Mr. Bickhart's conduct in sexually
14 assaulting two separate 16-year-old girls in his
15 Osburn, Idaho home over the course of almost five
16 months time.

17 The facts of this case are alarming. So much
18 so that the State will do its best to spare both this
19 Court, the victims and their families in this courtroom
20 from having to relive those events which both are very
21 well aware of.

22 What the State will focus on today are the
23 results and related concerns with the defendant as he
24 moves forward here today at sentencing.

25 As part of this case's resolution, the

1 defendant underwent a psychosexual evaluation. A
2 psychosexual evaluation as Your Honor is well aware
3 aims at identifying the risks of a defendant, the risks
4 to R.E.-offend and the possible concerns moving forward
5 in rehabilitation. Indirectly, this evaluation gives a
6 glimpse into the state of mind of a particular
7 defendant and outlines the issues of concern for the
8 parties as a case moves forward in sentencing.

9 In this case, the notes of the evaluator and
10 the results of the tests completed, coupled with the
11 defendant's statements after his arrest, highlight many
12 of the concerns that the State has had in this case
13 since its outset. Most notable, the general lack of
14 recognition for his actions and the defendant's failure
15 to truly accept responsibility for his conduct.

16 To share some examples of this with the Court,
17 during Mr. Bickhart's psychosexual evaluation, the
18 certified evaluator noted that, "While Mr. Bickhart
19 does acknowledge sexually abusing two minors, he has
20 numerous justifications for doing so."

21 The evaluator then said, "Mr. Bickhart has
22 numerous thinking errors he used in order to justify
23 sexually abusing these two minors. During interviews
24 with police after his arrest, Mr. Bickhart repeatedly
25 placed the blame for his conduct back on the minors,

1 suggesting that during one of the sexual contacts with
2 one of the minors, he tried to leave but the 16 year
3 old girl," he said, "pushed him back down."

4 "At a different time, Mr. Bickhart made
5 suggestion that the sexual abuse he committed was
6 actually attributable to the minor girl wearing
7 "provocative" clothing."

8 Then again, in another conversation, he
9 indicated that, "She said she wanted it. She just kept
10 pushing." "And then Mr. Bickhart insinuated the
11 situation was out of his control saying things like,
12 'she was going to get her way. She had me trapped.
13 And I tried to stop. I really did.'"

14 Finally, when reflecting back on his actions
15 during his psychosexual evaluation, actions which
16 included as Your Honor heard comments about,
17 Mr. Bickhart sexually molesting his own daughter, "The
18 defendant stated that he feels the sexual abuse of his
19 daughter was 50 percent his fault, and 50 percent
20 hers."

21 This blaming behavior is the type that has been
22 continually exhibited by Mr. Bickhart since his arrest
23 and is what ultimately led to the evaluator concluding
24 that, "Mr. Bickhart poses a significant risk to others
25 in the community, especially when he doesn't fully

1 accept responsibility for his sexual crimes and blames
2 his victim, who he states is highly sexualized and has
3 mental health issues."

4 While Mr. Bickhart presents to the Court today
5 as a remorseful individual, I'm sure defense counsel
6 will allude to the same, there's no escaping the
7 egregiousness of his conduct.

8 Mr. Bickhart's sexual abuse was not an isolated
9 event. It occurred over and over and over, spanning
10 the course of several months. For the two young girls
11 who are victims of Mr. Bickhart's acts, the affects and
12 trauma of these incidents will likely live with them
13 for the rest of their lives. This is trauma that can
14 never be undone.

15 The courts in Idaho have long stood by the
16 position that the primary goal of sentencing in
17 criminal cases is the protection of society, with the
18 related goals of deterrence, rehabilitation and
19 retribution following close behind. Today the Court is
20 applying these goals of sentencing to six separate
21 charges.

22 For each count of rape as charged under Idaho
23 Code 18-6101(2), this Court can impose a sentence of up
24 to life in prison.

25 For each count of sexual battery as charged

1 under Idaho Code 18-1508(a), the allowable sentence
2 from this Court is also life in prison.

3 Putting these together, the Court has at its
4 disposal today six life sentences.

5 Your Honor, what the State is asking the Court
6 to do today is to help bring justice in some sense of
7 closure, however small, to these girls and their
8 families.

9 Based upon the egregiousness of the acts in
10 this case, the statements made by the victims and their
11 families which this Court heard, the need for
12 protection of our society from this type of conduct
13 which is outlined in the psychosexual evaluation, and
14 the related goals of deterrence, rehabilitation and
15 retribution, the State would ask the Court for the
16 imposition of the following sentence:

17 For Count I, the State is asking this Court
18 that Mr. Bickhart be sentenced to a unified period of
19 20 years; ten years fixed, ten years indeterminate,
20 with a full imposition of that sentence.

21 For Count II, the State is asking this Court a
22 unified sentence of 20 years; ten years fixed, ten
23 indeterminate, full imposition of that sentence.

24 For Count III, the State is asking a unified
25 sentence of 20 years; ten fixed, ten indeterminate,

1 full imposition.

2 Count VI, the State is asking for a unified
3 sentence of 20 years; ten fixed, ten indeterminate,
4 full imposition of that sentence.

5 Count VII, the State is asking a unified
6 sentence of 20 years; ten fixed, ten indeterminate, for
7 full imposition of that sentence.

8 Lastly, Count VIII, the State would also be
9 asking for the full unified sentence of 20 years; ten
10 fixed and ten indeterminate.

11 The final thing that I will leave this Court
12 with --

13 THE COURT: You're recommending they run
14 concurrent with one another too, I take it?

15 MR. ALLEN: Yes, Your Honor.

16 The final thing I will leave this Court with is
17 for a request that No Contact Orders be entered for the
18 victims and their families to insure that they have the
19 ability to move on from the events of the dates noted
20 and they have the ability to begin repairing their
21 families and begin repairing their daughters.

