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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46243-2018
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR14-2018-5662
	)	
CAMERON SCOTT FIGUEROA,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Figueroa failed to establish that the district court abused its discretion by declining either to retain jurisdiction or to place him on probation when it imposed concurrent, unified sentences of four years, with one and one-half years fixed, upon his guilty pleas to two counts of burglary?

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

Figuroa pled guilty to two counts of burglary, and the district court imposed concurrent, unified sentences of four years, with one and one-half years fixed. (R., pp.63-64.) Figuroa filed a notice of appeal timely from the judgment of conviction. (R., pp.51-54, 65-69.)

Figuroa asserts that the district court abused its discretion when it ordered his sentences into execution, instead of retaining jurisdiction or placing him on probation, in light of his mental health issues, difficult childhood, lack of “significant criminal history,” and the fact that he graduated from high school. (Appellant’s brief, pp.3-5.) Figuroa has failed to establish an abuse of discretion.

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.

Figuroa is not an appropriate candidate for probation, particularly in light of the seriousness of the offenses, his continued criminal offending, and danger he presents to the community. Twenty-seven-year-old Figuroa’s criminal history is not insignificant. It includes five misdemeanor convictions, for: making a false report to law enforcement, theft, marijuana violation (amended from felony), shoplifting, and disorderly conduct (fighting). (PSI, pp.6-7.<sup>1</sup>) Figuroa also has a prior felony conviction for resisting arrest in Arizona, and his record includes multiple dismissed misdemeanor and felony charges. (PSI, pp.6-8.) Although he does not

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Confidential Exhibits Appeal.pdf.”

appear to have been charged, officer also received reports that Figueroa was a “peeping Tom or prowler” around his neighborhood. (PSI, p.5.)

In this case, Figueroa committed two home invasion burglaries at two separate, inhabited residences in Nampa. (PSI, p.3.) On March 16, 2018, Shelly Lynn Petersen reported to officers that her son was awakened by a noise and found Figueroa in his bedroom looking through his dresser. (PSI, p.3.) Figueroa left the room and subsequently entered the room of Shelly’s daughter, Amiee. (PSI, p.3.) Amiee awoke to find Figueroa in her room and asked who he was and why he was there, at which point Figueroa ran down the hall. (PSI, p.3.) Figueroa then opened Shelly’s bedroom door before fleeing from the house. (PSI, p.3.) Shelly reported a number of items were missing from her home, including three tablets, a camo-colored PS4, an Xbox with Kinect, UE Mega Boom speakers, fishing poles, a BMX bike, and tools. (PSI, p.3.) Shelly also reported that \$40 was missing from her purse and \$60 was missing from her son’s wallet. (PSI, p.3.)

Two days later, the Nampa Police Department received another report of a home invasion burglary. (PSI, p.3.) The victim, Jennifer Navarro, reported that her alarm went off, and that her husband found the exterior garage door opened. (PSI, p.3.) Jennifer reported their black duffle bag that contained ski equipment had been taken. (PSI, p.4.) Officers located Figueroa in the area; he was “wearing a black hoodie, dark-colored pants/sweats, and a grey beanie,” and a black duffle bag containing ski equipment and apparel was “nearby.” (PSI, p.4.) Figueroa’s breath smelled like alcohol, and he became aggressive and confrontational with the officers. (PSI, p.4.) When officers searched Figueroa they found a large knife in his belt line, a cylinder-shaped container with “THC percentage of 15.1” printed on it, a metal object that “resemble[d] a punch used in vehicles or other burglary tools,” “several small bags rolled up under his shirt,” and a

flashlight. (PSI, p.4.) Some of the missing items from the first burglary were later recovered at Figueroa's residence. (PSI, p.4.)

Figueroa claims the district court should have placed him on probation or retained jurisdiction in light of factors he deems mitigating, including his age, lack of significant criminal history, mental health issues, difficult childhood, and educational achievements and goals. (Appellant's brief, pp.4-5.) The district court specifically articulated its consideration of a number of these factors, however, and nevertheless concluded a sentence of imprisonment was necessary both to deter Figueroa and to protect society from the danger Figueroa poses to people's "security" and "safety." (4/24/18 Tr., p.43, L.9 – p.46, L.7.) The court considered options in lieu of imprisonment but determined in light of all of the information before it, including the nature of the offenses and Figueroa's mental health needs, that the goals of sentencing would be best achieved by a sentence of incarceration. (4/24/18 Tr., p.42, L.7 – p.46, L.7.) The district court concluded:

This sentence ultimately is not going to be all that much longer than the retained jurisdiction program. But I think that a sentence of incarceration is necessary both to impress upon you that maybe you'll remember that you can't do this. Also that will give significant period of time to address your mental health issues.

