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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	
)	NO. 48872-2021
Plaintiff-Respondent,)	
)	Ada County
v.)	Case No. CR01-18-31471
)	
CHANGKUOTH DOMACH)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Changkuoth Domach failed to show that the district court abused its sentencing discretion when it imposed a sentence of eight years with two and one-half years determinate upon his conviction for unlawful possession of a firearm with a persistent violator enhancement?

ARGUMENT

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

A. Introduction

Police conducted a traffic stop on the vehicle Changkuoth Domach drove and could smell marijuana emanating from the vehicle. (PSI, p. 187.) Unlicensed, Domach provided the officer with his name and police conducted a record check, which returned outstanding warrants. (PSI, pp. 187-88.) Based on the odor, police conducted a search of the vehicle and found marijuana in

the driver's door pocket. (PSI, pp. 178, 187-88.) Police then searched the trunk of the car and found a field stripped Glock handgun, magazines, and ammunition inside a retail luxury brand bag. (PSI, p. 188; State's Exhibit 1A-1B.) Police requested a record check on Domach's criminal history which revealed he had been convicted of five prior felonies and police arrested Domach for felon in possession of a firearm, possession of marijuana, and the outstanding warrants. (PSI, p. 188.)

The state charged Domach with unlawful possession of a firearm and possession of a controlled substance, and later added a persistent violator enhancement. (R., pp. 24-25, 38-39.) Domach pleaded guilty to the possession charge prior to trial (R., pp. 157-58), was found guilty for the unlawful possession of a firearm charge by a jury (R., p. 202), and pleaded guilty to the persistent violator enhancement following the verdict (R., p. 167). The district court imposed an enhanced aggregate sentence of eight years with two and one-half years determinate, with credit for time served in the amount of 618 days. (R., pp. 208-11.)

Domach filed a timely notice of appeal. (R., pp. 215-17.)

Domach challenges the district court's decision to sentence him to an enhanced aggregate sentence of eight years, two and one-half years determinate. Domach 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. Domach 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)).

At the sentencing hearing, the district court considered the four objectives of criminal sentencing including protection of the community, rehabilitation, deterrence, and punishment.

(Tr., p. 360, L. 23 – p. 361, L. 2.) The district court also considered the aggravating and mitigating circumstances unique to this particular case. (Tr., p. 361, Ls. 15-16.) Among mitigating factors, the court considered Domach’s unique experience as a young, Sudanese refugee (Tr., p. 361, Ls. 17-22) and his psychological evaluation which placed Domach as a “low” risk threat to commit violent acts against the community (Tr., p. 361, L. 23 – p. 362, L. 5; PSI, pp. 209-10). Among aggravating factors, the district court considered Domach’s felony record including charges of burglary, assault, and drug convictions. (Tr., p. 362, Ls. 8-13.) The district court considered Domach’s 15 month absconsion after posting bail in the present case. (Tr., p. 363, Ls. 2-3.) It also considered Domach’s testimony during trial which the district court and the jury found was almost certainly “untruthful” and was reason alone to deny placing Domach on probation. (Tr., p. 363, L. 17 – p. 365, L. 4.) The record shows the district court correctly perceived it discretion, acted within the boundaries of its discretion, acted consistently with the applicable sentencing standards, and reached its decision by the exercise of reason

Domach claims his experience as a refugee, his low risk to the community, and his social support system should have suggested a lesser term of imprisonment. (Appellant’s brief, p. 4.) Appellant’s claims are not persuasive. The district court addressed Domach’s experience as a child refugee and his low risk to the community directly in sentencing and found them mitigating. (Tr., p. 361, L. 16 – p. 362, L. 5.) These factors were, however, not enough to overcome the balance when weighed against aggravating factors including his criminal history, his absconsion, his trial testimony, and his willingness to disobey rules and “do the wrong thing in order to achieve his immediate objectives.” (Tr., p. 364, Ls. 15-21.)

Domach has failed to take accountability for his criminal past, the present offense, or his behavior while in jail. As a juvenile, Domach received convictions in three felony and three

misdemeanor cases for crimes including burglary, theft, domestic assault, assault, possession of stolen property, and probation violations. (PSI, pp. 2-3, 6-7). As an adult, Domach accrued convictions of a violent nature, including burglary, assault, two separate counts of felony possession of a controlled substance, and misdemeanor charges including two counts of disorderly conduct, escape, and two counts of driving without privileges. (PSI, pp. 3, 6-9.) Since his release from prison in his 2013, Domach claims he has “not committed an offense with the intentions of a criminal mind state” (Tr., p. 356, Ls. 11-13) yet has accrued charges of felony fugitive from justice, misdemeanor disorderly conduct, providing false information, criminal trespass, and three additional counts of driving without privileges (PSI, pp. 7-9). In the five year interim between his release from prison and the present offense, Domach believes he – despite the additional seven charges – to be “turning his life around” and “has been doing well.” (PSI, pp. 205, 209-10.)

Domach reported to the psychological evaluator that he had “taken advantage of his time [in jail] by reading books about psychology and spirituality” and had experienced personal growth. (PSI, pp. 209-10.) While jailed, Domach also used his time to accrue over 50 negative log entries including 15 disciplinary reports for behavior including making false statements, disrespecting staff including calling guards “fucking bitch,” “bitch,” “pussy,” “faggot,” and “dumbass,” fighting with cellmates, possessing and passing contraband, stealing food, interrupting count procedures, and using other inmates’ phone accounts. (PSI, p. 9; see also PSI, pp. 22-105.) Domach explained his behavior in jail as the result of the “frustration” he felt after finding himself in a “bad situation” requiring him to “kind of weather the storm.” (Tr., p. 356, L. 25 – p. 357, L. 7.)

Domach claimed his juvenile crimes were the result of his attempt to help his mother financially. (PSI, p. 9.) In the present offence, he claimed he was unaware the car he drove contained a gun (PSI, p. 1), even though his palm prints were found on the gun’s flashlight

attachment (Tr., p. 221, L. 4 – p. 230, L. 19; p. 281, Ls. 1-20). He also claimed he didn't know the last name of the owner of the car he was driving or that his Washington state medical marijuana card would not protect him from a controlled substance with intent to deliver charge in Idaho. (PSI, p. 187; Tr., p. 356, Ls. 14-21.) The psychological evaluator wrote Domach, "fails to accept full responsibility for his actions." (PSI, p. 207.) "Treatment is available for Mr. Domach's antisocial personality disorder issues in the form of cognitive thinking type programs," he wrote, though Domach has to "really want to make those difficult long-lasting pro-social changes in order for the program to be effective." (PSI, p. 208). The psychological evaluator also observed Domach "is satisfied with himself as he is" and "sees little need for changes in his behavior." (PSI, p. 207.) The district court concluded Domach "ought to be provided an opportunity for programming in a structured setting" to think about his "mind-set" and "all the bad decisions [he] made that led to this day." (Tr., p. 365, Ls. 13-20.)

Though it may be an improvement from his violent criminal life before his release from prison in 2013, Domach has continued to accrue criminal charges that illustrate his unwillingness to conform his behavior to acceptable standards. Rather than take responsibility for his actions, Domach has claimed ignorance and provided excuses, including providing false testimony at trial, illustrating the community is best protected from him by a term of incarceration. The district court carefully considered both the mitigating and aggravating factors and imposed an appropriate sentence which is well supported by the record.

CONCLUSION

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

DATED this 24th day of November, 2021

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

MOLLY GARNER
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th 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:

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/s/ Kenneth K. Jorgensen
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