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State v. Steady Respondent's Brief Dckt. 44085

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 44085, 44086, 44087, 44088
)	
v.)	Kootenai County Case Nos.
)	CR-2013-23941, CR-2014-23277,
)	CR-2015-16816, CR-2015-17276
ROBERT ANTONELLI STEADY, JR.,)	
)	
Defendant-Appellant.)	RESPONDENT'S BRIEF
)	

Issue

Has Steady failed to establish that the district court abused its discretion, either by imposing and executing concurrent unified sentences of 10 years, with five years fixed, upon his guilty pleas to three counts of burglary in Docket Nos.44087 and 44088, or by declining to retain jurisdiction upon revoking his probation in Docket Nos. 44085 and 44086?

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

While on probation for one count of grand theft in CR-2013-23941 and one count of grand theft in CR-2014-23277, Steady pled guilty to a total of three counts of burglary

in CR-2015-16816 and CR-2015-17276. (R., pp.60-64, 201-02, 232, 418-27, 462-63, 476-77, 493, 673.) After Steady admitted to having violated his probation in the 2013 and 2014 cases, the district court revoked his probation and ordered his underlying sentences executed. (R., pp.246-49, 507-10.) In the 2015 cases, the district court imposed a unified sentence of 10 years, with five years fixed, for each count of burglary. (R., pp.602-607, 675-80.) The court ordered that the sentences in all four cases run concurrently. (R., pp.247, 508, 603, 676.) Steady filed notices of appeal timely from the judgments in the 2015 cases and from the orders revoking his probation in the 2013 and 2014 cases. (R., pp.252-56, 511-15, 610-13, 683-86.)

Steady argues both that his sentences in the 2015 cases are excessive and that the district court abused its discretion by declining to retain jurisdiction in all of his cases in light of his difficult upbringing, drug abuse, mental health issues, motivation to succeed in treatment, employability, accountability, and purported remorse. (Appellant's brief, pp.4-8.) The record supports the sentences imposed and the district court's decision to not retain jurisdiction because Steady was not a suitable candidate for probation.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear

abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

The maximum prison sentence for burglary is 10 years. I.C. § 18-1403. The district court imposed and executed unified sentences of 10 years, with five years fixed, for each count of burglary in the 2015 cases, which sentences fall within the statutory guidelines. (R., pp.602-07, 675-680.) At the combined disposition and sentencing hearing, the district court addressed the seriousness of the offenses, Steady's extensive criminal history, his failure to rehabilitate, and the risk he poses to the public. (3/14/16 Tr., p.44, L.3 – p.48, L.8.) The state submits that Steady has failed to establish the

district court abused its discretion, either by imposing and executing his sentences in the 2015 cases or by declining to retain jurisdiction in the 2013 and 2014 cases, for reasons more fully set forth in the attached excerpt of the sentencing and disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Steady's convictions and sentences and the district court's orders revoking probation.

DATED this 20th day of January, 2017.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of January, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

MAYA P. WALDRON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

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

APPENDIX A

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1 And that was on his PSI at page 17. I think that's a
2 very significant statement of my client's history and
3 should be considered as part of the Toohill factors
4 that this Court will take into consideration.

5 My client accepted responsibility
6 throughout the PSI. He admitted that he would need
7 counseling, and he's amenable to treatment. He has an
8 opportunity to go into the Good Samaritan program.
9 He's behaved while pending these cases. He has not
10 been a behavioral issue, which I think would show he
11 may be able to go to the rider program and receptive of
12 that programming there.

13 Judge, based on that, I'm asking you to
14 take into consideration a recommendation of a rider in
15 this particular matter for him to do as part of his new
16 cases and as well on his PV's. I'd ask the opportunity
17 for him to come back and show this Court that he's
18 either ready to go out on probation with this last
19 opportunity or not.

20 Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 And, Mr. Steady, is there anything you'd
23 like to say before I impose judgment and sentence?

24 THE DEFENDANT: Yeah. Just -- as my attorney
25 said, you know, I've been in jail for 157 days, no

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1 judgment and sentence?

2 MS. HOWE: No, Your Honor.

3 THE COURT: Well, Mr. Steady, on your
4 admission to having violated your probation in Case
5 13-23941 and in Case 14-23277, the Court finds that you
6 violated your probation in those matters and will enter
7 an order revoking your probation. In Case Nos.
8 15-17276 and in 15-16816, on your plea of guilty to the
9 three counts of burglary, the Court will find you
10 guilty.

11 As far as imposing sentence, I've looked
12 over the presentence reports. I've listened to the
13 recommendations of the attorneys. I've listened to the
14 comments that you've advanced here to the Court.

15 The Court has to take into account a
16 number of factors when it imposes sentence. I'm
17 dealing with a 29-year-old young man who has really got
18 a pretty scorched earth type of criminal history. Your
19 criminal history dates back when you were a juvenile
20 and you were in and out of juvenile court for a variety
21 of problems. And then as soon as you became an adult,
22 your criminal offenses continued. You've been in the
23 system. You've gotten multiple felony convictions.
24 Much of your behavior is certainly related to your drug
25 addiction as much of your behavior is probably related

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1 write-ups. That's not -- you know, I'm not
2 particularly proud of it. It's not typically like me.
3 I'm usually been in more trouble; so I've done a lot in
4 my time of incarceration to try and address my
5 behavioral issues, kind of submit to authority as it
6 is.

7 Also in the time that I've been there,
8 I've been trying really hard to get into the Good
9 Samaritan program. My mom and I have got it all
10 figured out, I believe.

11 I don't feel that a prison term is
12 something that my life is -- I'm not a lot like a lost
13 cause. That's how I feel -- you know, if I go to
14 prison, I feel like it's kind of a lost cause. Yeah,
15 there's treatment down there, but also the environment
16 down there, I think, would be hazardous for my
17 functionability when I come back into society four
18 years, five years down the road.

