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7-21-2016

# State v. Pool Respondent's Brief Dckt. 43880

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43880
Plaintiff-Respondent,	)	
	)	Twin Falls County Case No.
v.	)	CR-2015-4517
	)	
JACOB FREDERICK POOL,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Pool failed to establish that the district court abused its discretion by imposing a unified sentence of four years, with two years fixed, and a lifetime suspension of his hunting privileges in Idaho, upon his guilty plea to killing/wasting a trophy mule deer during a closed season?

Pool Has Failed To Establish That The District Court Abused Its Sentencing Discretion

After Pool pled guilty to felony killing/wasting a trophy mule deer during a closed season and to misdemeanor concealment and/or destruction of evidence, the district court imposed a unified sentence of four years, with two years fixed, and retained

jurisdiction. (R., pp.160-66.) The court also imposed a lifetime suspension of Pool's hunting privileges in Idaho. (Id.) Pool filed a notice of appeal timely from the judgment of conviction. (R., pp.167-70.)

Pool asserts his underlying sentence is excessive because this is his first hunting violation, the lifetime suspension prohibits him from joining in a family tradition, he was trying to feed his family, and the sentence imposed does not serve the goal of rehabilitation. (Appellant's brief, pp.4-7.) The record supports the sentence imposed.

Appellate courts review a criminal sentence under an abuse of discretion standard. State v. Calley, 140 Idaho 663, 665-666, 99 P.3d 616, 618-619 (2004). Sentences fixed within the statutory limits will ordinarily not be considered an abuse of discretion. State v. Sheahan, 139 Idaho 267, 284, 77 P.3d 956, 973 (2003). When a sentence is challenged as being excessively harsh, appellate courts independently review the record on appeal, having due regard for the nature of the offense, the character of the offender, and the protection of the public interest. Calley, 140 Idaho at 666, 99 P.3d at 619. In order to prevail, a defendant must demonstrate that the sentence "in light of the governing criteria, is excessive under any reasonable view of the facts." Id. Sentences are 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.'" Sheahan, 139 Idaho at 284, 77 P.3d at 973. A sentence need not serve all sentencing goals; one may be sufficient. Id. at 285, 77 P.3d at 974 (citing State v. Waddell, 119 Idaho 238, 241, 804 P.2d 1369, 1372 (Ct. App.1991)). However, as a matter of policy in Idaho, the primary consideration in sentencing is the

good order and protection of society, and all other factors are subservient to that end. State v. Hunnel, 125 Idaho 623, 627, 873 P.2d 877, 881 (1994) (citing State v. Moore, 78 Idaho 359, 363, 304 P.2d 1101, 1103 (1956)).

The maximum prison sentence for killing/wasting a trophy mule deer during a closed season is five years and a lifetime suspension of hunting privileges. I.C. §§ 18-112, 36-1402(d), (e). The district court imposed a unified sentence of four years, with two years fixed, and a lifetime suspension of hunting privileges in Idaho, which falls well within the statutory guidelines. (R., pp.160-66.) At sentencing, the district court addressed the seriousness of the offense, Pool's intent to kill knowing it was closed season, and his callousness about the law. (Tr., p.16, L.13 – p.20, L.8.) The state submits that Pool has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Additionally, regarding Pool's claim that, given the length of his underlying sentence, "a *lifetime* suspension of hunting privileges on a first hunting violation was unnecessary to serve" the sentencing goals articulated by the district court (see Appellant's brief, pp.5-6 (emphasis original)), the state offers the following observations. The district court specifically articulated "community deterrence" and Pool's purported desire "to accept responsibility" as two of the factors bearing on its sentencing decision. (Tr., p.16, L.21 – p.17, L.6, p.20, L.8.) Those were legitimate considerations, and there can be no serious question that the imposition of a lifetime suspension of Pool's hunting privileges, in addition to a suspended prison sentence, was an effective means by which to achieve those goals. That Pool believes the court could have achieved the same

result by less restrictive means does not show an abuse of discretion. When reviewing a sentence, the appellate court “will not substitute [its] view of a reasonable sentence for that of the trial court where reasonable minds might differ.” State v. Carver, 155 Idaho 489, 496, 314 P.3d 171, 178 (2013) (citing State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)). And, given the facts of this case, many of which go unmentioned by Pool on appeal, the district court’s determination that Pool’s hunting privileges should be suspended for life is unquestionably reasonable.

In January 2015, Pool “stalk[ed]” a herd of “good-sized” mule deer bucks for approximately two hours with the specific intent to “kill, cut up and eat one of those deer.” (R., p.127; PSI, pp.3-4.) It was not hunting season. Nevertheless, Pool, using his daughter’s .22 rifle, shot and killed a “very large, unique, non-typical buck” that was part of the herd. (R., pp.16-18; PSI, pp.3-4.) Pool harvested the antlers and meat but left the headless carcass along a canyon near the Twin Falls County West building. (R., pp.15-17; PSI, pp.3-4.) Juan Puente, who had seen and photographed the atypical mule deer on January 26, 2015, subsequently discovered its carcass and reported it to Fish and Game. (R., p.15.) Corey Skinner, who worked in the Twin Falls County West building, also reported having last seen the atypical mule deer on January 26th. (R., pp.15-16.) That same day, Mr. Skinner had seen a man engaging in suspicious behavior in a field next to the trees where the headless carcass was later located. (R., pp.15-16.)

