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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45478
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2016-30823
)	
DAMIAN MAXWELL BARBER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Barber failed to establish that the district court abused its discretion by relinquishing jurisdiction?

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

Barber pled guilty to aggravated battery and the district court imposed a unified sentence of 15 years, with three years fixed, and retained jurisdiction. (R., pp.66-68.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.72-73.) Barber

filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.74-76.)

Barber asserts the district court abused its discretion by relinquishing jurisdiction in light of factors he deems mitigating, including his progress on his rider. (Appellant's brief, pp.4-10.) Barber has failed to establish an abuse of discretion.

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant 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. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013) (citing State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205–06, 786 P.2d 594, 596–97 (Ct. App. 1990)). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013); Hansen, 154 Idaho at 889, 303 P.3d at 248 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)). “While a recommendation from corrections officials who supervised the defendant [during the period of retained jurisdiction] may influence a court's decision, it is purely advisory and is in no way binding upon the court.” State v. Hurst, 151 Idaho 430, 438, 258 P.3d 950, 958 (Ct. App. 2011) (citing State v. Merwin, 131 Idaho 642, 648, 962 P.2d 1026, 1032 (1998); State v. Landreth, 118 Idaho 613, 615, 798 P.2d 458, 460 (Ct. App. 1990)). Likewise, an offender's “[g]ood performance while on retained jurisdiction, though commendable, does not alone establish an abuse of discretion in the district judge's decision not to grant probation.” Hurst,

151 Idaho at 438, 258 P.3d at 958 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

Barber has failed to show that he is an appropriate candidate for community supervision, particularly in light of the serious nature of the offense, his criminal history, and the danger he poses to society. Although young, Barber has a lengthy criminal history that includes four juvenile adjudications and four adult misdemeanor convictions that include battery, possession of paraphernalia, and possession of marijuana. (PSI, pp.5-8.) In November of 2014, he was removed from the Ada County Juvenile Court program and ordered to serve 129 days in jail, during which time he was required to complete the ABC, SAP, and work ready program. (PSI, p.8.)

Furthermore, the facts in this case demonstrate that a lesser sentence would depreciate the seriousness of the offense. After arguing with his ex-girlfriend the evening of September 14, 2016, the verbal altercation grew to include others, including the victim. (PSI, pp.2-5.) Barber and the victim challenged each other to fight, so Barber texted his address and waited outside with his .22 rifle. (PSI, pp.2-5.) When people arrived, Barber and the victim had a verbal confrontation that escalated to a physical confrontation that resulted in Barber shooting the victim three times. (PSI, pp.2-5.) Barber stated that he was not afraid of the victim, nor was he threatened by the number of people who came to his house, and that he did not see that the victim or anyone else had a weapon of any kind. (PSI, p.3.)

At the sentencing hearing, the district court placed Barber in the retained jurisdiction program, and stated,

... I will retain jurisdiction, but it is for evaluation.

I'm not looking at probation at the end of this. I might adjust the sentence based on you evidencing by what you do. That you are willing to work, not just

willing to work, you are genuinely working to change things and genuinely working to deal with your issues. But I'm not primarily looking at this from the standpoint of probation after a rider. I am looking at this to see if you are willing to do the work and evaluate whether it's just talk.

(2/27/17 Tr., p.30, Ls.11-22.) Despite his assertion that he made progress while on his rider, Barber acquired nine written warnings and a Class B DOR for manipulation of staff. (PSI, p.306.) Barber received the DOR after his graduation date, leading his case manager to conclude Barber "may have not internalized the curriculum" and that Barber's "continued disrespect to staff, poor attitude, and rule violations indicate that he may not perform any better while on community supervision." (PSI, p.306.)

At the jurisdictional review hearing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for relinquishing jurisdiction. (10/2/17 Tr., p.13, L.20 – p.15, L.11.) The state submits that Barber has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the jurisdictional review hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order relinquishing jurisdiction.

DATED this 12th day of April, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of April, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

LARA E. ANDERSON
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

11

1 very short fuse, ma'am. I really dug deep into it
 2 on my anger with by social skills that I have that
 3 was given from my teacher, from my instructor, and
 4 he was very surprised. He really didn't think I
 5 would be able to pull through it. And I really --
 6 I really pat myself on the back for that for being
 7 able to come all this way from being a total, you
 8 know, total nothing and from not learning anything
 9 and just doing wrong to coming out and being able
 10 to control my anger, be able to not fight back,
 11 and be able to know who I am inside, and to be
 12 positive and keep my emotions up.

13 During my T for C class, I had a lot of
 14 concerns, and so did my teachers as well. I was
 15 learning to stop and think, use self-cognitive
 16 thinking. Through my T for C and my CBI class, I
 17 had asked a lot of questions on how to do the work
 18 and how to do the assignments, and I got that
 19 help. And I've never been able to ask for help.

