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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 47840-2020
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-01-19-30000
)	
SETH JORDAN DEBOER,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

ISSUE

Has Deboer failed to show the district court imposed an excessive sentence?

Deboer Has Failed To Show The District Court Imposed An Excessive Sentence

As set forth in the Presentence Report (“PSI”), Deboer’s conviction for trafficking in 28 grams or more of methamphetamine (as represented) is based on the following facts.

On February 12, 2019, officers with the Meridian Impact Team set up a controlled drug buy with Seth Deboer as part of an ongoing drug investigation. Detective Durbin . . . was working in an undercover capacity when he set up a controlled buy of one ounce of methamphetamine with Mr. Deboer in the Winco parking lot in

Meridian, Idaho. It was agreed the purchase of one ounce of methamphetamine would be \$650.00.

Mr. Deboer arrived at the Winco store in a vehicle with two unidentified males. Detective Durbin paid Mr. Deboer \$650.00 in pre-recorded funds in exchange for the methamphetamine.

The methamphetamine was weighed and tested at another location and was found to not total a full ounce. Detective Durbin reached out to Mr. Deboer regarding the amount, and Mr. Deboer indicated his “homie” failed to zero the scale prior to weighing it and agreed to provide Detective Durbin with the remaining methamphetamine.

(PSI, p.48.¹)

The state charged Deboer with trafficking in methamphetamine by possessing or representing that he possessed for delivery 28 grams or more of methamphetamine. (R., pp.14-15.) Pursuant to a plea agreement, Deboer pled guilty to the charge in exchange for the state not charging him with delivery of heroin based on police report DR#2019-4009, and dismissing the charges in two separate cases against him – possession of heroin in CR01-19-23897, and aiding and abetting delivery of methamphetamine in CR01-19-29775. (R., pp.22-33; Tr., p.5, Ls.7-24.) The state also agreed to recommend three years fixed plus seven years indeterminate. (R., p.31; Tr., p.5, Ls.13-16.) The district court sentenced Deboer to a unified sentence of ten years with three years fixed. (R., pp.37-40; Tr., p.25, Ls.11-18.) Deboer filed a timely Notice of Appeal. (Tr., pp.41-43.)

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed

¹ Page number citations to the PSI are as designated at the bottom of each page of the 278-page computer file labeled “Conf.Docs.-Deboer.pdf.”

that the fixed portion of the sentence will be the defendant's probable term of confinement.² State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999).

To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. 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. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, "[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court." Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The district court did not abuse its discretion when it imposed a unified sentence of 10 years, with three years fixed, for trafficking in 28 or more grams of methamphetamine. As Deboer concedes, his sentence falls within the statutory maximum.³ (Appellant's brief, p.3.) In addition

² The Idaho Supreme Court explained in State v. Oliver, 144 Idaho 722, 727, 170 P.3d 387, 392 (2007) (quoting State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)), that "whether or not a defendant serves longer than the fixed portion of the sentence is a matter left to the sole discretion of the parole board, and '[c]ourts cannot intrude on this discretion when fashioning a sentence nor when reviewing a sentence[.]'"

³ I.C. § 37-2732B(a)(4)(D) carries a maximum sentence of life, and a mandatory minimum fixed term of imprisonment of three (3) years.

to being statutorily permissible, Deboer's overall sentence is appropriate as a matter of discretion in light of the entire record before the district court.

Deboer argues that "it is unclear how the district court concluded that [he] – a non-violent, first-time felon – deserved the additional seven years more than the legally required sentence." (Appellant's brief, p.5.) Deboer specifically asserts the district court imposed an excessive indeterminate sentence in light of:

(1) his past dependency on drugs and alcohol, (2) his amenability to treatment, (3) his lack of prior felony convictions, (4) his acceptance of responsibility and remorse, (5) *the fact that his crime was encouraged by government agents*, (6) *the fact that his crime was less egregious than many similarly charged cases*, (7) his unstable upbringing, (8) his employability, (9) his willingness to pay restitution, and (10) his good behavior while incarcerated.

