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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47236-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-19-7095
v.)	
)	
CHRISTOPHER DIRK BAAY,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE THOMAS J. RYAN
District Judge

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	5
ARGUMENT	6
The District Court Abused Its Discretion When It Sentenced Mr. Baay To Ten Years, With Five Years Fixed, Based On Its Misunderstanding That The Persistent Violator Statute Required At Least Five Years Fixed	6
A. Introduction	6
B. Standard Of Review.....	6
C. The District Court Did Not Correctly Perceive Its Discretion Or Act Consistently With The Legal Standards Because It Mistakenly Believed It Had To Sentence Mr. Baay To At Least Five Years Fixed As A Persistent Violator.....	7
CONCLUSION.....	10
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

Cases

Lunneborg v. My Fun Life, 163 Idaho 856 (2018).....6

State v. Anderson, 152 Idaho 21 (Ct. App. 2011).....8, 10

State v. Haggard, 146 Idaho 37 (Ct. App. 2008).....7

State v. Helms, 143 Idaho 79 (Ct. App. 2006).....7

State v. Miller, 151 Idaho 828 (2011)6

State v. Toyne, 151 Idaho 779 (Ct. App. 2011) 7, 8, 9, 10

State v. Weigle, 165 Idaho 482 (2019)6

Statutes

I.C. § 18-9011

I.C. § 18-903(a).....1

I.C. § 19-2514..... 1, 7, 8, 9

I.C. § 19-918(5)1, 9

STATEMENT OF THE CASE

Nature of the Case

Christopher D. Baay appeals from the district court's judgment of conviction and sentence for felony domestic assault and the persistent violator sentencing enhancement. Mr. Baay argues the district court abused its discretion at sentencing because the district court incorrectly believed the persistent violator statute required a sentence of at least five years fixed. As such, the district court sentenced Mr. Baay to five years fixed plus five years indeterminate. Due to the district court's misunderstanding of its sentencing discretion and the applicable legal standard, Mr. Baay respectfully requests this Court vacate his sentence and remand for a new sentencing hearing.

Statement of Facts and Course of Proceedings

The State charged Mr. Baay by Information with felony domestic assault, in violation of I.C. §§ 18-901 and -918(5), and misdemeanor battery, in violation of I.C. § 18-903(a). (R., pp.47–48; *see also* R., pp.111–12 (amended information).) Later, the State filed an Information Part II that charged Mr. Baay as a persistent violator of the law pursuant to I.C. § 19-2514. (R., pp.60–61.) Mr. Baay pled not guilty. (R., p.59.)

Mr. Baay went to trial, and the jury found him guilty of domestic assault, but not guilty of battery. (*See* R., pp.117–123 (trial minutes), p.151 (verdict); Tr. Vol. I,¹ p.336, L.18–p.337, L.15 (verdict).) Mr. Baay admitted to two prior felony offenses for the persistent violator enhancement. (Tr. Vol. I, p.339, L.5–p.345, L.17; R., p.123.)

¹ There are four separate transcripts on appeal: (1) the preliminary hearing, held on March 11, 2019; (2) a motion hearing, held on May 14, 2019; (3) the one-day trial, held on May 22, 2019; and (4) the sentencing hearing, held on July 23, 2019. The preliminary hearing and motion hearing transcripts are not cited herein. Citations to Volume I will refer to the trial transcript, and citation to Volume II will refer to the sentencing hearing transcript.

At sentencing, the State recommended a sentence of two years fixed plus six years indeterminate, for a total of eight years. (Tr. Vol. II, p.17, Ls.5–8.) Mr. Baay did not recommend a specific sentence, but recommended the district court retain jurisdiction (“a rider”). (Tr. Vol. II, p.27, Ls.3–5.) After the parties’ recommendations, the district court asked about the required sentence under the persistent violator statute:

Counsel . . . I want to inquire. The recommendation from the State is two-plus-six or a unified sentence of eight years. But correct me if I am wrong, but that would be an illegal sentence given the fact he has admitted being a persistent violator. It’s no less than five years and up to life that I need to impose here.² So it would appear that the Court couldn’t accept the State’s recommendation. Am I correct about that?

