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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46737-2019
)	
v.)	ADA COUNTY NO. CR01-18-52248
)	
JOSHUA E. OKOCHA,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Joshua Okocha pled guilty to possession of a stolen vehicle, his first felony, and both he and the State recommended that the district court place him on probation. The district court disregarded the parties' recommendation and sentenced Mr. Okocha to prison, but retained jurisdiction and ordered Mr. Okocha to participate in a rider. Before he began classes, however, Mr. Okocha was attacked by another inmate and the Department of Correction removed him from the rider program for being in a "fight." On the recommendation of the Department, the district court relinquished jurisdiction and ordered Mr. Okocha to serve a prison sentence of five years, with fifteen months fixed.

On appeal, Mr. Okocha argues that the district court abused its discretion by relinquishing jurisdiction rather than placing him on probation or providing him another rider opportunity.

Statement of the Facts and Course of Proceedings

Mr. Okocha walked into a Jackson's Food Store with a bloody nose and asked the clerk to call him an ambulance. (PSI, p.12.) The medics arrived, but when Mr. Okocha refused their request to get into the ambulance, they called the police because they thought Mr. Okocha was acting "strangely." (PSI, p.24.) When the police arrived, Mr. Okocha told them he was fine and walked away; the police continued to follow and Mr. Okocha began to run from them, and at one point, entered the roadway and obstructed traffic. (PSI, p.25.) The police caught up with Mr. Okocha at a mobile home park and used force to arrest him. (PSI, p.25.)

At the mobile home park, the police talked with a resident who said Mr. Okocha had been a guest and had offered to sell her and her boyfriend the BMW that he had recently purchased. (PSI, p.25.) An investigation soon revealed the BMW had been reported as stolen. (PSI, p.25.)

Mr. Okocha explained that he found the vehicle on Craigslist and purchased it without doing his research, thinking it was a good deal. (PSI, p.143.) He admitted some suspicion regarding the identity of the seller and the legitimacy of the title document he was provided, and for that reason, admitted these circumstances should have put him on notice that the BMW may have been stolen. (PSI, p.144; 1/11/19 Tr., p.13, L.1 – p.14, L.1.)

Later, the State filed an information charging Mr. Okocha with theft by possession of stolen property, along with two misdemeanors: resisting an officer and possessing a controlled substance – marijuana – found on his person following his arrest. (R., p.18.)

Pursuant to an agreement, Mr. Okocha pled guilty to the theft charge and the State dismissed the misdemeanors and promised to recommend probation with an underlying sentence of five years, with two years fixed. (R., p.20; 11/16/18 Tr., p.7, Ls.10-15, p.15, L.17.)

At sentencing, both parties asked the district court to place Mr. Okocha on probation with an underlying five-year sentence; the State recommended the fixed portion of the sentence to be two years, while Mr. Okocha asked that the fixed portion be just one year. (1/11/19 Tr., p.7, Ls.7-24, p.10, Ls.4-14.) The district court ignored the parties' joint request for probation and imposed a prison sentence of five years, with two years fixed; however, the court retained jurisdiction and ordered that Mr. Okocha complete a rider. (1/11/19 Tr., p.20, Ls.14-24; R., pp.45-36.)

The Department of Correction placed Mr. Okocha in its program at Cottonwood. (PSI, p.551.) However, just weeks after his arrival and before he could begin any classes, Mr. Okocha was removed from the program due to a "fight" with another inmate. (PSI, pp.554-55.) The Department subsequently sent the district court an Addendum to the Presentence Report ("APSI") that recommended relinquishing jurisdiction. (PSI, pp.553-54.) The APSI stated that Mr. Okocha was not available for comment on the recommendation. (PSI, pp.554-55.)

At the rider review hearing, Mr. Okocha, who is African American, testified under oath describing the incident as an unprovoked racist attack by one of the white supremacist, Neonazis in his unit; he also stated that the incident had been investigated and that the DOR alleged against him had been dismissed. (5/3/19 Tr., p.5, L.19 – p.7, L.25.)

The district court declined to grant Mr. Okocha probation or to provide him with another rider opportunity. Instead, the district court followed the recommendation of the Department and relinquished jurisdiction, and then ordered that Mr. Okocha serve a slightly modified prison term

of five years, with fifteen months fixed. (Supp.R., pp.12-13.) Mr. Okocha filed Notices of Appeal that are timely from his judgment and from the subsequent order relinquishing jurisdiction. (R., p.39, Supp.R., p.18.)

ISSUE

Did the district court abuse its discretion by relinquishing jurisdiction?

