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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47092-2019
Plaintiff-Respondent,	)	
	)	Ada County Case No. CR01-18-21028
v.	)	
	)	
BLAINE JOSEPH CUNNINGHAM,	)	RESPONDENT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

Has Blaine Joseph Cunningham failed to show that the district court abused its sentencing discretion when it relinquished jurisdiction without reducing the fixed term of his sentence?

ARGUMENT

Cunningham Has Failed Show That The District Court Abused Its Discretion When It Relinquished Jurisdiction

A. Introduction

While on felony parole, law enforcement officers discovered Cunningham in possession of methamphetamine and LSD. (PSI, pp.389-90.) The state charged Cunningham with felony possession of methamphetamine and LSD. (R., pp.22-23.) Pursuant to a plea agreement,

Cunningham pled guilty to possession of methamphetamine, and the state dismissed the possession of LSD charge. (R., pp.27-28, 32.)

In August 2018, the district court imposed a sentence of seven years with three years fixed and retained jurisdiction. (R., pp.32-33.) The Department of Corrections (“Department”) assessed Cunningham and placed him in the Advanced Practices program at the Idaho State Correctional Institution. (Sealed, p.1.) However, Cunningham never started his programming. (PSI, pp.482, 484.) According to the Department, he did not start because of his disciplinary offenses, security and safety concerns, and because he was moved from the Idaho State Correctional Institution to the Idaho State Correctional Center where he was housed in close custody and thus unable to participate in the programming. (PSI, pp.482-84, 495-97.)

At the rider review hearing, Cunningham argued that the court should not relinquish jurisdiction but should continue him on his rider. (Tr., p.22, L.11 – p.23, L.22.) Alternatively, Cunningham requested that the court reduce the fixed term of his sentence by one year. (Tr., p.23, L.23 – p.24, L.1.) The State argued that the court should relinquish jurisdiction. (Tr., p.21, L.25 – p.22, L.9.) The court relinquished jurisdiction and declined to reduce Cunningham’s sentence. (R., pp.57-59; Tr., p.21, Ls. 22-23; p.25, Ls.9-12.) Cunningham timely appealed from the order relinquishing jurisdiction. (R., pp.60-62.)

On appeal, Cunningham asserts that the district court abused its discretion when it relinquished jurisdiction. (Appellant’s brief, pp.5-7.) He also argues that the court should have reduced the fixed term of his sentence. (Appellant’s brief, pp.5-7.) Cunningham’s arguments are unavailing.

B. Standard Of Review

“This Court reviews the district court’s decision to relinquish jurisdiction for an abuse of discretion.” State v. Le Veque, 164 Idaho 110, 115, 426 P.3d 461, 466 (2018). This includes an analysis of whether the district court: “(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” Id. at 113, 426 P.3d at 464.

C. Cunningham Has Shown No Abuse Of The District Court’s Discretion

The district court did not abuse its discretion when it relinquished jurisdiction. A court's decision to relinquish jurisdiction will not be deemed an abuse if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate pursuant to I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984). Good performance while on a retained jurisdiction program “does not alone create an abuse of discretion in the district judge's decision not to place the defendant on probation or reduce the sentence.” State v. Flores, 162 Idaho 298, 300, 396 P.3d 1180, 1182 (2017) (internal quotation omitted). A court does not abuse its discretion in relinquishing jurisdiction if the record shows that the district court “properly considered the information before it and determined that probation was not appropriate.” State v. Pelland, 159 Idaho 870, 367 P.3d 265, 269 (Ct. App. 2016).

In this case, after recognizing the issue as discretionary, the record shows that the district court properly considered the information before it and correctly determined that continuing Cunningham’s rider was not appropriate, placing him on probation was not appropriate, and reducing his sentence was not appropriate.

First, the court properly considered Cunningham's extensive criminal history. (Tr., p.24, Ls.11-15.) Cunningham was convicted of felony domestic violence in early 2005. (PSI, pp.2-3.) In that case, the court suspended his sentence, and placed him on probation. (Id.) In October 2005, Cunningham was convicted of forgery and a probation violation. (Id.) He was imprisoned for those offenses. (Id.) Cunningham was subsequently paroled in March 2010. (Id.) He absconded three months later. (Id.; Tr., p.24, Ls.13-14.) In September 2010, he was sent back to prison. (PSI, p.3.) While imprisoned he committed an aggravated battery. (PSI, pp.2-3.) He was paroled again in 2018, and three weeks later he was arrested for the instant offenses. (Id.) Thus, at the time of the rider review hearing, Cunningham had six felony convictions and multiple probation and parole violations. (PSI, pp.2-3; Tr., p.24, Ls.11-12.) Such an extensive criminal history demonstrates that Cunningham is a multiple offender and indicates that the commission of another crime is likely, and thus weighs heavily against placing Cunningham on probation. See I.C. § 19-2521. Moreover, there is no indication that Cunningham's prior stints on probation and parole had any rehabilitative effect on him, or that he would be successful on probation in this case.

Second, the court considered Cunningham's gang affiliations, especially while in prison. (Tr., p.24, Ls.15-19.) The district court stated, "He has been in and out of prison gangs since he was [REDACTED] He's about [REDACTED] now." (Tr., p.24, Ls.15-17.) The court emphasized that although he had been "in and out" of prison gangs for approximately nineteen years, the court understood that he had been "mostly in." (Tr., p.24, Ls.17-19.)