Following a press release, Fish and Game Conservation Officer James Stirling received numerous reports identifying Pool as the individual who had killed the mule deer. (R., p.16; PSI, p.3.) When interviewed by Officer Stirling, Pool “was initially

deceitful regarding the killing of the large unique non-typical mule deer.” (R., p.16; PSI, p.3.) Approximately an hour into the interview, Pool “admitted to harvesting the deer in question, specifically identifying it as the large unique non-typical mule deer from a photo [the officer] showed him.” (R., p.16; PSI, p.3.) Although Pool claimed he had “never done anything like that” and that he had killed the deer because he needed the meat, he specifically admitted, “I’ve poached a couple deer in my life, you know, this is like the 3<sup>rd</sup> time ....” (R., p.16.) He also admitted to having intentionally chosen to kill the biggest deer in the herd, stating, “I saw the big one and fuckin’ shot him. I’ve never seen a deer that big.” (R., p.16.) Pool lamented his decision, however, reasoning in hindsight that he “probably should have taken the small one, no one would have noticed.” (R., p.16; see also PSI, p.5 (“When asked how he felt about having committed this crime, the defendant wrote, ‘I wish I hadn’t shot the big one, it would only be a misdemeanor.’”))

In addition to eventually admitting to having killed the trophy mule deer out of season, Pool also admitted to having subsequently concealed the evidence of his crime. (R., p.17; PSI, p.3.) Pool claimed that, after the incident was reported in the paper, he hid the .22 rifle in a friend’s garage. (R., p.17; PSI, p.3.) He also claimed that he and a friend “took the [unlawfully taken deer’s] bones, meat, [and] skull [including the antlers] and put them in 2 Army duffle bags and weighted them with dumbbells [sic]” and threw them off the Murtaugh bridge into the river. (R., p.17; PSI, p.3.) A dive team searched the river beneath the Murtaugh bridge for the discarded evidence on three separate occasions. (R., p.18; PSI, pp.3-4.) “During each effort, the water levels continually dropped and neither divers or searchers along the banks of the river recovered duffle

bags containing deer parts or antlers.” (R., p.18; PSI, p.4.) Conservation officers later located the hind leg of the unlawfully taken deer beneath the Murtaugh bridge, but the leg was not in a duffle bag. (R., p.18; PSI, p.4.)

In light of the foregoing facts, and considering Pool’s criminal history and demonstrated beliefs that the rules do not apply to him as alluded to by both the prosecutor and the district court at sentencing (see Tr., p.9, L.17 – p.12, L.11, p.17, L.7 – p.18, L.7), the district court acted well within its discretion in determining that a lifetime suspension of Pool’s hunting privileges was not only warranted, but was also necessary to achieve the goals of sentencing and impress upon Pool the seriousness of his crimes. By his own admission, Pool has poached at least two other big game animals. His decisions in this case to intentionally shoot and kill the largest buck in a herd of mule deer and then to conceal the evidence of his crime by wasting and/or hiding the deer meat and antlers demonstrates a profound lack of judgment and one that justifies the court’s finding that Pool does “not deserve to ever, ever hunt in the state of Idaho again.” (Tr., p.19, L.25 – p.20, L.1.) Pool has failed to establish an abuse of discretion.

#### Conclusion

The state respectfully requests this Court to affirm Pool’s conviction and sentence.

DATED this 21st day of July, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of July, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General



# APPENDIX A

1 THE COURT: Finally, Mr. Pool, you have the right to  
2 address the Court. You're not required to say anything.  
3 You're welcome to if you wish. Is there anything you want to  
4 say today, sir?  
5 THE DEFENDANT: I just want to say I'm sorry for  
6 taking away from the community. I just want to take  
7 responsibility for my actions and do what's right, you know?  
8 That's it. It's been a long day.  
9 THE COURT: Okay. Mr. Andersen, any reason legal in  
10 nature why sentence should not be imposed on both of these  
11 counts today?  
12 MR. ANDERSEN: No, Your Honor.  
13 THE COURT: Mr. Pool, as I have looked at this case,  
14 I have, frankly, tried to figure out what the community in  
15 Twin Falls, Idaho, is thinking about this case if they know  
16 about it. I'm sure that some people who are not hunters, who  
17 think that it's inappropriate to take game animals, says,  
18 what's the big deal? What's the big deal here? It's only a  
19 deer. Guy was out trying to feed his family, and I'd have done  
20 the same thing under the circumstances. And I'm sure there are  
21 people in this community that say that. I bet if I talked to  
22 all of the people that are avid hunters in the state who look  
23 at this case, they're probably outraged because most of the  
24 hunters that I know play by the rules, and in the view of  
25 people that are honest with themselves who follow the fish and