(Tr. Vol. II, p.30, Ls.7–16.) The State responded:

That’s an interesting question, Your Honor, because in my experience different district court judges here in Ada County view that five-to-life differently. Some have -- and it appears to be your view -- that you have to at least impose a minimum of five years fixed and go up to life. But in my experience, the majority feel that the sentence has to be at least five, that it cannot add up to less than five.

(Tr. Vol. II, p.30, Ls.17–25.) The district court asked Mr. Baay’s counsel if that was his “experience here as well,”³ and Mr. Baay’s counsel answered that the sentence must be “at least five years in its entirety.” (Tr. Vol. II, p.31, Ls.1–11.) Mr. Baay’s counsel explained a defendant must receive a minimum sentence of five years, but “it doesn’t have to be fixed.” (Tr. Vol. II, p.31, Ls.13–14.) Mr. Baay’s counsel added:

It says that -- although I can’t quote you a case, I have read case law that reflects, again, that it does [sic] have to be a prison sentence. But it says shall be sentenced

² At the trial, during the district court’s colloquy with Mr. Baay on his admissions to two prior felonies, the district court made a similar remark: “And, essentially, if you admit today that you violated by committing two prior felonies, I understand the law would say that the maximum penalty that could be imposed for this charge that you were found guilty of would be no less than five years and up to life in the state penitentiary.” (Tr. Vol. I, p.340, Ls.15–21.)

³ The sentencing transcript indicates that the prosecutor asked Mr. Baay’s counsel this question about his experience in Ada County, but this is likely an inadvertent omission of “THE COURT” by the court reporter. (See Tr. Vol. II, p.30, L.17–p.31, L.2.)

to a term in custody of the State Board of Corrections for not less than five and may extend to life.

The language, I believe, mirrors robbery. Robbery says sentenced to the Department of Corrections for a minimum of five up to life. And I think in the Court's experience, you can give people riders; you can give people probation on robberies. So I just believe -- I believe what you have to do is obviously divide out the sentence, so I think you can give a two-plus-six, but you have to say something like I'm giving a, you know, two-plus-three for the offense, and I am extending that for purposes of the persistent violator to a zero-plus-three consecutive.

(Tr. Vol. II, p.31, L.14–p.32, L.6.) The district court thanked the parties for “that clarification,” and Mr. Baay made a statement in allocution. (Tr. Vol. II, p.32, Ls.7–8, p.32, L.11–p.34, L.21.) After that, the district court announced its sentencing decision. The district court first discussed the facts and victims of Mr. Baay's criminal conduct. (Tr. Vol. II, p.34, L.22–p.31, L.2.) On the persistent violator enhancement, the district court stated: “Now, I understand that there may be a difference of an opinion with regard to how to allocate the time on a persistent violator. But I have always taken the view that it is a minimum of five years.” (Tr. Vol. II, p.37, Ls.3–7.) The district court continued to discuss various factors it considered for the appropriate sentence for Mr. Baay. (Tr. Vol. II, p.37, L.7–p.38, L.16.) The district court then stated:

The Court in this case finds that, indeed, the Court needs to add extra time. You have put yourself in a position where you're now treated as a persistent violator. The reality is you ever commit any other offense, you're – the rest of your life, you're pretty much going to be in prison. That's where you got yourself. Three felony convictions. And I'm going to fashion a sentence that makes sure that that happens because I think there needs to be a sufficient deterrence for you to make sure that you need to change your life around.

So the Court -- the underlying sentence is going to impose or sentence you to five years fixed and five years indeterminate for this particular case. Now, I will retain jurisdiction, however, and allow for the rehabilitative program -- programming in that retained jurisdiction program which could last up to 365 days.

