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### State v. Paramo Respondent's Brief Dckt. 48840

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO	)	
	)	NO. 48840-2021
Plaintiff-Respondent,	)	
	)	Twin Falls County
v.	)	Case No. CR42-20-2954
	)	
LUIS PARAMO	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Luis Paramo failed to show that the district court abused its sentencing discretion when it imposed aggregate sentences totaling five years with two years determinate upon his convictions for eluding a peace officer and DUI?

ARGUMENT

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

A. Introduction

While riding home during rush hour traffic in his marked police vehicle, Sergeant Ken Mencl feared for his life when he saw Luis Paramo speeding toward him at 97 miles per hour in the wrong lane of traffic. (PSI, p. 15; Trial Tr., p. 108, Ls. 16-22; p. 110, Ls. 6-7.) Sergeant Mencl testified, "I've been in this job for 20 years, and only on a very few occasions have I been in a

situation where I thought that I might not make it home, and this was one of those situations.” (Trial Tr., p. 110, Ls. 9-12.) After nearly being run off the road, Sergeant Mencl activated his lights and sirens, U-turned, and proceeded to pursue Paramo, attempting to intervene to avoid collision on the congested road. (Trial Tr., p. 111, Ls. 5-22.) While running, Paramo failed to negotiate a turn, ran over a traffic sign damaging his windshield and hood, through a field where he spun out, and back onto the road where he continued to elude Sergeant Mencl, traveling at 75 miles per hour. (PSI, p. 15; Trial Tr., p. 114, Ls. 11-16; p. 119, Ls. 19-22; p. 150, L. 25 – p. 152, L. 19.) Paramo surprised Sergeant Mencl when he suddenly turned into the parking lot of a McDonalds and stopped. (PSI, p. 15; Trial Tr., p. 122, L. 22 – p. 123, L. 12.)

Sergeant Mencl initiated a felony stop on the vehicle, handcuffed Paramo, and observed many indications that Paramo was intoxicated, including glassy, bloodshot eyes, a strong odor of alcohol on his breath, and slurred speech. (PSI, p. 15.) Sergeant Mencl considered asking Paramo if he’d be willing to do standard field sobriety tests but decided the tests “would be difficult if not hazardous based on [Paramo’s] inability to walk well.” (Trial Tr., p. 133, Ls. 7-17.) Though he claimed to have had only three beers, Paramo’s blood alcohol content was 1.53/1.54. (PSI, pp. 16, 25.) When asked why he didn’t stop for Sergeant Mencil, Paramo answered that he “didn’t want to go to jail.” (PSI, p. 16; Trial Tr., p. 186, Ls. 14-20.) Later, when asked about the evening of his arrest, Paramo recalled he was pulled over because his front window was broken, passed a field sobriety test, was not driving fast and never attempted to flee police. (PSI, p. 16.)

The state charged Paramo with eluding a peace officer and operating a motor vehicle while under the influence of alcohol (DUI). (R., pp. 48-49.) A jury found Paramo guilty. (R., p. 179.) The district court imposed aggregate sentences of five years, with two fixed, and suspended

Paramo's driver's license for a period of three years following his incarceration. (R., pp. 188-90.)

Paramo filed a timely notice of appeal. (R., 195-97.)

Paramo challenges the district court's decision to impose an aggregate sentence of five years with two years fixed. Paramo 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. Paramo 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 district court applied factors for both Toohill<sup>1</sup> and those set forward in Idaho Code § 19-2521 (Sent. Tr., p. 16, Ls. 10-13.) The district court recognized Paramo’s actions put society at risk and his “history indicates that [he] will continue to do so through [his] alcohol consumption.” (Sent. Tr., p. 17, L. 25 – p. 18, L. 3.) The district court hoped Paramo could be rehabilitated but, based on his comments before the district court during sentencing, recognized that he was “not taking responsibility for what [he’d] done” and had “no desire to change [his] behavior.” (Sent. Tr., p. 18 Ls. 4-12.) The district court considered Paramo’s “unwillingness to accept responsibility” and found it needed “to impose a sentence that deters [Paramo] from doing this in the future.” (Sent. Tr., p. 18, L. 22 – p. 19, L. 1.) Finally, the court found Paramo needed to be punished “given the danger [he] put society in.” (Sent. Tr., p. 19, Ls. 2-4.) Considering the aforementioned, the district court sentenced Paramo to a unified sentence of five years, with two fixed, despite the state’s request for a unified sentence of five years, with three and one-half fixed. (Sent. Tr., p. 7, L. 24 – p. 8, L. 1; p. 19, Ls. 5-11.)

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<sup>1</sup> State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

Paramo argues that the district court should have sentenced him to a lesser term of imprisonment or retained jurisdiction because Paramo “recognized that alcohol contributed to his legal problems” and “he had an immigration detainer and expected to be deported.” (Appellant’s brief, pp. 3-4). These arguments are far from persuasive. Rather than admit his own culpability, Paramo maintained “the police made up a story because they want him in jail.” (PSI, p. 16.) He told the GAIN-I evaluator, “I don’t drink that much. I think I have been set up by police.” (PSI, p. 25.)

Despite his claim of no criminal record in another state, Paramo has a felony charge for possession of concentrated cannabis and two charges of DUI in California. (PSI, pp. 6-7, 21.) Elmore County charged Paramo with alcoholic beverage—consume or possess open container by driver. (PSI, pp. 21-22.) Paramo meets the clinical criteria for alcohol use disorder but does not believe he needs treatment nor does he express any motivation to seek treatment or quit drinking. (PSI, pp. 20, 23, 26, 28.) Paramo is an ongoing threat to the community due to his “high” LSI-R score of 30 combined with his resistance to treatment and failure to take responsibility for the crimes he committed. (PSI, p. 17.) He is not an appropriate candidate for retained jurisdiction or a reduced sentence.

Paramo denies every aspect of the night he attempted to elude Sergeant Mencl, and has instead concocted a new story of imagined events and personal persecution. He denies he has a problem with alcohol but has been charged multiple times with alcohol related offenses and diagnosed with alcohol use disorder. The district court recognized Paramo’s disregard for the safety of the community and his lack of accountability makes him a continued risk. Paramo has failed to show an abuse of discretion.

CONCLUSION

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

DATED this 26<sup>th</sup> day of October, 2021

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

MOLLY GARNER  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26<sup>th</sup> day of October, 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:

JENNY C. SWINFORD  
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\_\_\_\_\_  
/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
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