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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NOS. 51643-2024 & 51644-2024
	)	
v.	)	PAYETTE COUNTY NOS. CR38-23-542
	)	& CR38-23-562
	)	
RAMON NUNEZ,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Ramon Nunez appeals from the judgment of conviction in Payette County Case Number CR38-23-542 (No. 51643), which was entered after Mr. Nunez pleaded guilty to felony eluding with a persistent violator enhancement. The court ordered a sentence of twenty years, with four years fixed. Mr. Nunez also appeals from the judgment of conviction in Payette County Case Number CR38-23-562 (No. 51644). Mr. Nunez pleaded guilty

to burglary, possession of methamphetamine, and destruction of evidence, and the court ordered terms of five years, with two years fixed for each charge to be served concurrently with all terms.

The judgments of conviction were both entered on January 22, 2024. Mindful that he received the sentence he requested, Mr. Nunez argues herein that the district court abused its discretion by imposing an excessive sentence.

#### Statement of Facts and Course of Proceedings

On December 16, 2022, law enforcement was informed that a vehicle known to be driven by Mr. Nunez was seen in an area near Payette, Idaho, and they attempted to locate the vehicle to arrest Mr. Nunez on active warrants. (R. 51643, p.14.) After an officer observed Mr. Nunez driving the vehicle, he tried to initiate a traffic stop, but Mr. Nunez continued driving at an elevated speed. (R. 51643, p.14.) Mr. Nunez briefly stopped to allow a second occupant to exit from the passenger seat, but he remained inside the vehicle and continued eluding officers. (R. 51643, p.14.) In the resulting pursuit, Mr. Nunez lost control of the vehicle multiple times, first colliding with a tree and then hitting two police patrol vehicles. (*See* R. 51643, p.14.) Officers ultimately discontinued the pursuit, but charges were filed against Mr. Nunez in docket number 51643 for aggravated assault on certain personnel, felony eluding, and misdemeanor charges for marijuana possession and the property damage resulting from the collisions. (*See* R. 51643, pp.14-15, 21-23.)

The events at issue in docket number 51644 occurred on April 1, 2023.<sup>1</sup> (*See* R. 51644, p.9.) An officer observed Mr. Nunez on a public street in Payette, and police began efforts to locate Mr. Nunez to arrest him. (*See* R. 51644, pp.9-11.) Police were informed that Mr. Nunez was in an apartment, but before they made contact, Mr. Nunez exited the building and left the area on a bicycle while being pursued by officers. (*See* R. 51644, pp.10-12.) The bicycle was discovered in a residential area, where officers continued their efforts to locate him. (*See* R. 51644, pp.10, 12.) Minutes later, a resident informed officers that Mr. Nunez was hiding in his son's room in the basement of his home. (*See* R. 51644, pp.10, 12.) In a coordinated effort, officers apprehended Mr. Nunez and arrested him outside the residence. (*See* R. 51644, p.10.) Officers later located methamphetamine and paraphernalia in the room where Mr. Nunez had been seen in the home. (*See* R. 51644, p.11.) Mr. Nunez was charged with burglary, possession of a controlled substance, use of drug paraphernalia, and misdemeanor obstruction. (*See* R. 51644, p.45.)

Under the terms of a Rule 11 plea agreement resolving both cases, Mr. Nunez agreed to plead guilty to felony eluding, burglary, possession of methamphetamine, and destruction of evidence. (R. 51643, p.70.) Mr. Nunez remained subject to the persistent violator enhancement for any eligible charge under the terms of the plea agreement. (R. 51643, p.71.) The State and defense agreed to jointly recommend that Mr. Nunez serve four years fixed, sixteen years indeterminate, and that this term run concurrently with other terms. (R. 51643, p.71.)

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<sup>1</sup> While these events occurred in 2023, the probable cause statement mistakenly gave a date of April 1, 2022. (*See* R. 51644, p.9; *but see* R. 51644, pp.14, 16.)

Mr. Nunez pleaded guilty and was immediately sentenced at the status conference scheduled for January 19, 2024. (*See* R. 51643, pp.80-82.) The court agreed to be bound by the terms of the plea agreement. (Tr., p.17, L.17.) For the charge of eluding in CR38-23-542, the court imposed a twenty-year unified sentence with four years fixed, which was authorized by the persistent violator enhancement filed in that case. (*See* Tr., p.6, L.15 – p.8, L.4; *see also* Tr., p.20, L.19 – p.21, L.3.) For the other charges in CR38-23-562, Mr. Nunez was sentenced to concurrent terms of five years, with two years fixed. (*See* Tr., p.20, L.23 – p.21, L.3.) The remaining charges in these cases and a third matter were dismissed. (*See* Tr., p.5, L.8 – p.6, L.14; *see also* R. 51643, pp.74, 88.) The judgments of conviction were entered on January 22, 2024, and Mr. Nunez timely appealed. (*See* Augmentation.)<sup>2</sup> Mindful of the fact that he received the sentences he requested, Mr. Nunez argues herein that these sentences were excessive.