(Tr. Vol. II, p.38, L.17–p.39, L.11.) The district court entered a judgment of conviction that sentenced Mr. Baay “to the custody of the State Board of Correction of the State of Idaho for a

unified enhanced sentence not to exceed ten (10) years, with the first five (5) years fixed, and with the remaining five (5) years indeterminate” and retained jurisdiction. (R., pp.158–59.)

Mr. Baay timely appealed. (R., pp.162–64.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Baay to ten years, with five years fixed, based on its misunderstanding that the persistent violator statute required at least five years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Baay To Ten Years, With Five Years Fixed, Based On Its Misunderstanding That The Persistent Violator Statute Required At Least Five Years Fixed

A. Introduction

Mr. Baay argues the district court abused its discretion at sentencing because it misunderstood the relevant legal standard and believed it had to impose a sentence of at least five years fixed to comply with the persistent violator statute. The district court's understanding was incorrect because the persistent violator statute does not require five years fixed, but only a unified sentence of at least five years. Therefore, the district court did not properly perceive its discretion or act consistently with the applicable legal standards when it sentenced Mr. Baay. Due to this discretionary error, Mr. Baay respectfully submits this Court vacate his sentence and remand his case for a new sentencing hearing.

B. Standard Of Review

The Court reviews the district court's sentencing decision for an abuse of discretion.

State v. Miller, 151 Idaho 828, 834 (2011).

When determining whether the trial court abused its discretion, this Court considers “[w]hether 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. Weigle, 165 Idaho 482, 447 P.3d 930, 937 (2019) (alteration in original) (quoting

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018)).

C. The District Court Did Not Correctly Perceive Its Discretion Or Act Consistently With The Legal Standards Because It Mistakenly Believed It Had To Sentence Mr. Baay To At Least Five Years Fixed As A Persistent Violator

“Idaho’s persistent violator statute, I.C. § 19-2514, authorizes a court to sentence a third-time felon to a greater term than otherwise would have been permissible for the new offense.” *State v. Helms*, 143 Idaho 79, 81 (Ct. App. 2006). It states in full:

Any person convicted for the third time of the commission of a felony, whether the previous convictions were had within the state of Idaho or were had outside the state of Idaho, shall be considered a persistent violator of law, and on such third conviction shall be sentenced to a term in the custody of the state board of correction *which term shall be for not less than five (5) years* and said term may extend to life.

I.C. § 19-2514 (emphasis added). “Idaho’s persistent violator law does not create a new offense requiring punishment . . . , but rather renders a person convicted liable to punishment in excess of that which might have been inflicted upon him had he not been twice previously convicted.” *State v. Haggard*, 146 Idaho 37, 39 (Ct. App. 2008). The statute is “a clear expression of legislative policy that a recidivist should be subject to more severe punishment than a first offender would be.” *Helms*, 143 Idaho at 81.

The more severe punishment required by I.C. § 19-2514 is a “term . . . for not less” than five years that “may extend to life.” I.C. § 19-2514. In *State v. Toyne*, 151 Idaho 779 (Ct. App. 2011), the Court of Appeals clarified any “confusion” over the prescribed sentence in I.C. § 19-2514. *Id.* at 782. The Court of Appeals held I.C. § 19-2514 “does not require a minimum fixed term of imprisonment.” *Id.* at 783. The statute’s language “does not state that the five-year minimum sentence must be fixed or that the sentence may not be suspended.” *Id.* “The statute requires only a *unified* sentence of at least five years and such sentence may, in the court’s discretion, be suspended.” *Id.* Therefore, to comply with I.C. § 19-2514, the district court must sentence the defendant to unified term of at least five years, and the district court has

discretion to determine the fixed portion, if any, of that term. The district court also has discretion to retain jurisdiction or suspend the sentence.⁴