Third, and most importantly, the court considered how Cunningham had demonstrated by his own behavior while on the rider that he was not an appropriate candidate for retained jurisdiction. (Tr., p.24, Ls.19-20.) Between September 2018 and December 2018, the Department took several disciplinary actions against Cunningham. (PSI, pp.480-82.) The Department's

addendum to the PSI reflects that Cunningham was disciplined for being in a housing tier that he did not live in, refusing repeated orders to clear the dayroom, refusing orders to stay out of doorways in other tiers, refusing orders to stop visiting in the hallways, and refusing repeated orders to bunk up for inmate count. (PSI, pp.482, 496-97.) He was also disciplined for horse play with other inmates, for contacting general population inmates that he was prohibited from communicating with, and twice for possessing contraband. (PSI, pp.482, 496-97.)

On December 9, 2018, Cunningham received a Class A disciplinary offense report (DOR). (PSI, pp.485-86.) The DOR alleged that Cunningham was using his status in the gang Severely Violent Crimes to have another inmate pass notes for him and to extort other inmates for testifying against members of the Severely Violent Crimes gang. (PSI, pp.485-86.) Cunningham appealed the allegations in the DOR. (PSI, p.484.) The Department affirmed, removed Cunningham from programming, and moved him to close custody at Idaho State Correctional Institution. (Id.) In an addendum to the presentence investigation report, the Department recommended that the court relinquish jurisdiction. (Id.) Despite not being entitled to an evidentiary hearing, Cunningham requested an evidentiary hearing on the Department's recommendation to relinquish jurisdiction. (Tr., p.6, L.21 – p.8, L.10.) After the court granted Cunningham's request for an evidentiary hearing, Cunningham subpoenaed the Department, and the Department moved to partially quash the subpoena. (Tr., p.8, Ls.11-21; p.12, Ls.13-17; see R., pp.43-47.) The parties subsequently reached a resolution whereby Cunningham withdrew his subpoenas and the Department withdrew the DOR and dismissed it from his prison record. (Tr., p.16, L.25 – p.17, L.4; p.18, Ls.12-21.)

The Department then filed an amended addendum to the PSI, which reflected that Cunningham did not receive a DOR during his rider. (PSI, pp.493-98.) The amended APSI did, however, include additional disciplinary actions taken by the Department between December 2018

and April 2019. (PSI, p.493-505.) Cunningham was disciplined twice for hanging towels and/or clothing across the side of his bunk to conceal his head and face against policy and unit housing rules, and twice for disobeying direct orders not to cross the red line in the dayroom. (PSI, pp.494-96.) Not including the DOR, Cunningham accrued five incidents, five corrective actions, and one housing concern. (PSI, p.497.) Despite dismissing the DOR, the Department maintained its recommendation that the court relinquish jurisdiction due to Cunningham's numerous documented disciplinary actions, which "demonstrated he is not capable of following the Idaho Department of Corrections Living Guide rules" and because he was now housed at the Idaho State Correctional Institution. (R., p.498.)

Ultimately, the district court considered all of this information and concluded that Cunningham is "a danger to the community" and "not an appropriate candidate for probation." (Tr., p.25, Ls.7-9.) Thus, the court adopted the recommendation in the APSI, relinquished jurisdiction, and executed the sentence. (R., p.57-59.) The court also declined to reduce "either the fixed or the indeterminate portion of that sentence." (Tr., p.25, Ls.9-12.) Because the record shows that the district court had sufficient information to determine that a suspended sentence and probation would be inappropriate, it did not abuse its discretion when it considered such information and relinquished jurisdiction.

Cunningham incorrectly argues that the district court abused its sentencing discretion in light of mitigating factors such as his "intractable drug problem," the circumstances of his upbringing, "remorse for his actions," and the fact that he was initially sent to the wrong facility and placed on an incorrect programming/release schedule. (Appellant's brief, pp.5-7.) According to Cunningham, these circumstances "weigh in favor of retaining jurisdiction with the potential of probation, or at least in favor of granting him a one-year reduction of the fixed portion of his

sentence.” (Appellant’s brief, p.7.) Although these factors may weigh in favor of retaining jurisdiction, Cunningham has nevertheless failed to show that the district court abused its discretion by relinquishing jurisdiction.

The court considered the factors Cunningham points to on appeal. With respect to Cunningham’s substance abuse issues, the court assured him that he would “have an opportunity to program” as “the prison [would] give him those same classes before they parole him.” (Tr., p.24, Ls.21-24.) The court was also “sympathetic to the fact that he did have a hard time getting in the door with the Department.” (Tr., p.25, Ls.3-5.) Importantly, none of these mitigating factors excuses or even outweighs Cunningham’s poor performance on the rider or his criminal history. Defense counsel even acknowledged that Cunningham had “several corrective actions” and “formal disciplinary issues” while on his rider, (Tr., p.23, Ls.12-15), and conceded that Cunningham was “lucky to get a retained jurisdiction” in the first place, (Tr., p.22, Ls.24-25). He expressly stated that he recognized that “it would probably be a challenging Rider” due to Cunningham’s history, the facts of this case, and other issues. (Tr., p.22, L.25 – p.23, L.5.) Accordingly, Cunningham has failed to show that the district court abused its discretion by relinquishing jurisdiction, executing the sentence rather than placing him on probation, and declining to reduce his sentence.

In light of Cunningham’s performance on the retained jurisdiction, his criminal history, and his unlikely prospects at succeeding on yet another probation, the district court was well within its discretion to relinquish jurisdiction. Cunningham fails to show how the district court abused its discretion when it relinquished jurisdiction and declined to reduce the fixed portion of his sentence, even in light of mitigating factors.

CONCLUSION

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

DATED this 4th day of February, 2020.

/s/ Justin R. Porter  
JUSTIN R. PORTER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of February, 2020, 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  
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/s/ Justin R. Porter  
JUSTIN R. PORTER  
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