(Appellant's brief, p.4 (emphasis added).) Despite Deboer's arguments, the record supports the sentence imposed. None of the mitigating factors cited by Deboer, together or separately, required the district court to sentence him to a lesser indeterminate term.

At the outset of pronouncing Deboer's sentence, the district court discussed the four sentencing factors of State v. Toohill, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982), and considered "information in mitigation and in aggravation[.]" mindful that the protection of society is the "first and foremost" consideration. (Tr., p.23, L.17 – p.24, L.1.) The court noted it had "reviewed and considered the PSI materials made available to [it], considered the arguments and recommendations of counsel and the statement [Deboer] has made today." (Tr., p.24, Ls.1-4.)

Although this is Deboer's first felony conviction, he is no stranger to criminality; he has been convicted of 11 misdemeanors, including battery, theft, disturbing the peace, and a variety of driving offenses. (PSI, pp.49-54.) Deboer's felonious drug-related conduct was not confined to one incident. Contrary to his implication, Deboer was not "encouraged by government agents" to do something he was not otherwise predisposed to do. (See Appellant's brief, p.4.) Deboer needed

no encouragement from anyone – except, perhaps, his drug buddies. Deboer admitted to the PSI investigator that *he* was the one who first contacted an undercover officer in order to sell him drugs, stating:

I was unemployed in the beginning of 2019. I got involved with the wrong crowd and made a really bad choice and was trying to make fast money by selling meth. *My buddy texted me and told me to go sell some meth to someone he knew. So I did and these turned out to be undercover cops.*

(PSI, p.49 (emphasis added; spelling and capitalization modified).)

As police reports of Deboer’s other drug-dealing during February 2019 show, he initiated contact for several drug sales and was fully engaged in his role as “merely a middleman” (see Appellant’s brief, p.9), to wit:

On February 4, 2019, Meridian Police Department officers conducted a controlled drug buy from Seth Deboer . . . and Jay Patton . . . as part of an investigation conducted by the Meridian Impact Team. Detective Durbin, who was working in an undercover capacity, arranged to purchase one-quarter ounce of methamphetamine in exchange for \$220.00 from the two male individuals. The controlled buy took place in the Winco parking lot in Meridian, Idaho.

Two days later, on February 6, 2019, *Detective Durbin received text correspondence from Seth Deboer. Mr. Deboer solicited a heroin sale by messaging, “U mess with drky?” and “I got it in hand hmu.”* He confirmed he meant “black,” a street slang name for heroin, and advised he could meet in Nampa, Idaho, for a sale. Mr. Deboer advised it would be \$360.00 for two grams of heroin.

Detective Durbin got in touch with Detective Woodward with the Nampa Police Department Special Investigations Unit (SIU) about the controlled buy. It was arranged that Detective Durbin would be accompanied by an undercover SIU Detective, and would introduce the detective to Mr. Deboer. . . .

On February 10, 2019, *Mr. Deboer again reached out to Detective Durbin via text message and questioned whether he wanted to purchase a quarter ounce of methamphetamine.* Detective Durbin responded he was “good for now.” *The next day, Mr. Deboer sent another message to Detective Durbin soliciting an Ecstasy sale indicating he has “hella double stacks” and would sell three bags for \$85.00.* Detective Durbin agreed to “ask around,” however, Mr. Deboer later reached out and said they had been sold.

...

On February 7, 2019, Detective Durbin . . . attended a briefing with members of the Nampa Police Department Special Investigations Unit (SIU) to set up a controlled heroin buy with Seth Deboer as part of an ongoing drug investigation.