20 One of our social skills that we have,
 21 ma'am, is asking for help. I asked for -- for a
 22 lot help through it all. Through this whole
 23 program, I asked for help. And I was glad to have
 24 gotten that help and be able to use it towards my
 25 peers, towards the staff facility, and towards

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1 Deputy Acosta, the Deputy Warden there.
 2 While I was placed on the behavior
 3 contract, I was to complete it on a certain date.
 4 I did get it done on time. I did not fight back
 5 with that as well, which I'm actually really
 6 surprised and so was everybody else. I really
 7 do -- I really do wish that the things that I did
 8 did not happen, and I kick myself in the butt for
 9 it. But I do take full responsibility of that,
 10 and I take that as a man. You know, I'm not a
 11 child anymore. I'm a man, and I was treated like
 12 a man there. And either way, whether I like it or
 13 not, I did what I was supposed to do. And I did
 14 what IDOC expected me to do.

15 And with those punishments, I did not
 16 fight against them. I did not fight with them. I
 17 stuck to it. I did what I was supposed to do.
 18 With everything that was happening with my baby
 19 momma, with my ex, ma'am, and my son, it enraged
 20 me quite a bit, but I didn't show it. I simply
 21 talked about it in group. I talked about it with
 22 my case manager, and they were able to help me
 23 know what to do.

24 I don't have no contact with her
 25 anymore nor do I want one because of what she

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1 said. I do keep in contact with her father, and I
 2 do keep in contact with her mother to know how my
 3 boy is doing. But other than that, I do want to
 4 thank you for giving me this chance to, at least,
 5 show you -- show the courts that, yeah, it was
 6 rocky. This was a rocky rider.

7 I can't speak for you, ma'am, but I do
 8 have to say I do want to give you a thank you and
 9 a God bless to giving me this rider and having me
 10 come closer to who I am as myself and who I can
 11 truly be on the outs.

12 I mean, as my public defender said, I
 13 do have housing. I do have -- I will have
 14 full-time employment that my mother, who is here
 15 today, has set me up with a job that she as well
 16 working. And that's about it, ma'am.

17 THE COURT: Is there legal cause why we
 18 should not proceed?

19 MR. MARX: No, Your Honor.

20 THE COURT: Well, I told you at the time of
 21 sentencing that this was a rider for evaluation.
 22 And your attorney, I'm positive, told you what
 23 that means. You needed to apply yourself. You
 24 needed to work hard, and you needed to stay out of
 25 trouble. You shot -- you are here because you

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1 shot another person three times.
 2 The performance on the rider is poor.
 3 There were violations -- you were sentenced back
 4 in February. There were violations in April, May,
 5 two in June, many in August, and then just before
 6 you come here on September 27th, you got a class B
 7 DOR for manipulation of staff because you wrote a
 8 letter about the security staff and showed it to
 9 another staff member and asked that staff member
 10 not to tell anyone.

11 I don't think you have internalized
 12 anything. You present as a risk to others. You
 13 shot a person three times. You needed to pull it
 14 together. You did not. Your juvenile record
 15 already raised concerns about your ability and
 16 willingness to control yourself.

17 Because the offense that you committed
 18 placed another person in the community at serious
 19 risk, in part because of your bad judgment and the
 20 bad judgment of the people you hang out with.
 21 This was a troubling situation as an initial
 22 offense. I don't see that you picked up the
 23 skills that you need, and the fact that you got
 24 this level of DOR when you were on a rider for
 25 evaluation purposes only. That gives me no

1 confidence that you would be suitable for
2 probation. It gives me no confidence that the
3 public would be protected if you were on
4 probation.

5 The Court has a number of factors to
6 consider. Those are wrapped up primarily in the
7 overall goal of protecting the public. I don't
8 think your rehabilitation program appears to have
9 been internalized in any meaningful sense. That
10 was what was essential to reduce your risk, and I
11 don't see that that occurred.

12 The Court will relinquish jurisdiction.
13 You do get credit for time served. You do have
14 42 days in which to appeal. The Court will
15 recess.

16 (Proceedings concluded at 10:50 a.m.)

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REPORTER'S CERTIFICATE

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STATE OF IDAHO)
) SS
COUNTY OF ADA)

I, ROXANNE K. PATCHELL, Official Court
Reporter, Ada County, State of Idaho hereby
certify:

That I am the reporter who took the
proceedings had in the above-entitled action in
machine shorthand and thereafter the same was
reduced into typewriting under my direct
supervision; and

That the foregoing reporter's transcript
contains a full, true, and accurate record of the
proceedings had in the above and foregoing cause,
which was heard at Boise, Idaho

IN WITNESS WHEREOF, I have hereunto set my
hand this 4th of December, 2017.

Roxanne K. Patchell, RPR, CSR
Roxanne K. Patchell, RPR, CSR
Idaho CSR Number 733
California CSR Number 12057