

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

11-23-2021

State v. Manko Respondent's Brief Dckt. 48793

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

Recommended Citation

"State v. Manko Respondent's Brief Dckt. 48793" (2021). *Not Reported*. 7308.
https://digitalcommons.law.uidaho.edu/not_reported/7308

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,)	
)	NOS. 48793-2021 & 48794-2021
Plaintiff-Respondent,)	
)	
v.)	Ada County Case Nos. CR01-18-47843
)	CR01-21-4944
)	
MICHELLE RENEE MANKO,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Michelle Renee Manko failed to show that the district court abused its discretion by imposing consecutive sentences in CR01-21-4944, and ordering those sentences run consecutive to the sentence in CR01-18-47843?

ARGUMENT

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

A. Introduction

In 2018, police conducted a traffic stop on Dale Symons for having a cancelled registration. (PSI, p. 118.) Authorities identified Michelle Renee Manko as the passenger of the vehicle, and

found drug paraphernalia and methamphetamine in the vehicle. (PSI, p. 118.) Under case number CR01-18-47843, the state charged Manko with one count of felony possession of a controlled substance, and one count of possession of drug paraphernalia. (48793 R., pp. 24-25.) Manko pleaded guilty felony possession of a controlled substance, and the state agreed to dismiss the paraphernalia charge. (48793 R., pp. 30-31.) The district court sentenced Manko to seven years, with two years determinate and retained jurisdiction. (48793 R., pp. 46-49.) Following the period of retained jurisdiction, the district court placed Manko on probation for a period of seven years. (R., pp. 54-56.)

In January of 2021, authorities conducted a traffic stop on Manko for an expired registration. (PSI, p. 343.) Manko threw methamphetamine, heroin, marijuana and syringes from her window as she pulled over. (PSI, p. 343.) Two minor children were in the vehicle with Manko, and Manko denied having thrown anything from the window, and denied having any drugs in the vehicle. (PSI, p. 343.) Authorities then found more marijuana and drug paraphernalia in the vehicle. (PSI, p. 343.)

Under case number CR01-21-4944, the state charged Manko with one count of trafficking in heroin, one count of felony possession of methamphetamine, one count of destruction and/or concealment of evidence, one count of misdemeanor possession of a controlled substance, and one count of possession of drug paraphernalia. (48794 R., pp. 26-27.) In CR01-18-47843, the state filed a motion for probation violation for the offenses included in CR01-21-4944, along with numerous other violations. (48793 R., pp. 116-119.) Pursuant to a guilty plea, the state amended the information in CR01-21-4944, charging Manko with two counts of possession of a controlled substance with the intent to deliver, one count of destruction and/or concealment of evidence, one

count of misdemeanor possession of a controlled substance, and one count of possession of drug paraphernalia. (48794 R., pp. 30-31, 41.)

In CR01-21-4944, Manko pleaded guilty to two counts of possession of a controlled substance with the intent to deliver, and the state agreed to dismiss the remaining charges. (48794 R., p. 29.) At the sentencing hearing, Manko asked the district court “to consider imposing the sentence the State suggested, the two plus five sentence” in CR01-18-47843 concurrent, with hopes “this period of sustained sobriety through incarceration will help her” on parole. (Tr., p. 35, Ls. 10-21.) In CR01-18-47843, the district court found Manko violated her probation, and executed the underlying sentence of seven years, with two years determinate. (48793 R., pp. 126-129.) In CR01-21-4944, the district court sentenced Manko to seven years, with two years determinate for each count of possession of a controlled substance with the intent to deliver, ordered that the two sentences run consecutively with each other, and consecutively to the sentence in CR01-18-47843. (48794 R., pp. 46-49.) Manko filed timely appeals in both cases, and a Rule 35 motion in CR01-18-47843. (48793 R., pp. 131-132, 135; 48794 R., pp. 51-52.) The district court granted Manko’s Rule 35 motion in part, denying her request to commute her sentence, but reducing the fixed portion of her sentence from two years to one, and credited her for 343 days served. (Aug., pp. 1-13.)

On appeal, Manko argues that “the district court abused its discretion when it revoked her probation and imposed consecutive sentences in the new case, and ordered those sentences to run consecutive to the sentence in [CR01-18-47843].” (Appellant’s brief, p. 1.) Manko’s argument on the revocation of her probation is barred by the invited error doctrine, and she’s failed to show the district court abused its discretion by imposing consecutive sentences in CR01-21-4944, and ordering those sentences to run consecutive to the sentence in CR01-18-47843.