Detective Durbin was accompanied by Detective Garcia, a member of the SIU who was working in an undercover capacity, to meet Mr. Deboer at the Chevron station in Nampa for the controlled buy. Mr. Deboer arrived in a maroon car which was occupied by a male driver and two female passengers. He collected the \$360.00 in pre-recorded funds from the undercover detectives and returned to the car to retrieve the two ounces of heroin. Mr. Deboer then returned to Detective Durbin's car and provided him and Detective Garcia with the heroin. *He also gave Detective Garcia his telephone number for future sales.*

Four days later, on February 11, 2019, Detective Garcia set up another controlled buy with Mr. Deboer. The sale was for an "8-ball," otherwise known as 3.5 grams, of heroin in exchange for \$440.00. The original buy was scheduled to take place at the Chevron in Nampa, however, *Mr. Deboer indicated he needed a ride to Meridian to pick up the heroin from his supplier.* Detective Garcia arrived at the gas station to pick up Mr. Deboer. En route to Meridian, Mr. Deboer called his source of supply, later identified as Adam Deines, a known heroin user, via Detective Garcia's phone.

Detective Garcia arrived at the pre-arranged meeting spot, Lowes in Meridian, to meet with the supplier, however, the supplier failed to show. *Mr. Deboer then advised he had a second source in Nampa* and provided Detective Garcia with directions to an apartment complex at the address of 1909 East Railroad Street, Apartment #103, in Nampa, where the source reportedly lived. The supplier, identified only as Chance at the time, exited the apartment and entered Detective Garcia's vehicle. A sale of one gram of heroin in exchange for \$170.00 was conducted.

. . .

On February 18, 2019, Detective Garcia arranged to meet with Mr. Deboer to purchase an "8-ball" of heroin for \$420.00. Detective Garcia picked up Mr. Deboer in Nampa and they drove to the Walmart parking lot to meet Mr. Deboer's supplier, later identified as Isaiah Mitchell . . . , a known heroin dealer. After meeting in the store and in Detective Garcia's vehicle, Mr. Mitchell indicated he would need the money in order to get the heroin. He provided Detective Garcia with his phone to hold to assure he would be returning. A short time later, Mr. Mitchell returned to Detective Garcia's vehicle and advised he couldn't get the full "8-ball," but could still give him two grams in exchange for \$320.00. The exchange took place and Mr. Mitchell provided Detective Garcia with his contact information for future deals.

(PSI, pp.46-47.)

From the above summary of police reports, it is clear that Deboer was pro-actively working with his drug suppliers – Mitchell, Chance and Dienes – to sell methamphetamine and/or heroin to the public. His argument that, at least he was not one of the “higher-level drug distributors for whom he was selling,” is not compelling. (See Appellant’s brief, p.9.) Deboer participated as an effective team-member in the overall distribution of methamphetamine and heroin through his close contacts with drug suppliers; that his role was “merely” that of a “middleman” does not provide him with any excuse or mitigation for his conduct.⁴

Similarly, Deboer’s assertion that his crime “was less egregious than many *similarly* charged cases” (Appellant’s brief, p.4 (emphasis added)) is unsupportable. Even assuming Deboer alleges that the conduct of persons convicted of his exact offense, I.C. § 37-2732B(a)(4)(A), is typically more egregious than his, he has not presented any viable support for such a claim. Deboer’s comparison of himself to those who “manufacture and distribute bulk amount of drugs”, or use “weapons or behave[] in a violent or threatening manner during [their] involvement in drug sales” is not well-taken. The criminal charge and punishment for trafficking in methamphetamine increases with the quantity of methamphetamine involved. (See I.C. § 37-2732B(a)(4)(B) (200 grams or more – mandatory minimum 5 years fixed); I.C. § 37-2732B(a)(4)(C) (400 grams or more – mandatory minimum 10 years fixed).) Another provision separately proscribes the manufacture of methamphetamine, and punishes such conduct with a mandatory minimum fixed penalty of 5 years. I.C. § 37-2732B(a)(3). None of those offenses are the same as Deboer’s. Further, under I.C. § 19-2520, the maximum penalty for a variety of offenses – including trafficking in methamphetamine – is extended by 15 years if the defendant “displayed, used, threatened, or

⁴ The LSI-R (“Level of Service Inventory-Revised”) gave Deboer a score of 29, which places him near the upper part of the “moderate risk category” for recidivism. (PSI, p.59.)

attempted to use a firearm or other deadly weapon while committing or attempting to commit the crime[.]” That enhancement does not apply to Deboer’s conviction. Deboer has failed to show that his crime of trafficking in methamphetamine is less egregious than others similarly situated.