22 Thank you, Your Honor.

23 THE COURT: Thank you. Mr. Smith.

24 MR. SMITH: Thank you.

25 THE COURT: Hold on just one second. I need

APPENDIX B

1 punishment. I'm not saying that by any means, Your
2 Honor. I just want to do better. I just don't want
3 this to happen.

4 I can't say anything else. I'm sorry. Except
5 for I'm sorry, [REDACTED] I really never meant for this to
6 happen. [REDACTED] I'm sorry to bring you involved in
7 all this. I regret everything I've done. I just hope
8 that you guys can forgive me one day, if at all. And I
9 can live with that.

10 I'm sorry.

11 THE COURT: Thank you.

12 I've reviewed all of the Presentence material,
13 including the Presentence Report and psychosexual
14 evaluation that has been discussed at length here
15 today.

16 I appreciate the statements of the victims.
17 These cases are difficult for everyone and the reason
18 they're difficult for everyone is because of the
19 actions that you've taken, Mr. Bickhart. You're what I
20 can only describe as selfish depraved actions have put
21 everyone here in this situation.

22 None of them, and I'm speaking of the victims,
23 deserve this. I have no doubt that your family,
24 friends of your family are feeling anguish too but
25 again that's solely the result of your selfishness and

1 your depraved actions. That's the reason we're here.

2 The goals of sentencing have been discussed and
3 there are four goals. One, and a very most important
4 one particularly in a case like this, is it's called
5 protection of society. In this case it's really
6 protection of vulnerable people. Because the victims
7 are children. And the age difference is significant.
8 It's not a statutory rape type of situation or anything
9 close to that. It's a situation where the laws have
10 been enacted to protect young people, children, and you
11 violated those laws, Mr. Bickhart.

12 Another goal is deterrence, not only to you but
13 to others. That will be a factor in my sentencing as
14 well.

15 Rehabilitation is obviously a factor that's
16 been discussed at length. That's going to be a factor
17 in my decision.

18 Punishment I think is also a factor, given the
19 egregious nature of the acts you're being sentenced for
20 here today.

21 It is true the Presentence Report shows
22 virtually no prior criminal history but that really
23 doesn't take away from the fact that I'm sentencing you
24 for six major felonies here in one day. And it's
25 apparent in looking at the file that it could have been

1 -- it could have been more but there are six and that's
2 what I will base my decision on. But the point is the
3 lack of prior history really isn't a big factor given
4 the number of offenses here.

5 I don't know if any of us can appreciate the
6 impact on the victims, particularly the minors
7 involved. We do know from prior cases and studies that
8 this will remain with them the rest of their lives.
9 Whether they will be able to get on and cope with their
10 lives, we can only hope that will happen. Hopefully
11 with some closure here today that will allow everyone
12 to have some way to begin to recover.

13 As I stated, the laws are set up to protect
14 children in these kinds of cases. I can't imagine the
15 parent victims that we heard here today, that their
16 restraint I think is admirable and something that I
17 don't usually see in these kinds of cases. I
18 appreciate their statements very much. I can't imagine
19 what they're going through either.

20 The facts of the case, as I stated, are
21 alarming. These are not isolated events. It happened
22 again and again. And given the ongoing nature of the
23 actions, it's clear to me that there were things that
24 you had certainly thought about before you did them,
25 Mr. Bickhart. There's no doubt in my mind you knew

1 they were wrong and yet you continued to do them again
2 and again.

3 There have been discussion as to whether he's
4 fully accepted responsibility. I don't know. I have
5 no way of knowing that. He did plead guilty. There's
6 certainly some statements, statements made to the
7 officers at the time that didn't accept -- indicate an
8 acceptance of responsibility. His statement here today
9 is that he accepts responsibility. I certainly have no
10 way of gauging whether that's true or not.

11 The psychosexual evaluation indicated that he's
12 a moderate risk to R.E.-offend. If he's -- he receives
13 treatment, and I think this is very important too, if
14 he's motivated to complete it. As I stated, that's
15 only one part of the sentencing factor and really not
16 the primary factor which is protection of the public.

17 Given all of the foregoing, I think the
18 recommendations by the State as to the appropriate
19 sentence are the correct ones. Accordingly, for each
20 of Counts I, II, III, VI, VII and VIII, the sentence is
21 a unified sentence of 20 years; with ten years fixed,
22 ten years indeterminate. And the motivation I think to
23 complete sex offense treatment in prison will come, if
24 it will come at all, from the fact that you're looking
25 at a lengthy -- lengthy sentence here, Mr. Bickhart.

1 You will receive credit for the time served to
2 this point.

3 You'll reimburse the -- you'll pay court costs.
4 The sentences will run concurrent with one
5 another.

6 Court costs of \$545.50.

7 The No Contact Orders will remain in effect.

8 You'll reimburse the Department of Corrections
9 for the costs of the Presentence Report not to exceed
10 \$100.00.

11 As I stated, you will reimburse the county for
12 the costs of the psychosexual evaluation.

13 Is there any issues of restitution?

14 MR. ALLEN: I don't know that there were any
15 that I have readily available at my disposal, Your
16 Honor, that I was made aware of but I believe there may
17 have been some outstanding, if I can obtain that
18 information.

19 THE COURT: We can keep restitution is open
20 for a period -- we'll keep restitution issues open for
21 a period of 60 days.

22 MR. ALLEN: Thank you, Your Honor.

23 THE COURT: Anything else, counsel?

24 MR. SMITH: No. Thank you.

25 THE COURT: Anything else, Mr. Allen?