(4/24/18 Tr., p.46, L.22 – p.47, L.3.)

The district court's decision to execute Figueroa's sentences, rather than retain jurisdiction or suspend the sentences, was appropriate in light of the seriousness of the offenses, his continued criminal offending, and the danger he presents to the community. The state submits that Figueroa 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. (4/24/18 Tr., p.42, L.7 – p.47, L.3 (Appendix A).)

Conclusion

The state respectfully requests this Court to affirm Figueroa's conviction and sentence.

DATED this 14th day of May, 2019.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of May, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
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/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A

41	42
<p>1 week, probably not even one month would I -- as a  2 homeowner, as a victim would I move past something  3 like this. I'll knock on wood. I haven't been a  4 victim like this and heaven forbid I ever become  5 one. But I think we can all appreciate the level of  6 offense that this defendant has caused.</p> <p>7 Like I said before, this is not a store  8 burg. This is not, you know, a squatting situation  9 where you go into an abandoned home. Each and every  10 one of these alleged incidents, the three of them,  11 appear to involve thefts of residences that were  12 occupied at the time by people that appeared to be  13 sleeping.</p> <p>14 And my guess is that if you took each one  15 of the legislators of this state and sat them down  16 and said you're a victim of this, the justice  17 reinvestment and saving prison space would not be  18 the first thing that crosses their mind. This is  19 just not one of those offenses where probation is  20 appropriate.</p> <p>21 This Court -- I beg this Court to be  22 careful not to give a sentence that diminishes the  23 significance of these crimes. I know it's kind of  24 rote for us to come in and, yeah, we have another  25 theft case, a home burg or a store burg. But here</p>	<p>1 we have someone that demonstrated even when they're  2 in the system pending a case of similar behavior  3 alleged, they go out and commit two more -- two of  4 these two or three days apart. Even while pending a  5 similar case in the system. That is not someone  6 that is safe for the community.</p> <p>7 THE COURT: I agree with the State. This is  8 not a property crime, a mere property crime. There  9 is something terrifying I think to all families, all  10 homeowners to find somebody broke into their house,  11 is in their house at night when their family,  12 children are sleeping, violate the safety and  13 security of somebody's home. I think that creates  14 in addition a very dangerous circumstance, sir, a  15 situation where people could wake up with guns, could  16 try to tackle you. You'll have to fight, try to get  17 away, do something to hurt somebody. The invasion  18 of a home I think is a very serious incident.</p> <p>19 And I agree with the State also I think  20 and your attorney quotes statistics on burglaries,  21 but I can tell you that this Court deals with very  22 few burglaries that are home invasions while the  23 homeowners and their family are in the home. There  24 seems to be something that was bothering you or some  25 need for you to go to houses where people were</p>
43	44
<p>1 sleeping to try to steal, go in and steal from them.  2 I don't know what that is. You're lucky you weren't  3 shot. You're lucky you weren't captured and in the  4 event of somebody trying to capture you and hold you  5 that somebody else wasn't injured.</p> <p>6 I have considered the presentence  7 investigation report, the statement of Ms. Navarro,  8 both written and what was said in court today, the  9 other evaluations. I do recognize that you're  10 young, 27 years of age, have been -- received mental  11 health services, have been placed on antipsychotics  12 since you've been in jail.</p> <p>13 THE DEFENDANT: Yes.</p> <p>14 THE COURT: By your statement, you were  15 diagnosed with schizophrenia at 16. The mental  16 health review didn't specifically find  17 schizophrenia, although they found that you did  18 suffer from mental health illnesses.</p> <p>19 But I can't understand the need, sir, to  20 break into people's homes while people are sleeping,  21 try to sneak around, steal their property. The  22 Petersons' home, you went into the son's bedroom.  23 You went into the daughter's bedroom. You went  24 through the house. It's hard to imagine how  25 traumatic that is to the owners. Ms. Navarro in her</p>	<p>1 case said that when you went through their house,  2 invaded their house while they were there.</p> <p>3 I have considered your relatively young  4 age. I have considered your prior record, which is  5 not all that extensive. Appears to be one felony  6 offense on there.</p> <p>7 But I've considered also the fact that  8 you've done this three times in our community here.  9 You seem to target homes, residence, hotel rooms  10 where people are. You try to sneak in and steal  11 from them right in their presence.</p> <p>12 In determining an appropriate sentence, I  13 have to try to seek the sentencing goals and  14 exercise my discretion to seek sentencing goals,  15 No. 1 of which is protection of society. You are a  16 much greater danger than merely to the property of  17 people of Idaho. You are a danger to their  18 security, to their safety. And I think they're  19 deserving and need to be protected from you.</p> <p>20 I also have to seek the sentencing goal  21 of deterrence to you and to others. Frankly, you've  22 served 129 days. Given the severity of the conduct  23 here, I don't think that that is sufficient. And I  24 think that this is the kind of case where I need to  25 send a message to others like you that are invading</p>