Neither does Deboer’s “past dependency on drugs and alcohol” and “amenability to treatment” play a significant mitigating role in his sentence. (See Appellant’s brief, p.4.) Deboer told the PSI investigator that “he began selling illegal drugs when he was unemployed and had no other means to support his addiction.” (PSI, p.60.) The GAIN-I Recommendation and Referral Summary diagnosed Deboer as having “alcohol use disorder, severe,” “cannabis use disorder, severe,” and “opioid use disorder, severe[.]” and recommended “Level 1” outpatient treatment. (PSI, pp.185, 192 (capitalization modified).) Although substance addiction can constitute a mitigating factor, here, it helped justify the district court’s seven-year indeterminate term of Deboer’s sentence.

A substance abuse problem does not necessarily constitute a mitigating factor, especially when the substance abuse creates or increases the risk the defendant poses to the community. See State v. Oliver, 144 Idaho 722, 727, 170 P.3d 387, 392 (2007) (holding, where defendant had “a serious alcohol problem,” that “parole supervision after Oliver’s release from incarceration is clearly reasonable not only for the protection of the public, but for his own protection”); State v. Farwell, 144 Idaho 732, 736, 170 P.3d 397, 401 (2007) (rejecting argument that district court failed to properly consider alcohol problem as mitigating factor, in part, because “Farwell’s criminal history shows he is a risk to society especially when drinking”). The district court essentially found that Deboer’s substance abuse issues needed to be resolved in order to protect society by linking such abuse with his criminality, explaining, “[y]ou can come out of this, earn parole, go to work and keep your nose clean *or you can continue down this same pattern of use and abuse of*

drugs as well as profiteering from them, in which case you'll be back and you'll be facing the potential for actually spending the good portion of your life incarcerated. I hope you do take advantage of time that you have to figure out a different path.” (Tr., p.25, Ls. 3-10 (emphasis added).)

The district court's comments show that it considered the importance of trying to treat Deboer's substance abuse problems and getting him rehabilitative help while in prison, in order to best insure that he would not engage in further criminal behavior upon release. Given the clear connection between Deboer's substance abuse issues and his criminality, the court did not abuse its discretion by refusing to give more mitigating weight to those issues.

Next, while employment can be a mitigating factor, see State v. Mitchell, 77 Idaho 115, 118, 289 P.2d 315, 317 (1955), Deboer's past and future employment merited little, if any, weight as a mitigating factor. While certainly commendable that Deboer is capable of employment, his track record for *keeping* employment is not good, as he “acknowledged issues maintaining a job for an extended period of time as he ‘can hold a job for a year or so then I do something else.’” (PSI, p.57.)

While Deboer's acceptance of responsibility, remorse, willingness to pay restitution, unstable upbringing, and good behavior while incarcerated are laudable and/or mitigating factors (see Appellant's brief, p.4), they do not overcome the fact that he was a serious drug abuser who, as a consequence of such abuse, engaged in trafficking methamphetamine. Therefore, the district court was well within its discretion to allow the Idaho Department of Corrections' Parole Board seven years – after Deboer serves his mandatory fixed term of three years – to determine when Deboer should be released into the community without unreasonably risking public safety.

In sum, the district court properly recognized its primary sentencing goal was the protection of society and formulated a sentence that required Deboer to be rehabilitated from the destructive cause of his criminal behavior – substance abuse. The court’s seven-year indeterminate term of Deboer’s sentence reasonably accomplishes that goal. Thus, the indeterminate term imposed by the district court was not excessive.

CONCLUSION

The state respectfully requests this Court affirm Deboer’s sentence.

DATED this 31st day of August, 2020.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of August, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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JCM/dd