

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 49504/49505

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, ) **Filed: February 2, 2023**  
 )  
 v. ) **Melanie Gagnepain, Clerk**  
 )  
 JOSHUA CHRISTOPHER GERVASI, ) **THIS IS AN UNPUBLISHED**  
 ) **OPINION AND SHALL NOT**  
 ) **BE CITED AS AUTHORITY**  
 Defendant-Appellant. )  
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 )

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Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Lamont C. Berecz, District Judge.

Judgments of conviction and aggregate unified sentence of ten years, with a minimum period of confinement of five years, for grand theft and aggravated assault, affirmed.

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

Hon. Raúl R. Labrador, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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Before GRATTON, Judge; HUSKEY, Judge;  
and BRAILSFORD, Judge

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PER CURIAM

This case involves two consolidated cases. Joshua Christopher Gervasi entered into a global plea agreement with the State wherein he agreed to plead guilty to grand theft by receiving or disposing of stolen property with the intent to deprive owner of use/benefit, Idaho Code § 18-2403(4)(a), and to aggravated assault, I.C. § 18-905. In exchange for his guilty pleas, the State agreed, in part, to dismiss additional charges and to recommend Gervasi's sentences run concurrently. Gervasi entered a guilty plea to aggravated assault and grand theft, but Gervasi failed to appear for the sentencing hearing. Approximately a year later, Gervasi was apprehended

and the cases proceeded to sentencing. The State believed Gervasi's failure to appear at sentencing was a breach of an implied term of the plea agreement and thus, did not follow the plea agreement; it recommended the sentences run consecutively, not concurrently. The district court imposed a unified sentence of five years, with three years determinate, for the grand theft charge and a unified sentence of five years, with two years determinate, for the aggravated assault charge. The district court ordered the sentences to run consecutively.

Gervasi filed an Idaho Criminal Rule 35 motion and/or motion to withdraw his guilty plea based on "manifest injustice in accordance with I.C.R. 33(c)." At the hearing, Gervasi requested a reduction of his sentences consistent with the sentence negotiated in the plea agreement. The district court found there was no basis upon which Gervasi was permitted to withdraw his guilty pleas. However, the district court granted the Rule 35 motions, vacated Gervasi's sentences and ordered him to be resentenced by a different judge.

Prior to resentencing, Gervasi renewed his motion to withdraw the plea, again arguing the State breached the plea agreement. The district court found that Gervasi's failure to appear at sentencing constituted a breach of an implied term of the plea agreement. As a result, the court further found the State was no longer bound by the terms of the plea agreement and did not breach the plea agreement when it recommended consecutive sentences. The district court denied the motion to withdraw the guilty pleas and sentenced Gervasi to a unified sentence of ten years, with five years determinate, for grand theft and a determinate five-year sentence for aggravated assault. The district court ordered the sentences to run concurrently. Gervasi timely appealed and asserts the district court abused its discretion by imposing excessive sentences.

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). Our role is limited to determining whether reasonable minds could reach the same conclusion as the district court. *State v. Biggs*, 168 Idaho 112, 116, 480 P.3d 150, 154 (Ct. App. 2020).

Applying these standards, and having reviewed the records in these cases, we cannot say that the district court abused its discretion. Therefore, Gervasi's judgments of conviction and sentences are affirmed.