ARGUMENT

The District Court Abused Its Discretion By Relinquishing Jurisdiction

A. Introduction

Mr. Okocha claims that, in light of the specific circumstances surrounding his removal from the rider program, and his subsequent willingness to engage in mental health treatment, the district court's decision to relinquish jurisdiction, rather than grant probation or allow him another rider, is unreasonable representing an abuse of the district court's sentencing discretion. This Court should remand Mr. Okocha's case to the district court for resentencing.

B. Applicable Legal Standards

The determination whether to place a defendant on probation or instead to send him to prison is governed by the legal standards set forth in Idaho Code § 19-2521, which require that the district court *not* impose a prison sentence “*unless*, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public...” *Id.* (Emphasis added). As it did in this case, the district court has discretion to impose sentence and retain jurisdiction for further evaluation by the Department of Correction and to afford the defendant an opportunity to demonstrate his rehabilitation potential and suitability for probation. *See* I.C. §

19-2601(4); *State v. Lee*, 117 Idaho 203, 205-06 (Ct. App. 1991). During the retained jurisdiction period, the Department determines the placement of the defendant and the education, programming, and treatment as it deems appropriate. I.C. § 19-2601(4). The Department may then provide the district court with a *recommendation* in the form of an addendum to the presentence report. *Id.* However, the decision to grant probation or relinquish jurisdiction is a matter left to the district court's discretion. *Id.*; *State v. Le Veque*, 164 Idaho 110, 12 (2018).

C. The District Court Abused Its Discretion By Relinquishing Jurisdiction Rather Than Placing Mr. Okocha On Probation Or Ordering Another Rider

Mr. Okocha testified under oath to the circumstances surrounding the reported “fight” underlying the Department’s decision to remove him from his rider and to recommend relinquishment. (5/3/19 Tr., p.5, L.19 – p.15, L.20.) Contrary to the APSI, this was not a fight involving a gambling debt (he had been playing dominos previously); rather, he was attacked, without provocation, by another inmate. (5/3/19 Tr., p.5, L.19 – p.7, L.25.) Mr. Okocha explained he had been placed within a unit with inmates who were white supremacist Neonazis, some of them bearing swastikas on their bodies. (5/3/19 Tr., p.5, L.19 – p.7, L.25.) He further testified that as the lone African-American in the unit, he had suffered other verbal abuse and he felt threatened and unsafe. (5/3/19 Tr., p.5, L.19 – p.7, L.25.) He’d made multiple requests of the guards to be moved out of the unit for these reasons. (5/3/19 Tr., p.5, L.19 – p.7, L.25.)

Regarding the attack, Mr. Okocha testified that the other inmate taunted him by telling a highly offensive, racist “joke” (Tr., p.8, Ls.20-24), and Mr. Okocha had called him out on it by saying it wasn’t funny, then got up from the dominos table and walked away, and stood by the stairwell watching TV. (5/3/19 Tr., p.5, L.19 – p.9, L.25.) He was then “blindsided” by the inmate, who swung at him with fists, hitting the windowsill when Mr. Okocha ducked. (5/3/19 Tr., p.10, Ls.1-21.) The other inmate continued to swing multiple times and Mr. Okocha pushed

back and covered his face, trying not to get hit. (5/3/19 Tr., p.10, Ls.1-21.) After someone from upstairs was heard saying, “What’s going on?” the incident ended, and the other inmates instructed Mr. Okocha to say nothing about it. (5/3/19 Tr., p.11, L.5 – p.12, L.8.)

Mr. Okocha did report the incident, however, and the investigation showed no marks on Mr. Okocha’s fists but marks on the fists of the other inmate. (5/3/19 Tr., p.13, L.13 – p.15, L.1-21.) The APSI also corroborates Mr. Okocha’s version, indicating the DOR against him had been dismissed. (*See* PSI, p.556.) As document by APSI, the Department’s decision to remove Mr. Okocha from the rider program is based on the case manager’s perception that, notwithstanding the dismissal of the DOR, “the behavior is still there.” (PSI, p.556.)

Mr. Okocha submits that, given his sworn testimony as to his version of the attack, the Department’s decision to remove him from the program and to recommend jurisdiction be relinquished was unfounded and unfair. Additionally, Mr. Okocha points out that, as documented by the APSI, he had requested mental health services at the conclusion of his rider (PSI, p.556); he also completed his GED (5/3/19 Tr., p.21, Ls.9-13). In light of these circumstances, the district court’s decision to relinquish jurisdiction over Mr. Okocha was unreasonable, representing an abuse of the district court’s discretion.

CONCLUSION

Mr. Okocha respectfully requests that this Court vacate his sentence and remand his case to the district court for resentencing, with instructions that the district court retain jurisdiction and either place him on probation or allow him to complete another rider.

DATED this 8th day of October, 2019.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

KAC/eas