19 I have an eight-year-old daughter.
20 Regretfully enough I've missed a lot of her life.
21 Providing that I get the chance to go back into her
22 life, I want to have that opportunity to spend the rest
23 of my time with her. Just ask for some leniency.

24 THE COURT: All right. Do you know of any
25 legal reason why the Court should not proceed to impose

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1 to your upbringing and some of the problems that you've
2 had to deal with in life.

3 But regardless of that, there's certainly
4 a very significant concern here, from a public safety
5 standpoint, because your addiction has led to
6 significant harm to not only yourself but also to the
7 ones that care for you and -- but primarily to many of
8 the innocent citizens in the community. You by your
9 own admission basically have engaged in a lifestyle
10 where you feed your drug habit by stealing property,
11 trading that property for drugs, and continuing that
12 lifestyle. And you've got other offenses on your
13 extensive criminal history that certainly give some
14 rise of concern to the Court.

15 I understand that you've addiction issues.
16 I understand that you've got some mental health issues.
17 And I understand that you've got some emotional issues
18 that probably have followed you most of your life. But
19 when the Court decides what an appropriate sentence
20 should be, the Court has to take into account an awful
21 lot of factors. We always do weigh the possibility of
22 rehabilitation because in your own words, we can
23 rehabilitate an offender, and that offender may not
24 become the problem and victimize society as they have
25 in the past. And that obviously is the goal that we

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1 strive for.

2 I won't disagree with you for a minute
3 that the penitentiary setting is not always the best
4 place to put an individual in terms of getting that
5 individual's act together. But it's not always about
6 the defendant that the Court is required to determine
7 or to analyze in terms of determining what the
8 appropriate sentence should be. The protection of
9 society is really first and foremost in terms of what
10 the Court tries to do. Sometimes protection of society
11 includes things such as deterrence of not only that
12 individual from further behavior but also deterrence of
13 society in general.

14 Now, I'm very familiar with the Good
15 Samaritan program, and I certainly don't doubt for one
16 minute that they would be willing to accept you into
17 their program. And I have watched over years of them
18 doing some very good work with some very difficult
19 cases.

20 But not every case is a case that I think
21 is one the Court should be considering for
22 rehabilitation through the Good Samaritan or any other
23 similar type of program. Sometimes an individual
24 defendant has simply exhausted the system in terms of
25 the amount of chances that we're willing to give you in

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1 29 years of age. And I think, regardless of what we do
2 here today, there's going to be a time in the future
3 that you will be given an opportunity at free society
4 again. But I just don't think that today is the time
5 to do that or to give you another chance. I think
6 today is the time that, unfortunately for you, is
7 basically face the music. I think that's the most
8 appropriate disposition that this Court can do.

9 I think the State has made a reasonable
10 recommendation under the circumstances here, and I'm
11 inclined to go along with the State's recommendation.
12 In Case No. 13-23941, the Court will impose the 7-year
13 prison sentence with the 3 years fixed that previously
14 was suspended by Judge Gibler. Likewise in 14-23277
15 the Court will impose the 9-year prison sentence with
16 the 4 years fixed. Order those two sentences to run
17 together.

18 The three charges of burglary that are set
19 forth in case 15-17276 and 15-16816, the Court will
20 impose a 10-year prison term with 5 years fixed. I
21 will direct that the sentences all run concurrent. I
22 will also grant you credit for time served that you
23 have in all these matters. I don't even -- I couldn't
24 even begin to do the calculations right now. I
25 suspect, if counsel wants to do that and present an

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1 terms of the risk that's available. If I thought your
2 only problem was that you had a severe drug addiction
3 that was about ready to destroy your life, it may
4 become an option that would be very pleasing to the
5 Court. But when I'm dealing with an individual with
6 multiple felony convictions, multiple instances of
7 victimizing society in the fashion that you have, it
8 becomes paramount that the Court consider protecting
9 society. And protecting society sometimes requires
10 that we just put somebody away for a period of time.
11 Protecting society sometimes means we need to impose a
12 sentence that's significant enough that maybe others
13 out there may think twice about becoming involved in
14 the type of criminal behavior that you've been involved
15 in.

16 I recognize you've got some issues, but I
17 think you've had an awful long time in your young life
18 to be able to sit down and try to reflect on what your
19 problems are and try to do something about your
20 problems. But you haven't been doing a very good job
21 of that at all. You've just simply continued to engage
22 in the lifestyle that you've engaged in over a period
23 of time.

24 I agree with you that I don't know that
25 you're a lost cause. You're a young man. You're only

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1 order to the Court for the Court's signature, I'm sure
2 he's got lots of credit on certainly the older charges.
3 And I think you indicated he's got 150 --
4 MS. HOWE: Right around 157.
5 THE COURT: 157 days' credit. So I guess the
6 judgments can reflect 157 days' credit in the 15-17276
7 and 15-16816 cases. He's entitled to that credit plus
8 probably some more on his probation violation charges.
9 So he'll get credit in that amount. But I think that
10 probably is going to require some additional
11 calculating on the probation violations.

12 I will remand you to the custody of the
13 Department of Corrections pending completion of the
14 sentence that the Court has imposed.

15 Does the State have any questions?

16 MR. VERHAREN: No, Judge.

17 THE COURT: Ms. Howe, do you have any
18 questions at this point?

19 MS. HOWE: No, Your Honor. Thank you.

20 THE COURT: I'm not going to impose any court
21 costs. I think the record reflects he owes in excess
22 of \$4,000 in fines and costs. I think adding any more
23 costs would be rather a waste of my efforts.

24 I will leave the question of restitution
25 open for a period of 60 days at the request of the