For example, in *Toyne*, the district court believed it had to impose a minimum sentence of five years fixed to comply with persistent violator statute. 151 Idaho at 781. The district court also believed it could not retain jurisdiction because the statute did not allow suspension of the sentence after the rider. *Id.* Accordingly, the district court sentenced the defendant to fifteen years, with seven years fixed, for driving under the influence with the persistent violator enhancement. *Id.* at 780. After clarifying the sentencing requirements in I.C. § 19-2514, the Court of Appeals held the district court abused its discretion. *Id.* at 783. The Court of Appeals reasoned, “[T]he district court here misperceived the scope of its sentencing discretion and may have imposed a harsher sentence than it would have fashioned had the court properly understood the scope of its sentencing discretion.” *Id.* at 783. “[T]he proper remedy,” the Court of Appeals concluded, “is to vacate the sentence and remand for resentencing. We do so here.” *Id.* (citing *State v. Anderson*, 152 Idaho 21, 23 (Ct. App. 2011)).

Similar to the facts in *Toyne*, the district court here misperceived the scope of its sentencing discretion, which led to the district court acting inconsistently with the applicable legal standards. The district court first expressed to the parties that the State’s recommended sentence of two years fixed followed by six years indeterminate would be “illegal” because it had to impose at least five years fixed. (Tr. Vol. II, p.30, Ls.8–15.) Upon the district court’s inquiry, the State and Mr. Baay’s counsel informed the district court of their respective

⁴ Mr. Baay does not take issue with the district court’s decision to retain jurisdiction. The district court correctly recognized it had the authority to retain jurisdiction and, if warranted, suspend Mr. Baay’s sentence. The issue is the district court’s misunderstanding of the scope of its discretion on Mr. Baay’s term of imprisonment, regardless of whether the sentence is ultimately suspended.

interpretations of I.C. § 19-2514. The State noted some judges shared the district court's view that it must impose a sentence of at least five years fixed. (Tr. Vol. II, p.30, Ls.20–23.) But, the State informed the district court that “the majority” of judges did not believe the five-year term had to be fixed. (Tr. Vol. II, p.30, Ls.23–25.) Mr. Baay's counsel stated I.C. § 19-2514 requires a sentence of at least five years, but it did not have to be fixed. (Tr. Vol. II, p.31, L.7–p.32, L.6.) Then, when sentencing Mr. Baay, the district court recognized “there may be a difference of opinion” on “how to allocate the time,” but, in line with its earlier remarks, it had “always taken the view that it is a minimum of five years.” Tr. Vol. II, p.37, Ls.3–7.) In accordance with that view, the district court sentenced Mr. Baay to five years fixed plus five years indeterminate. (*See* Tr. Vol. II, p.38, L.17–p.39, L.11.)

Looking at the district court's remarks at a whole, the district court believed it had to impose a sentence of at least five years fixed upon Mr. Baay, and it did so. This was in error. The district court did not perceive its decision on the fixed part of Mr. Baay's sentence as one of discretion. The district court also did not act consistently with I.C. § 19-2514's legal standard requiring a unified, but not necessarily fixed, term of at least five years. Therefore, the district court abused its discretion when it sentenced Mr. Baay.

Due to its discretionary error, the district court “may have imposed a harsher sentence than it would have fashioned had the court properly understood the scope of its sentencing discretion.” *Toyne*, 151 Idaho at 783. The prescribed sentence for felony domestic assault did not require a minimum fixed sentence. Rather, it set a maximum unified term of ten years. I.C. § 19-918(5). The persistent violator statute was the only authority understood by the district court to require a minimum fixed sentence. The district court may not have “chosen the same sentence if it had understood” that a fixed term of less than five years “was permissible.” *Anderson*, 152

Idaho at 23. “When this occurs, the proper remedy is to vacate the sentence and remand for resentencing.” *Toyne*, 151 Idaho at 783. In light of the district court’s discretionary error, Mr. Baay submits the proper remedy is to vacate his sentence and remand for resentencing.

CONCLUSION

Mr. Baay respectfully requests this Court vacate his sentence and remand his case for a new sentencing hearing.

DATED this 28th day of February, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF to be served as follows:

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/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JCS/eas