B. Standard Of Review

“Appellate review of a sentence is based on an abuse of discretion standard. Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and, thus, a clear abuse of discretion.” State v. Schiermeier, 165 Idaho 447, 451, 447 P.3d 895, 899 (2019) (internal quotations and citations omitted). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case. Id. at 454, 447 P.3d at 902. “A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion.” Id. (internal quotations omitted). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2019) (citation omitted).

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. Manko’s Argument The District Court Abused Its Discretion By Revoking Probation Is Barred By The Invited Error Doctrine

“The invited error doctrine is well settled in Idaho. A defendant may not request a particular ruling by the trial court and later argue on appeal that the ruling was erroneous. This doctrine applies to sentencing decisions as well as to rulings during trial.” State v. Griffith, 110

Idaho 613, 614, 716 P.2d 1385, 1386 (Ct. App. 1986). “In short, invited errors are not reversible.” State v. Edghill, 155 Idaho 846, 849, 317 P.3d 743, 746 (Ct. App. 2014).

At the sentencing hearing Manko’s counsel requested imposed sentences, not probation. (Re., p. 35, Ls. 10-23.) On appeal Manko acknowledges that she “requested that the district court revoke her probation and execute her sentence.” (Appellant’s brief, p. 9.) Her appellate argument regarding revocation of probation is barred.

D. Manko 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, and acted reasonably and within the scope of its discretion.

At the sentencing hearing, the district court “considered the record” in Manko’s cases, the comments made at the sentencing hearing, the statutory factors regarding probation, and “the Toohill factors of protection of society, deterrence of the individual and the public generally, rehabilitation and punishment.” (Tr., p. 36, Ls. 10-19.) Given Manko’s “criminal history and the escalation in these charges and the number of charges, particularly with the same crime and them moving to intent to deliver,” the district court determined “that it is not appropriate to place [Manko] in the community.” (Tr., p. 36, Ls. 21-25.) The district court stated “there has been a number of attempts at providing [Manko] with opportunities and resources to sort of get this under control and managed . . . the drug abuse issues.” (Tr., p. 37, Ls. 3-6.) The district court found it “very concerning that there were now two possession of controlled substance with intent to deliver that [she’s] pled guilty to.” (Tr., p. 37, Ls. 6-8; see also Tr., p. 38, Ls. 7-16.)

Manko argues that the mitigating factors—substance abuse issues, family history of committing drug offenses, difficult childhood, ability to be sober for period of time with support and treatment, not having participated in long-term substance abuse programming—show the

district court abused its discretion “when it imposed consecutive sentences in the new case, and made those sentences consecutive to the sentence in [CR01-18-47843].” (Appellant’s brief, pp. 6-8.) Manko’s argument does not show an abuse of discretion.

The PSI prepared for CR01-18-47843 reflects Manko’s LSI score is thirty-eight, placing her in the high risk to reoffend category. (PSI, p. 130.) Manko’s extensive criminal history consists of multiple felony convictions, opportunities on retained jurisdiction and probation, and probation violations. (PSI, pp. 119-124.) At the time of the 2018 PSI, the investigator stated “Manko is not a good candidate for community supervision,” and recommended Manko “be encouraged to actively participate in all treatment and cognitive behavioral therapy programs offered to her on supervision or while incarcerated.” (PSI, p. 131.) The district court placed Manko on a rider, and subsequently placed her on probation. While on probation, Manko received charges for possession of a controlled substance, driving without privileges, no insurance (second offense), and motorized vehicle on bike lanes or path in September of 2020. (48793 R., p. 117.) She also admitted to using meth multiple times a day for a few months, failed to perform 100 hours of community service and participate in rehabilitative programming, failed to submit to urinalysis tests, failed to obtain permission before changing residences, failed to maintain full-time employment, and failed to pay fines, fees or costs as ordered by the district court. (48793 R., pp. 117-118.)

Manko’s criminal history and performance on probation shows that she is not amenable to alternative treatment. Her LSI score and probation violations show that there is an undue risk Manko will reoffend without a significant term of incarceration, and concurrent sentences would fail to deter Manko’s criminal behavior. Concurrent sentences would also depreciate the seriousness of the instant offenses, committed while Manko was on probation. The sentences

imposed provide proper punishment for Manko's escalating criminal conduct, and provide appropriate protection to society. Manko has failed to show that the district court abused its discretion by imposing consecutive sentences in CR01-21-4944, and ordering those sentences run consecutive to the sentence in CR01-18-47843.

CONCLUSION

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

DATED this 23rd 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 23rd 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:

KILEY A. HEFFNER
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

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