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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, ID 83720-0010
(208) 334-4534
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)
) NO. 49001-2021
Plaintiff-Respondent,)
) Ada County
v.) Case No. CR01-19-43743
)
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 aggregate sentence totaling ten years with two years determinate upon his conviction for grand theft with a persistent violator enhancement?

ARGUMENT

Alvarez's Challenge to His Sentence is Barred by the Doctrine of Invited Error

A citizen reported Mario Alberto Alvarez as a potential prowler. (Tr., p. 23, Ls. 10-11.) When police encountered him Alvarez gave them a false name and avoided arrest on outstanding warrants. (Tr., p. 23, Ls. 11-12; R., pp. 27-28.) Later police again encountered Alvarez, who attempted to flee on a bicycle but ultimately crashed into the back of the patrol vehicle. (Tr., p. 23, L. 12-16.) Police found Alvarez in possession of stolen checks. (Tr., p. 23, Ls. 16-18.) Alvarez

claimed he found an envelope of payroll checks and was trying to decide if he should return the checks “for a reward” or “hold onto them” to obtain drugs to “fuel [his] addiction” with when he was confronted by police. (Tr., p. 16, Ls. 3-17.)

The state charged Alvarez with grand theft, resisting and/or obstructing an officer, possession of a taser, providing false information to law enforcement, and added a persistent violator enhancement. (R., pp. 22-23, 40-41.) Count four, the charge of providing false information to law enforcement, was ultimately severed from the other counts. (R., pp. 27-31, 35.) Alvarez pleaded guilty pursuant to a plea agreement in which he admitted to the grand theft charge and persistent violator enhancement and the state agreed to dismiss the remaining charges in the present case and dismiss charges of possession of methamphetamine and possession of drug paraphernalia in another case.¹ (R., pp. 75-87.) The state recommended a 14 year sentence, four fixed, to run concurrently with the sentence Alvarez received the previous day in another district court case which also involved grand theft and stolen checks.² (R., p. 92; Tr., p. 22, Ls. 5-10; PSI, pp. 2-3.) Defense requested a sentence of ten years, two fixed, to run concurrently. (R., p. 92; Tr., p. 25, Ls. 7-8.) The district court imposed a sentence of ten years, two fixed, to run concurrently with the other grand theft conviction. (R., pp. 92-96; Tr., p. 36, L. 21 – p. 37, L. 2.)

Alvarez filed a timely notice of appeal. (R., pp. 101-03.)

Alvarez challenges the district court’s decision to sentence him to an aggregate sentence of ten years, two fixed. (Appellant’s brief, pp. 3-8.) Alvarez’s argument is barred by the invited error doctrine.

¹ iCourt, State v. Alvarez, CR01-20-37688

² iCourt, State v. Alvarez, CR01-20-5746

“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). Because Alvarez received the sentence he advocated for, he is barred from claiming on appeal that his sentence is excessive.

Even if not barred by the invited error doctrine, review shows the sentence to be reasonable. At the sentencing hearing, the district court considered the factors of punishment, deterrence, rehabilitation, and primarily, to “fashion a sentence so that ... this doesn’t happen again.” (Tr., p. 35, Ls. 10-15.) The district court considered the state’s recommendation of mirroring the sentence imposed the previous day in the other grand theft case but found that, in the interest of the balance of the factors and facts in the present case, the district court would ignore the other sentence and make its own decision. (Tr., p. 36, Ls. 10-20.) Given Alvarez’s criminal history, the district court considered ten years a reasonable sentence. (Tr., p. 36, Ls. 21-23.) The district court accepted defense council’s recommendation of two years fixed, and imposed sentence to run concurrently with the other sentence. (Tr., p. 36, L. 23 – p. 37, L. 8.)

Despite the fact that Alvarez received the sentence he argued for, “he nevertheless maintains the district court should have imposed a lesser sentence in light of the mitigating factors present in this case” including his substance abuse issues, his mental condition, and his show of regret. (Appellant’s brief, p. 4-7). Alvarez’s claims are not persuasive. For more than a decade, Alvarez has been telling the courts he is ready for change and has “stopped using drugs because of what [he] learned in drug treatment!” (PSI, p. 182.) He has been the beneficiary of multiple

attempts to provide him the assistance he needs to address his substance abuse and mental health issues, but Alvarez has been unwilling to avail himself those numerous attempts or to engage in rehabilitation. (PSI, pp. 15, 63-74, 178, 183.) Alvarez's younger brother said Alvarez is unwilling to take advantage of the opportunities offered to him. (PSI, p. 172.)

The present case is Alvarez's *seventh* felony conviction in Idaho for crimes of forgery and theft. (PSI, p. 4-5, 77.) Since 1999, he has been charged criminally in Idaho dozens of times (PSI, pp. 4-5, 11-12, 77-78, 161-63, 172) with dozens more charges from the state of Arizona between 1990 and 1998 (PSI, pp. 79-80, 157-61, 172). The charges include, amongst others, assault, burglary, possession of paraphernalia and controlled substances, failure to appear, trespass, theft, and forgery. (PSI, p. 77-80, 157-62.) 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. 97-98, 163-64, 178, 191.) He said, “He has never faced the consequences of his actions. I hold no malice toward [Alvarez], and I love him, but he is unwilling to take advantage of the help I have offered him.” (PSI, p. 164.)

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. 9.) 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. 174, 183.) In Idaho Dept. of Corrections custody until 2014, Alvarez Interstate Compact transferred to Arizona 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. 5.) Three months following his release, Alvarez committed the new crime by illegally obtaining two blank checks, a driver's license, and Social Security card from a stolen vehicle which resulted in a jury finding him guilty and led to his sentence of 14 years, four fixed. (PSI, pp. 2, 5, 341-48; R., p. 92; Tr., p. 22, Ls. 6-8.) Alvarez also accrued other charges including aid/abet petit theft, attempted petit theft, and petit theft. (PSI, p. 4-5.) Unsurprisingly, Alvarez LSI-R score is "high" at 42. (PSI, p. 3.)

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. 63-74, 178, 194-97.) A presentence investigator wrote Alvarez is "not at all willing to accept responsibility for his actions and own up to his behavior." (PSI, p. 17.) 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. 164.) Alvarez's parole officer said Alvarez "did not take any responsibility at all for his possession / use of drugs." (PSI, p. 15.) Alvarez has not attempted to modify his behavior while in jail, either. Between November 2019 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. 5, 268-70, 272-74, 276, 280, 284, 292, 299, 318, 323.)

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 the sentence that Alvarez also requested.

