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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45520
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2012-2512
	)	
CORY MARK BOOKER,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

In 2012, Booker invited a 12-year-old girl to his residence, provided her with alcohol until she became intoxicated, and then had sexual intercourse with her, despite the fact that she “tried to keep his hands from going down her pants,” told him “she wanted him to stop when he put his hand down her pants,” and subsequently told him that the sexual intercourse “was

hurting” her. (PSI, pp.4-5, 105, 118.<sup>1</sup>) At some point, the victim “passed out,” after which Booker continued to fondle her breasts and his “finger penetrated her vagina.” (PSI, pp.4, 119.) Results of a sexual assault examination revealed that the victim suffered “a large amount of trauma to [her] vaginal area and she had several areas of bleeding.” (R., p.28.)

The state charged Booker with lewd conduct with a child under 16. (R., pp.93-94.) Pursuant to a plea agreement, Booker pled guilty to an amended charge of felony injury to a child and the state agreed to recommend “no greater sentence than that recommended by the Presentence Report.” (R., pp.107-09.) At sentencing, the district court withheld judgment and placed Booker on supervised probation for eight years. (R., pp.122-27.)

Approximately one month later, Booker’s probation officer filed a report of violation alleging that Booker had violated the conditions of his probation by incurring a “Major Infraction Disciplinary Marker” for “participating in sexual acts with another person” while he was still incarcerated in the Bannock County Jail awaiting the determination of his eligibility for “residential living at Belmont.” (R., pp.131-32.) Booker admitted the allegation and the district court revoked his probation and the withheld judgment, imposed a unified sentence of eight years, with four years fixed, and retained jurisdiction. (R., pp.137-44.) Following the period of retained jurisdiction, the district court suspended Booker’s sentence and again placed him on supervised probation for eight years. (R., pp.146-49.)

Approximately six weeks later, Booker’s probation officer filed a second report of violation, alleging that Booker had again violated the conditions of his probation by incurring a

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “CONFIDENTIAL CERTIFICATE OF EXHIBITS BOOKER 45520-2017.pdf.”

“Major Infraction Disciplinary Marker” at the Bannock County Jail for “participating in horseplay” that “involved pinching nipples, smacking and whipping buttocks and the touching of the genital area.” (R., pp.151-52.) The state later withdrew the report of violation “pending Mr. Booker[']s acceptance into the Aspire Supported Living Facility,” and Booker was continued on probation. (R., pp.169, 175.)

In October 2016, Booker “walked away from the Belmont assisted living facility in violation of his rules of supervision and court order”; consequently, he was required to serve 29 days of discretionary jail time. (R., p.174.) Approximately two months after Booker was released from the jail, his probation officer filed another report of violation, alleging that Booker had violated the conditions of his probation by again “walk[ing] away from his residence at Aspire Supported Living Facility” and absconding supervision. (R., pp.175-76.) Booker admitted the allegation and the district court revoked his probation, executed the underlying sentence, and retained jurisdiction a second time. (R., pp.187-89, 193-96.) Following the second period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.198-200.) Booker filed a notice of appeal timely from the district court’s order relinquishing jurisdiction. (R., pp.9, 244-45; Notice of Appeal.)

Booker asserts that the district court abused its discretion by relinquishing jurisdiction in light of “the progress that he was making in his courses prior to receiving his DOR” for attempted escape. (Appellant’s brief, pp.2-4.) Booker 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)).

Booker is not an appropriate candidate for probation in light of his ongoing absconding behavior, his high risk to reoffend, and his disregard for the law, the terms of community supervision, and institutional rules. Booker has a long history of criminal behavior – he incurred his first juvenile adjudication at the age of 11 and he “has been on probation since he was 12.” (PSI, pp.3, 6, 18.) Probation has clearly been ineffective at achieving any of the goals of sentencing, given that, while on probation, Booker committed the new crimes of burglary, battery, malicious injury to property, aiding in a misdemeanor, malicious mischief, third degree theft, three petit thefts (one of which was amended from grand theft), driver’s license violation, DWP, two separate failures to purchase/invalid driver’s license, three separate crimes of driving without the owner’s consent, and the instant injury to a child offense. (PSI, pp.6-10.) At the time of sentencing for the instant offense, Booker also had charges pending for DUI and failure to purchase/invalid driver’s license. (PSI, pp.9-10.) He also has a history of violating the law and the terms of probation by consuming alcohol and using marijuana, which began when he was approximately 10 years old and eventually escalated to “daily use.” (PSI, pp.13, 38.)

