

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47379

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) **Filed: June 29, 2020**
)
 v.) **Melanie Gagnepain, Clerk**
) **THIS IS AN UNPUBLISHED**
 JOSHUA CHRISTOPHER) **OPINION AND SHALL NOT**
 LYONS-MILLER,) **BE CITED AS AUTHORITY**
)
 Defendant-Appellant.)
)
)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Scott Wayman, District Judge.

Judgment of conviction and underlying unified sentence of three years, with a minimum period of confinement of one and one-half years, for possession of a controlled substance, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Kimberly A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

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

Before HUSKEY Chief Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

Joshua Christopher Lyons-Miller was found guilty of possession of a controlled substance, Idaho Code § 37-2732(c)(1). The district court imposed a unified sentence of three years, with a minimum period of confinement of one and one-half years, suspended the sentence, and placed Lyons-Miller on probation. Lyons-Miller appeals, contending that the district court abused its discretion by declining to grant Lyons-Miller's request for a withheld judgment and by imposing an underlying excessive sentence.

After a person has been convicted of a crime under I.C. § 37-2732(c)(1), the district court must sentence pursuant to the criteria set forth in I.C. § 37-2738(1). Specifically, when considering whether to grant a withheld judgment, the district court must follow the guidelines of I.C. § 37-2738(4). Idaho Code § 37-2738(4) states in relevant part:

(4) When sentencing an individual for the crimes enumerated in subsection (1) of this section, the court shall not enter a withheld judgment unless it finds by a preponderance of the evidence that:

(a) The defendant has no prior finding of guilt for any felony, any violation of chapter 80, title 18, Idaho Code

In 2017, Lyons-Miller was convicted of driving without privileges, I.C. § 18-8001(3), which falls under Chapter 80, title 18, Idaho Code, and prohibits the district court from granting a withheld judgment following a conviction for a crime under I.C. § 37-2732(c). I.C. § 37-2738(4)(a). At the sentencing hearing, Lyons-Miller's counsel acknowledged this when she stated, "if he didn't have the driving without privileges, I would ask this court to consider a withheld judgment in the matter." Thus, Lyons-Miller's counsel did not request a withheld judgment, nor did the district court err by denying Lyons-Miller a withheld judgment.

Next, sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (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).

Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in denying Lyons-Miller's request for a withheld judgment or in imposing probation with an underlying unified sentence of three years, with a minimum period of confinement of one and one-half years. Therefore, Lyons-Miller's judgment of conviction and sentence are affirmed.