

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46736

STATE OF IDAHO,)
)
) **Filed: April 20, 2020**
)
) **Plaintiff-Respondent,**)
) **Karel A. Lehrman, Clerk**
)
) **v.**)
) **THIS IS AN UNPUBLISHED**
) **WILLIAM THOMAS FAUCHER,**) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **Defendant-Appellant.**)
)
)
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Jason D. Scott, District Judge.

Judgment of conviction and concurrent sentences of twenty-five years determinate for two counts of sexual exploitation of a child by distribution of child pornography, ten years determinate for two counts of sexual exploitation of a child by possession of child pornography, and one year determinate for one count of possession of a controlled substance, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Sally J. Cooley, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before LORELLO, Judge; BRAILSFORD, Judge;
and HORTON, Judge Pro Tem

PER CURIAM

William Thomas Faucher pled guilty to two counts of sexual exploitation of a child by distribution of child pornography, Idaho Code § 18-1507(2)(d); two counts of sexual exploitation of a child by possession of child pornography, I.C. § 18-1507(2)(a); and one count of possession of a controlled substance, I.C. § 37-2732(c). The district court imposed concurrent sentences of twenty-five years determinate for sexual exploitation of a child by distribution of child pornography, ten years determinate for sexual exploitation of a child by possession of child

pornography, and one year determinate for possession of a controlled substance. Faucher timely appeals his sentences, and we affirm.

I. ANALYSIS

A. Sentence Review

Faucher argues that his sentences are excessive. An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution applicable to a given case. *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

At the time of sentencing, Faucher was a seventy-three-year-old, retired Catholic priest. Although Faucher acknowledges his sentences are within the statutory limits, he argues the district court failed to consider mitigating factors when sentencing him. As mitigating factors, Faucher identifies his advanced age, his physical and mental infirmities, his community support, his alcohol abuse, and his lack of a prior criminal history. He contends that if the court had properly considered these factors, it would have imposed less severe sentences.

A review of the record contradicts Faucher's assertion that the district court did not properly consider the mitigating factors. Indeed, the record reflects that the court deliberated the mitigating factors in this case at some length. The court considered each of the mitigating factors Faucher has identified on appeal and weighed them against the aggravating factors, including that Faucher lied about the nature of his crimes, minimized their significance, did not

accept responsibility, and showed no remorse and that many of Faucher's supporters were unaware of the nature and the scope of his crimes. Further, the court concluded Faucher posed "a legitimate risk to the community" in that he might act on his impulses. That the court did not elevate Faucher's mitigating factors over the need to protect society does not establish an abuse of discretion. *See State v. Felder*, 150 Idaho 269, 276-77, 245 P.3d 1021, 1028-29 (Ct. App. 2010) ("[W]hile the mitigating factors identified by [the defendant] may have some relevancy to sentencing, a court is not required to assess or balance all of the sentencing goals in an equal manner."). Finally, the court properly considered the sentencing objectives of protecting society and of achieving punishment, deterrence, and rehabilitation. *See Toohill*, 103 Idaho at 568, 650 P.2d at 710 (identifying sentencing objectives). Accordingly, we cannot say the district court abused its discretion in sentencing Faucher.

B. Cruel and Unusual Punishment

Faucher also argues that his twenty-five-year determinate sentence for sexual exploitation of a child by distribution of child pornography constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, Section 6 of the Idaho Constitution. Where a punishment is grossly disproportionate to a crime, the prohibition against cruel and unusual punishment is violated. *State v. Shanahan*, 165 Idaho 343, 350, 445 P.3d 152, 159 (2019). Accordingly, to address Faucher's constitutional challenge we must first make a threshold comparison of the crime committed and the sentence imposed to determine whether the sentence leads to an inference of gross disproportionality. *State v. Matteson*, 123 Idaho 622, 626, 851 P.2d 336, 340 (1993); *Brown*, 121 Idaho at 394, 825 P.2d at 491; *State v. Olivera*, 131 Idaho 628, 632, 962 P.2d 399, 403 (Ct. App. 1998). This gross disproportionality test focuses on whether the punishment is out of proportion to the gravity of the offense committed such that it shocks the conscience of reasonable people. *Brown*, 121 Idaho at 394, 825 P.2d at 491. If an inference of such disproportionality is found, we must conduct a proportionality analysis comparing the sentence to those imposed on other defendants for similar offenses. *Matteson*, 123 Idaho at 626, 851 P.2d at 340; *Olivera*, 131 Idaho at 632, 962 P.2d at 403. The burden of demonstrating that a sentence is cruel and unusual is on the person asserting the constitutional violation. *State v. Clay*, 124 Idaho 329, 332, 859 P.2d 365, 368 (Ct. App. 1993).

Faucher contends his sentence for sexual exploitation of a child by distribution of child pornography is grossly disproportionate to that crime "given the nature of [his] non-violent

internet-based offenses, combined with his advanced age, mental health issues, and infirmities.” Further, he argues, “If the mitigating qualities of [his] advanced age [and his] physical and mental disabilities had been considered, [he] would not be serving a fixed twenty-five-year sentence.” We disagree. First, Faucher’s argument ignores the shocking nature of his crimes involving images of extremely cruel and sadistic victimization of young children, including infants. *See State v. Campbell*, 123 Idaho 922, 926, 854 P.2d 265, 269 (Ct. App. 1993) (holding court may consider evidence of all defendant’s alleged misconduct in sentencing so long as defendant has opportunity to object or rebut evidence). Second, the district court did consider the mitigating factors Faucher identifies on appeal, as discussed above. Regardless, whether Faucher’s sentence constitutes cruel and unusual punishment does not turn on whether the district court considered mitigating factors. The United States Supreme Court has held that, although the Eighth Amendment requires consideration of mitigating factors in capital cases to make an individualized determination that punishment is appropriate, the sentencing court’s consideration of mitigating factors in a noncapital case is not required. *Harmelin v. Michigan*, 501 U.S. 957, 995 (1991).

Faucher also argues that, because he is elderly and infirm, his sentence for sexual exploitation of a child by distribution of child pornography is the “functional equivalent of a life sentence” and is unconstitutional. Faucher acknowledges Idaho appellate courts have never addressed the constitutionality of a fixed life sentence for an elderly or infirm defendant. In support of his argument, Faucher relies on federal case law addressing sentences under the federal sentencing guidelines and urges this Court to adopt the federal courts’ reasoning consistent with the federal sentencing guidelines. Even assuming without deciding that Faucher’s twenty-five-year determinate sentence was the equivalent of a life sentence, we decline to adopt the reasoning of federal courts applying federal sentencing guidelines.

Because we conclude Faucher has failed to meet his burden to show his sentence is grossly disproportionate to his crime, we need not conduct a proportionality analysis comparing Faucher’s sentence to those imposed on other defendants for similar offenses. *See Matteson*, 123 Idaho at 626, 851 P.2d at 340 (ruling proportionality analysis only required if inference of disproportionality is found). Regardless, we are unpersuaded by the numerous cases Faucher cites in support of his assertion that his sentence is not comparable to other defendants convicted

of purportedly similar offenses. None of the cases which Faucher cites address criminal conduct comparable to his crimes.

II.

CONCLUSION

Faucher's sentence for sexual exploitation of a child by distribution of child pornography is not unconstitutional and his sentences are not excessive. Accordingly, we affirm Faucher's judgment of conviction and sentences.