In this case, the mental health evaluator determined that Booker presents a high risk of danger to the public at large, and the psychosexual evaluator concluded that Booker's risk to sexually reoffend is "Moderate-High." (PSI, pp.31, 36.) The presentence investigator stated, "As noted in the psychosexual evaluation and mental health assessments, Mr. Booker will require a high level of structure and supervision. Due to this, I recommend he be considered for placement at Belmont, or a similar facility, where Mr. Booker can reside and be monitored." (PSI, p.15.) The district court followed the recommendation and placed Booker on supervised probation with the condition that he "live at a residence approved of by the Probation Officer." (R., pp.122-28.) The district court specifically recommended Belmont House, and ordered that Booker be released from the jail "upon approval of housing." (R., pp.125, 128.)

While he was waiting to be approved for placement at Belmont, Booker "committed a sexual offense in the Bannock County Jail," for which he incurred a "Major Infraction." (R., pp.131-36.) Consequently, Booker's probation officer filed a report of violation and recommended "the traditional Retained Jurisdiction Program with sex offender treatment," noting that "[Booker's] offense has raised concerns with myself and Belmont staff as to whether he is a viable candidate for residential living at Belmont." (R., p.131.)

The district court placed Booker in the retained jurisdiction program, during which Booker participated in the Sex Offender Assessment Group program. (R., pp.137-44; PSI, pp.54-55.) At the conclusion of Booker's rider, program staff reported that, although Booker "is capable of following directions," he "used avoidance as a coping mechanism" during his programming and, as a result, he did not complete all of his assignments, despite the fact that he had a special education assistant and several peers in his group who were willing to help him. (PSI, pp.55, 57.) Rider staff noted that, during Booker's "initial crime story, he had a lot of

‘minimizations’ in his story, blaming of others, and blaming his actions on his substance use,” and that, by the end of his program, he still “did not demonstrate that he was able to take ownership or accountability for his crime. He continued to minimize what he had done to the victim.” (PSI, pp.55, 61.) Staff further advised that Booker’s “treatment journal also does not indicate that he has developed any insight into his sexual [sic] deviant thinking,” and, “It appears that Mr. Booker is willing to engage in sexual behavior with just about anyone because he finds it to be sexual [sic] gratifying and gives very little thought about the consequences of his actions.” (PSI, p.61.) In the Sex Offender Risk Assessment that was completed at the conclusion of Booker’s programming, it was determined that Booker’s “overall risk to commit a new sex offense is rated at VERY HIGH” and that “he does not have the cognitive ability to be successful in a traditional sex-offender treatment program in the community. He does not seem to have the intellectual or academic capacity to process the information needed to reduce his level of risk to commit another sex offense.” (PSI, pp.60-61 (capitalization original).) Despite these reports, Booker was once again placed on probation following his period of retained jurisdiction, again with the condition that he reside at Belmont House. (R., pp.146-49.)

While he was again in the Bannock County Jail awaiting approval for placement at Belmont House, Booker again incurred a “Major Infraction,” for his “second offense for sexual misconduct at the Bannock County Jail.” (R., pp.151-52.) Booker admitted that he “would pinch [the other inmate] in the breast area” and that he “grabbed [the other inmate’s] penis and balls.” (R., p.155.) Booker also admitted that he had written a letter to a different inmate, “asking him if he wanted to hook up.” (R., p.155.) Consequently, Booker’s probation officer filed a second report of violation, recommending that the district court revoke Booker’s probation and execute the underlying sentence, and stating, “Belmont Care Management houses

developmentally delayed offenders. ... Staff at Belmont Care Management and I feel Mr. Booker's predatory behavior makes him too high risk to be housed with this vulnerable population." (R., pp.151-52.) The second report of violation was later withdrawn, however, "pending Mr. Booker[']s acceptance into the Aspire Supported Living Facility." (R., pp.169, 175.)