### ISSUE

Did the district court abuse its discretion by imposing a sentence of twenty years, with four years fixed?

### ARGUMENT

The District Court Abused Its Discretion By Imposing A Sentence Of Twenty Years, With Four Years Fixed

Where, as here, a district court imposes a sentence within statutory limits, the appellant “has the burden of showing a clear abuse of discretion on the part of the court imposing the

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<sup>2</sup> A motion to augment the record with the notices of appeal in both cases is being filed contemporaneously with this Appellant’s Brief.

sentence.” *State v. Jackson*, 130 Idaho 293, 294, 939 P.2d 1372, 1373 (1997) (quotation marks and citation omitted). An abuse of discretion is established if the sentence is shown to be “unreasonable upon the facts of the case.” *State v. Golden*, 167 Idaho 509, 513, 473 P.3d 377, 381 (Ct. App. 2020) (citation omitted). When an excessive sentence issue is raised on appeal, the court must conduct an independent review of the record and consider the objectives of criminal punishment and sentencing, including: (1) the protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *State v. Adamcik*, 152 Idaho 445, 483, 272 P.3d 417, 455 (2012) *Id.* (quoting *State v. Broadhead*, 120 Idaho 141, 143, 814 P.2d 401, 403 (1991)).

“The reasonableness of a sentence is determined primarily by examining the minimum length of time an inmate must spend in prison.” *State v. Waddell*, 119 Idaho 238, 240, 804 P.2d 1369, 1371 (Ct. App. 1991) (citing *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982)). It is only reasonable to impose a sentence of confinement if it appears that “confinement is necessary to accomplish the primary objective of protecting society” or other applicable objectives of criminal punishment. *State v. Struhs*, 152 Idaho 262, 267-68, 346 P.3d 279, 284-85 (2015) (quoting *State v. Hansen*, 138 Idaho 791, 797, 69 P.3d 1052, 1058 (2003)).

“The invited error doctrine is well settled in Idaho. A defendant may not request a particular ruling by the trial court and later argue on appeal that the ruling was erroneous.” *State v. Griffith*, 110 Idaho 613, 614, 716 P.2d 1385, 1386 (Ct. App. 1986). “This doctrine applies to sentencing decisions as well as to rulings during trial.” *Id.*

Mindful of the invited error doctrine, Mr. Nunez argues herein that it was excessive to impose a unified twenty-year sentence with four years fixed. “For purposes of appellate review, we consider the minimum period of confinement to be the probable duration of incarceration.” *State v. Hayes*, 138 Idaho 761, 766–67, 69 P.3d 181, 186–87 (Ct. App. 2003) (citing *State v. Sanchez*, 115 Idaho 776, 777, 769 P.2d 1148, 1149 (Ct. App. 1989)). However, when the length of a sentence is challenged, the defendant's entire sentence should be considered. *State v. Rinebarger*, 172 Idaho 775, 536 P.3d 887, 889 (Ct. App. 2023) (citing *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007)).

Here, the length of sentence is unreasonable, because it interferes with Mr. Nunez’s opportunities for rehabilitation. The fixed term prevents Mr. Nunez from making payments toward his restitution until he has served at least four years in custody. (*See* Tr., p.21, Ls.11-21.) When considering the length of the entire sentence, Mr. Nunez may be unable to make restitution for twenty years. (*See* Tr., p.18, L.25 – p.19, L.1.) In pleading guilty, Mr. Nunez understood “that it's time [to] admit the offenses and just start making some better decisions moving forward.” (*See* Tr., p.18, Ls.13-16.) The twenty-year term with four years fixed delays this improvement and was therefore longer than needed to achieve the purposes of protecting society through Mr. Nunez’s rehabilitation.

Moreover, Idaho recognizes that some leniency is required when a defendant expresses remorse for their conduct and accepts responsibility for their acts. *State v. Shideler*, 103 Idaho 593, 595, 651 P.2d 527, 529 (1982); *State v. Alberts*, 121 Idaho 204, 209, 824 P.2d 135, 140 (Ct. App. 1991). Mr. Nunez pleaded guilty and took responsibility for his offenses. (Tr., p.14, L.9 – p.16,

L.25.) At sentencing, defense counsel noted her belief that Mr. Nunez is “ready to change his ways” and that she has “seen a change in him since [she] was reappointed on this case[.]” (Tr., p.19, Ls.5-8.) Mr. Nunez had served close to a year in jail at the time of sentencing. (*See* Tr., p.18, L.25 – p.19, L.1; *see also* R. 51643, p.84.) Since he made improvements in that short period of time, a four-year fixed term was longer than needed to serve the goals of sentencing.

### CONCLUSION

Mr. Nunez respectfully requests that his sentence be reduced or this case be remanded for resentencing to a reasonable term.

DATED July 15, 2024.

/s/ Devin E. Harris  
DEVIN E. HARRIS  
Deputy State Appellate Public Defender

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 15, 2024, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF to be served as follows:

KENNETH K. JORGENSEN  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

DEH/eas