16

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1 say, you know, I have some mental health problems, but I also  
2 have drug use issues. I smoke marijuana every day, and I'm  
3 going to continue doing that until somebody tells me I can't do  
4 it anymore. That's the statement attributed to you in this  
5 PSI, and that is like, in my view, Mr. Pool, like, for lack of  
6 a more delicate way to put it, giving the middle finger to this  
7 Court because you don't care.  
8 THE DEFENDANT: No, sir.  
9 THE COURT: Well, that's the way I interpret it, and  
10 I guess this is where I get to talk.  
11 THE DEFENDANT: Sorry.  
12 THE COURT: I do not agree with the State's  
13 recommendation in this case. Not at all. I think that if I  
14 put you on probation today, it would only be a matter of time  
15 before you'd violate probation because you'd violate it for  
16 drug use. I think that time in the county jail is certainly  
17 justified in this case, but I think that it doesn't serve a  
18 whole lot of purpose because it's not going to do a thing to  
19 help towards rehabilitating you.  
20 Having considered the factors in Idaho Code Section  
21 19-2521 and the case law factors, State versus Toohill, I'm  
22 going to impose the following sentence: On the misdemeanor  
23 case I will order court costs as required by statute and rule,  
24 and I will order a sentence of 90 days in jail, as the State  
25 has requested. To be served, I don't see any point in

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1 game laws that we have in Idaho would be extremely offended at  
2 what you did. Not so much maybe because you took a trophy deer  
3 but because of the fact that you took any animal out of season.  
4 because you start doing that, where's our fish and game laws?  
5 So there is a level of community deterrence that's involved in  
6 the sentence that I'm going to impose today.  
7 There are three things that particularly trouble me  
8 about this case. The first thing is exactly what Madam  
9 Prosecutor alluded to in her comments, and I noticed this in  
10 the presentence report too: Your statement that, gosh, I wish  
11 I'd have shot a smaller deer. It would only be a misdemeanor.  
12 I can't believe somebody would say that, but apparently you  
13 did, because it remains unchallenged.  
14 Number two, well, I went out, and I stalked this  
15 deer for two or three hours, and I really didn't know that I  
16 shot a big one. Frankly, I don't believe that. If you have  
17 been a, quote, avid, unquote, hunter all your life, as you  
18 said, you knew exactly what you were doing because I don't  
19 think experienced hunters make that kind of a mistake in terms  
20 of identifying those kind of animals.  
21 The third thing that is troubling to me is, frankly,  
22 your callousness about just the law in general. This is felony  
23 number two for you. The last was a grand theft offense. Call  
24 it by a different name, that's exactly what this case is, just  
25 in a different form. And then on top of that, you callously

17

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1 suspending another 90 days over the top when we're going to be  
2 talking about a felony here in a minute.  
3 On the felony charge, I will order court costs as  
4 required by statute and rule. You are required to provide a  
5 DNA sample and a right thumbprint at a cost of \$100 to you.  
6 You have stipulated to total financial remuneration to the  
7 State in the amount of \$1,189.73, and I will order that, which  
8 includes what is set forth in the order of restitution. I will  
9 order public defender restitution in the amount of \$500.  
10 I will suspend -- I will follow the State's  
11 recommendation of a unified sentence of four years, consisting  
12 of two years fixed, two years indeterminate, but I'm going to  
13 retain jurisdiction in this case and send you on what I hope is  
14 the traditional rider program. The reason for that, Mr. Pool,  
15 very simply, is this: I do not think that you have come  
16 anywhere close to accepting responsibility for what you did in  
17 this case. I do not think that probation will work for you at  
18 this point. I would much rather have you spend 90 to 120 days  
19 in the penitentiary system of the State of Idaho in our  
20 rehabilitation programs in the rider than sitting next door  
21 90 days in the county jail, which would serve -- well, I mean,  
22 it would serve a purpose, but I think it serves a greater  
23 purpose to do what I'm going to do.  
24 The last issue in this case is a license suspension.  
25 As far as I'm concerned, you do not deserve to ever, ever hunt

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1 in the state of Idaho again, and I will follow the State's  
2 recommendation and suspend your hunting privileges in the state  
3 of Idaho for the rest of your natural life. You made a big  
4 mistake in this case, Mr. Pool. You said you want to accept  
5 responsibility. That's how you're going to accept  
6 responsibility. You will never be given the same opportunity  
7 that the rest of us Idaho citizens have to lawfully hunt  
8 anymore.

9 You'll be taken into custody at this time. I will  
10 advise you you do not have the right of appeal in this case. I  
11 have not exceeded the State's recommendations in terms of the  
12 underlying part of this sentence. Well, strike that. I think  
13 you do have the right of appeal in this case. If you want to  
14 perfect that appeal, you must do so within 42 days of today.

15 Hope to see you back here in a few months, and then  
16 we can talk about taking care of these financial obligations.

17 (End of proceedings at 4:14 p.m.)  
18 -000-  
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