Booker's unwillingness to follow the rules persisted after he was finally released from the Bannock County Jail and placed at the Aspire Supported Living Facility, as his probation officer later filed a third report of violation, advising:

Cory Booker has not done well on probation. He has continually refused to follow the rules at Aspire Assisted Living Facility. He has been sanctioned for drug and alcohol use and refusal to attend treatment. On October 24, 2016, Mr. Booker served 29 days of jail time for walking away from Aspire Supported Living Facility. Mr. Booker was released from Jail on November 21, 2016. Mr. Booker and another client were consuming alcohol at the First National Bar and had walked away from the facility without staff knowledge.

Cory Booker has again absconded supervision and walked away from his residential treatment facility on January 26, 2017. Mr. Booker has been offered every resource to succeed in the community but doesn't take supervision seriously. Cory Booker is on supervision for sexual assault of a twelve year old victim and I consider him a danger to the community.

(R., p.176.) Booker's probation officer again recommended that the district court revoke Booker's probation and execute the underlying sentence. (R., p.176.) The district court instead retained jurisdiction a second time, warning Booker that "he would be given the opportunity to get back into Aspire" if he successfully completed his rider, but he would "not be allowed to reside anywhere else." (PSI, p.76; R., pp.193-96.)

Booker, however, disregarded the district court's statements – upon arriving at NICI to begin his second rider, he met with his case manager and requested that an Interstate Compact be submitted so that he could reside with his grandmother upon his release. (PSI, pp.72, 77, 79.)

Booker's case manager agreed to set a meeting "to start the process." (PSI, p.79.) His case manager later learned that Booker "had access to alcohol at his grandmother's home and had been drinking while on probation" and contacted Booker's probation officer "to see if it was remotely possible" for Booker to live his grandmother; Booker's probation officer advised that "if Mr. Booker was released on probation the only place that would be considered would be Aspire through Belmont." (PSI, pp.72, 76-77.) Booker's case manager relayed this information to Booker on August 2, 2017, and, although Booker acknowledged that he "was aware that the Judge told him to go there or go to prison," he nevertheless became "quite upset about this information and tried to argue with his case manager," stating that Aspire was "the place that he ran from" and "ma[king] it very clear that he did not want to live at Aspire on the grounds that he was a grown man and did not need people telling him what to do all day long." (PSI, pp.72, 76.)

Booker's behavior deteriorated shortly after the August 2, 2017 conversation with his case manager – over the ensuing 27 days, Booker incurred written warnings for "bunk area not inspection ready," sharing commissary and unauthorized transfer of property, and, on August 29, 2017, he incurred a DOR for "Attempted Escape [f]rom Non-secure Facility." (PSI, pp.71, 76.) When officers questioned Booker about the attempted escape, he stated that he and two other offenders had been making a plan to escape "for about a month," and their plan was to "escape through the back gate behind unit 4 on Sept. 1<sup>st</sup>," and that "a man with a Dodge Charger would cut the pad locks to the gates and drive them to Las Vegas." (R., p.225.) Notably, Booker began planning to escape from NICI at approximately the same time that his case manager told him that he would be required to return to Aspire if released on probation. (R., p.225; PSI, pp.71-72.) Booker's case manager concluded that Booker's attempted escape "is similar to his probation violation of absconding in that he walked away from a non-secure facility where he was housed.

Mr. Booker did not want to return to Aspire and rather than use his self-regulation/self-control skills, he opted to continue his pattern of running/escaping from a situation he did not like.” (PSI, p.74.) Although Booker later attempted to diminish his culpability for the attempted escape by claiming that the two other offenders “attempted to implicate him” (Appellant’s brief, p.3; R., p.203), rider staff reported that, in addition to Booker admitting that he “did have plans to escape from NICI” (R., p.225), the escape plans “were substantiated in recorded phone calls” (PSI, p.71). Rider staff ultimately determined that Booker presents a high risk to reoffend and recommended that the district court relinquish jurisdiction. (PSI, pp.70, 74.)

The district court considered all of the relevant information and reasonably concluded that Booker was no longer a viable candidate for community supervision. The district court’s decision to relinquish jurisdiction was appropriate in light of Booker’s ongoing disregard for the law and institutional rules, refusal to abide by the terms of community supervision, continuing absconding behavior, high risk to reoffend, and failure to demonstrate adequate rehabilitative progress. Given any reasonable view of the facts, Booker has failed to establish an abuse of discretion.

Conclusion

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

DATED this 13th day of August, 2018.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of August, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
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/s/ Lori A. Fleming  
LORI A. FLEMING  
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