45	46
<p>1 homes or thinking about invading homes where people  2 reside that it's going to be dealt with and dealt  3 with harshly.</p> <p>4 I also have to consider rehabilitation.  5 It's pretty clear you suffer from a mental illness.  6 Been diagnosed for a number of years. I don't know  7 how good our retained jurisdiction program is for  8 schizophrenics and dealing with schizophrenics, but  9 I have some familiarity and understand that that's a  10 condition that's hard to deal with. It's a  11 condition that's hard for you to deal with. But --  12 and it's a condition that you're never going to get  13 better from, from everything I know about it.  14 Hopefully it will be -- you can have it controlled,  15 but schizophrenic antipsychotic medications, people  16 go on and off those medications all the time, most  17 people who suffer from schizophrenia. You're going  18 to struggle with it your entire life.</p> <p>19 And finally punishment or retribution. I  20 have considered all those matters along with the  21 items from the Idaho legislature in Idaho Code  22 19-2521.</p> <p>23 And I have determined that the best way  24 to fulfill my sentencing obligations is to do as  25 follows. I'm going to impose a prison sentence of</p>	<p>1 four years, consisting of one and a half years fixed  2 plus two and a half years indeterminate. That  3 sentence recognizes your mental health condition.  4 It recognizes your young age. It also recognizes I  5 feel the danger you present to society and will  6 operate as deterrence to both you and to others and  7 will give you a chance at rehabilitation.</p> <p>8 I will grant credit for 129 days served.  9 I will impose court costs only. You're likely  10 during the term of that sentence to lose your Social  11 Security disability payments.</p> <p>12 THE DEFENDANT: Um-hmm.  13 THE COURT: If you've not already lost them  14 because of the 129 days that you served. I will  15 order that you reimburse Canyon County \$300 for the  16 cost of your public defender. I will leave  17 restitution open for a period of 90 days as to all  18 cases. You will be required to submit a DNA sample  19 and right thumbprint sample that will be lodged in  20 the Idaho State Police database, sir.</p> <p>21 THE DEFENDANT: Okay.  22 THE COURT: This sentence ultimately is not  23 going to be all that much longer than the retained  24 jurisdiction program. But I think that a sentence  25 of incarceration is necessary both to impress upon</p>
47	48
<p>1 you that maybe you'll remember that you can't do  2 this. Also that will give significant period of  3 time to address your mental health issues.</p> <p>4 Anything further from the State,  5 Mr. Creswell?</p> <p>6 MR. CRESWELL: And the time on each charge  7 runs concurrent; correct?</p> <p>8 THE COURT: Yes. That will be the sentence  9 as to each charge. Those times will run concurrent.  10 You get credit for 129 days on each charge.</p> <p>11 MR. CRESWELL: The State will submit orders  12 dismissing the count three grand theft by possession  13 and the entirety of the other case that he wasn't  14 sentenced on.</p> <p>15 THE COURT: And I have signed the orders of  16 dismissal for the misdemeanors.</p> <p>17 MR. CRESWELL: Thank you, Judge.  18 THE COURT: I have to advise you,  19 Mr. Figueroa, you have 42 days from the date of  20 entry of this sentence within which to file an  21 appeal should you wish to do so. You have 120 days  22 from that date within which to file for a reduction  23 of sentence pursuant to Rule 35 of the Idaho  24 Criminal Rules. You have one year from the date the  25 appeal time runs or if an appeal is taken from the</p>	<p>1 date that appeal is finalized within which to file  2 for post-conviction relief. You're remanded to be  3 delivered to the Idaho State Penitentiary to serve  4 your sentence, sir. Court is in recess.  5 (Hearing concluded at 12:54 p.m.)  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>