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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	
)	NO. 48918-2021
Plaintiff-Respondent,)	
)	Ada County
v.)	Case No. CR01-20-5746
)	
MARIO ALBERTO ALVAREZ)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Mario Alberto Alvarez failed to show that the district court abused its sentencing discretion when it imposed a unified sentence of 14 years, with four fixed, upon his conviction for grand theft by receiving, possessing and/or obtaining control over stolen property?

ARGUMENT

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

A. Introduction

Someone stole Steven Vicuna's driver's license, Social Security card, and two blank checks out of his pickup. (PSI, pp. 1, 340-42; Tr., p. 104, L. 14 – p. 105, L. 2.) Alvarez used one of the stolen blank checks to deposit \$1200 into his account. (PSI, pp. 1-2, 343-46; Tr., p. 105, Ls. 2-10; p. 106, L. 20 – p. 107, L. 24.) Alvarez admitted to depositing the check but told police

Chancellor Threatt had given him check, which Threatt confirmed. (PSI, 346-47, 395.) Alvarez and Chancellor were together when Alvarez deposited the check. (PSI, p. 347.)

The state charged Alvarez with grand theft by receiving, possessing, and/or obtaining control over stolen property. (R., pp. 26-27.) A jury found Alvarez guilty. (R., p. 107.) The district court imposed a sentence of 14 years with four years fixed. (R., pp. 134-36.) Alvarez filed a timely notice of appeal. (R., pp. 138-39.)

Alvarez challenges the district court's decision to impose a unified sentence of 14 years, with four fixed. Alvarez 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. Alvarez 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 imposed a reasonable sentence, considering the goals of deterrence, rehabilitation, punishment, with the protection of society as the most salient in consideration of Alvarez. (Tr., p. 226, L. 23 – p. 227, L. 3.) The present case is Alvarez’s *seventh* felony conviction in Idaho for crimes of forgery and theft, creating “one victim after another, after another.” (Tr., p. 227, Ls. 2-18; PSI, pp. 3-4 (stating this was Alvarez’s sixth felony with a seventh pending)). The district court found it “necessary at this point to construct a sentence that will give society as much protection as it can get.” (Tr., p. 227, Ls. 18-21.)

Alvarez argues that mitigating factors including his long history of drug abuse and desire for treatment, his mental illness, and his remorse should have moved the court to impose a lesser

sentence. (Appellant’s brief, pp. 4-5). Alvarez’s argument is not persuasive. The district court noted, “There have been a number of attempts at rehabilitative measures, and they don’t seem to have worked.” (Tr., p. 228, Ls. 2-5.) The district court found that the promises and aspirations Alvarez made before the district court were promises he had made before other courts. (Tr., p. 228, Ls. 5-9.) The record shows similar promises and stated desire to rehabilitate from 2001 (PSI, pp. 154, 170), 2002 (PSI, pp. 74, 82), 2007 (PSI, pp. 8, 14), and 2009 (PSI, pp. 173, 181). Continuing, the district court noted that Alvarez has “had opportunities to avail [him]self of the kinds of services that [Alvarez is] now asking [the district court] to provide.” (Tr., p. 228, Ls. 9-11.) The district court found Alvarez not a candidate for probation. (Tr., p. 228, Ls. 12-14.)

Alvarez has an extensive criminal history. Since 1999, he has been charged criminally in Idaho dozens of times (PSI, pp. 3-4, 10-11, 76-77, 160-62, 171) with dozens more charges from the state of Arizona between 1990 and 1998 (PSI, pp. 78-79, 156-60, 171). The charges include, amongst others, assault, burglary, possession of paraphernalia and controlled substances, failure to appear, trespass, theft, and forgery. (PSI, p. 76-79, 156-61.) His younger brother – who Alvarez described as his “pastor, mentor, best friend,” attempted to help Alvarez multiple times by providing him a home, employment, schooling, and support – told a presentence investigator that Alvarez considers jail and prison “cake walks,” will brag about how many times he’s been to jail, and hoped “the judge understands that [Alvarez] does not respect the law.” (PSI, pp. 96-97, 162-63, 177, 190.) He said, “I hold no malice toward [Alvarez], and I love him, but he is unwilling to take advantage of the help I have offered him” and that Alvarez had “never faced the consequences of his actions.” (PSI, p. 163)

Alvarez has cycled through a revolving door of arrest, prison time, and release, only to be arrested months later for new crimes. In 2007, placed on parole following prison time for his

conviction of possession of a controlled substance, the state charged Alvarez with possession of methamphetamine less than two months after his release into the community. (PSI, p. 8.) Placed on parole in 2008 following prison time for the previous charge, the state charged Alvarez with forgery four months after his release into the community. (PSI, pp. 173, 182.) In Idaho Dept. of Corrections custody until 2014, Alvarez transferred to Arizona under the interstate compact and absconded less than a year later, only to be taken into custody in 2015 where he remained in continuous IDOC custody until late 2018. (PSI, p. 4.) Alvarez committed the present offence less than three months following his release. (PSI, p. 4.) In the months before his arrest for the present offense, Alvarez accrued separate charges of aid/abet petit theft, attempted petit theft, petit theft, and grand theft. (PSI, p. 3-4.) Unsurprisingly, Alvarez LSI-R score is "high" at 42. (PSI, p. 2.)

Despite the classes, certificates, and multiple resources devoted to his improvement, Alvarez has not made changes or taken responsibility for the crimes he has committed. (PSI, pp. 62-73, 177, 193-96.) A presentence investigator wrote Alvarez is "not at all willing to accept responsibility for his actions and own up to his behavior. (PSI, p. 16.) Alvarez's brother told a presentence investigator that Alvarez "has 'always viewed himself as a victim, whatever happens is somebody else's fault.'" (PSI, p. 163.) Alvarez's parole officer said Alvarez "did not take any responsibility at all for his possession / use of drugs." (PSI, p. 14.) Alvarez has not attempted to modify his behavior while in jail, either. Between September 2020 and March 2021, Alvarez had ten incident reports while in Ada County custody including assaultive behavior, refusal to comply with orders, disrespectfulness, disruptiveness, and fighting. (PSI, pp. 4, 267-69, 271-73, 275, 279, 283, 291, 298, 317, 322.)

The community is at risk when Alvarez is out of state custody. He is unable or unwilling to modify his behavior to conform to acceptable, legal standards. Undeterred by the threat of

punishment or in consideration of the harm he causes other, Alvarez continues to create more victims. 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 26th 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 26th 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:

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/s/ Kenneth K. Jorgensen
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