

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 37355/37356/37357

STATE OF IDAHO,)	2011 Unpublished Opinion No. 558
)	
Plaintiff-Respondent,)	Filed: July 21, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
BRYAN THOMAS ALLEN,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Judgments of conviction and sentences for possession of methamphetamine and two counts of forgery, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

In this consolidated appeal, Bryan Thomas Allen appeals from his judgments of conviction and sentences for possession of methamphetamine and two counts of forgery. He argues that the district court abused its discretion by failing to order a psychological evaluation and by imposing excessive sentences. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Allen pleaded guilty to possession of methamphetamine and two counts of forgery. During Allen’s plea hearing, the district court stated:

Mr. Allen, I am ordering that you obtain a presentence investigation report, to aid in the preparation of a sentencing hearing. Also that you obtain a controlled substance evaluation per Idaho Code 19-2524. . . . Are there any other assessments or evaluations sought by either party?

Allen's attorney responded by discussing Allen's plans to participate in a drug addiction treatment program, but did not request any further evaluations. As a result, the court did not order a psychological evaluation prior to sentencing.

At sentencing, the district court imposed concurrent seven-year unified sentences with two years determinate for possession of methamphetamine and one count of forgery. The court imposed a consecutive five-year indeterminate sentence for the remaining count of forgery. Allen appeals, contending that the district court abused its discretion by neglecting to sua sponte order a psychological evaluation before sentencing.

II.

ANALYSIS

The determination whether to obtain a psychological evaluation lies within the sentencing court's discretion. I.C. § 19-2522(1); I.C.R. 32(d); *State v. Jones*, 132 Idaho 439, 442, 974 P.2d 85, 88 (Ct. App. 1999). The legal standards governing the court's decision whether to order a psychological evaluation and report are contained in I.C. § 19-2522(1). Pursuant to that statute, if there is reason to believe that the mental condition of the defendant will be a significant factor at sentencing and for good cause shown, the sentencing court must appoint a psychiatrist or licensed psychologist to examine and report upon the defendant's mental condition.

Assuming *arguendo* that the record demonstrates Allen's mental condition would be a significant factor at sentencing, the doctrine of invited error bars Allen from prevailing on his claim. The invited error doctrine applies to estop a party from asserting an error when his or her own conduct induces the commission of the error. *Thomson v. Olsen*, 147 Idaho 99, 106, 205 P.3d 1235, 1242 (2009). One may not complain of errors one has consented to or acquiesced in. *Id.* In short, invited errors are not reversible. *Id.*

In this case, when ordering a presentence investigation, the court specifically asked if either party wanted any additional evaluations. Allen's attorney made no request for any type of evaluation and instead chose only to discuss Allen's plans for drug addiction treatment. Allen thus declined further evaluations and consented to proceed to sentencing without any additional assessments, including a psychological evaluation. If the court erred by failing to order an evaluation, Allen invited that error and may not assert it on appeal. Accordingly, we decline to

consider this issue any further and shall proceed to examine Allen's claim that his sentence is excessive.

Allen also argues that the court abused its discretion because it imposed excessive sentences. 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 that 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).

Allen contends that the court abused its discretion because it imposed excessive sentences in light of several mitigating factors. He points to his alleged mental health issues, drug addiction, willingness to undergo treatment, and remorse for his actions. We have reviewed the record and conclude that the district court gave these factors the appropriate weight and did not abuse its discretion in sentencing Allen.

III.

CONCLUSION

Allen is barred from asserting that the district court erred when it did not order a psychological evaluation after Allen declined the court's offer of further evaluations. He has also failed to demonstrate that the court abused its discretion during sentencing. Therefore, Allen's judgments of conviction and sentences are affirmed.

Chief Judge GRATTON and Judge MELANSON CONCUR.