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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47092-2019
)	
v.)	ADA COUNTY NO. CR01-18-21028
)	
BLAINE JOSEPH CUNNINGHAM,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Blaine Joseph Cunningham appeals from the district court's order relinquishing jurisdiction and from the judgment sentencing him to prison for seven years, with three years fixed, for possessing a controlled substance. He argues that his prison sentence is excessive and unreasonable under the circumstances.

Statement of the Facts and Course of Proceedings

In May of 2018, Mr. Cunningham was found in possession of methamphetamine and LSD. (PSI, p.2.)¹ He had recently been released from prison and was on parole at the time. (PSI, p.2.) He was arrested and charged with two counts of possession of a controlled substance. (R., pp.8, 22.) Pursuant to an agreement with the State, he pled guilty to possession of methamphetamine and the State dismissed the other count. (R., pp.28, 32.) The district court sentenced him to seven years, with a three-year fixed term, and retained jurisdiction. (R., p.32.)

Mr. Cunningham was then assessed by the Department of Correction (“Department”) and placed in the Advanced Practices program and Idaho State Correctional Institution (ISCI). (*See Sealed*, p.1.) However, before he had the chance to begin and benefit from his classes, the Department issued a Class A disciplinary offense report (DOR). (PSI, pp.484-86.) Mr. Cunningham adamantly denied the allegations in the DOR and appealed. (PSI, pp.484-86.) The Department affirmed, removed Mr. Cunningham from the program, and wrote the district court a letter recommending that it relinquish jurisdiction. (PSI, pp.480-86.)

At Mr. Cunningham’s request, the district court granted a rider review evidentiary hearing, allowing him to challenge the truthfulness of the allegations in the DOR. (Tr., p.8, Ls.7-10.) After Mr. Cunningham sent subpoenas to the Department, he and the Department reached an agreement whereby Mr. Cunningham withdrew his subpoenas and in exchange, the Department withdrew the DOR, dismissing it from Mr. Cunningham’s prison record. (Tr., p.17, Ls.7-14.) The Department sent the district court an amended PSI Addendum (APSI), dated April 16, 2019, which, while still recommending relinquishment of jurisdiction, reflected that

¹ “PSI” references the 505-page electronic file of the same name, containing the confidential presentence investigation report and associated confidential documents, including the April 16, 2019 amendment Addendum to Presentence Report.

Mr. Cunningham received *no* DORs during his rider, but had five corrective items and 1 housing concern. (PSI, pp.493-97.) The amended APSI reported that Mr. Cunningham was unable to attend the required classes “due to his placement in restrictive housing,” and recommended relinquishing jurisdiction. (PSI, pp.493-97.)

At the subsequent rider review hearing held the following week, Mr. Cunningham asked the district court for another opportunity to perform a rider, noting he had been approved for classes but had not had the chance to benefit from them. (Tr., p.22, Ls.11-14.) Alternatively, he asked the district court to modify his sentence pursuant to Idaho Criminal Rule 35, by reducing the fixed portion by one year. (Tr., p.23, Ls.10-24.) The district court decided to relinquish jurisdiction, finding that Mr. Cunningham was a “danger to the community” and was an inappropriate candidate for probation; the court also declined to grant his request for a reduction. (Tr., p.25, Ls.3-12; R., pp.57-59.)

Mr. Cunningham filed a Notice of Appeal that is timely from his judgment and from the order of the district court relinquishing jurisdiction. I.A.R.17(e)(1)(B). (R., pp.60-62.)

ISSUE

Did the district court abuse its discretion by relinquishing jurisdiction and sentencing Mr. Cunningham to prison, without reducing his sentence?

ARGUMENT

The District Court Abused Its Discretion By Relinquishing Jurisdiction And Sentencing Mr. Cunningham To Prison, Without Reducing His Sentence

A. Introduction

Mr. Cunningham argues that the length of his sentence is excessive and that the district court’s refusal to grant his request to complete another rider and to instead relinquish

jurisdiction, without reducing his sentence, represents an abuse of the district court's sentencing discretion.

B. Standard Of Review

The district court's sentencing decisions are reviewed under the multi-tiered abuse of discretion standard. *State v. Miller*, 151 Idaho 826, 834 (2011). The relevant inquiry is whether the district court: correctly perceived the issue as one of discretion; acted within the boundaries of its discretion; acted consistently with the legal standards applicable; and reached its decision by an exercise of reason. *Id*; see also *State v. Le Veque*, 164 Idaho 110, 12 (2018).

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*. Where, as in the present case, the district court lacks sufficient information at the time of sentencing to decide if a defendant is suitable for probation, the court has discretion to impose sentence and retain jurisdiction for further evaluation by the Department of Correction, and afford the defendant an opportunity to demonstrate his rehabilitation potential and suitability for probation. See I.C. § 19-2601(4); *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005); *State v. Lee*, 117 Idaho 203, 205-06 (Ct. App. 1991). The district court's refusal to retain jurisdiction for such further evaluation will not be deemed an abuse of discretion if the district court already has sufficient information to determine that a suspended sentence and probation would be inappropriate under Idaho Code § 19-2521. *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982).

Where a defendant challenges his sentence as excessively harsh, the appellate court conducts an independent review of the record, giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *Miller*, 151 Idaho at 834. A request for reduction of sentence pursuant to Idaho Criminal Rule 35(b) is essentially a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.*

C. Given The Circumstances Of This Case, The District Court’s Decision To Relinquish Jurisdiction, Without Reducing His Sentence, Was Unreasonable And Represents An Abuse Of The District Court’s Discretion

Mr. Cunningham was 39 at the time of sentencing. (PSI, p.1.) He has acknowledged his addiction and that at the time of his arrest he had been using methamphetamine on a daily basis. (PSI, p.3.) Mr. Cunningham grew up in a dysfunctional household surrounded by addiction and substance abuse. (PSI, p.26.) His father was an alcoholic with anger issues, and his mother was depressed and abused methamphetamine when he was a young child. (PSI, 26.) His parents verbally abused each other, with the children often attempting to intervene. (PSI, p.27.) In his house, drug abuse was tolerated. (PSI, p.26.) Mr. Cunningham had his first drink when he was just [REDACTED] and by the time he was fifteen, he was a regular user of marijuana, cocaine, heroin and methamphetamine. (PSI, p.32.)

The family lived in poverty in the Garden City area. (PSI. p.27.) From the time he was a young child, Mr. Cunningham acted out, being defiant, aggressive, and destructive. (PSI, p.27.) He was suspended from school as a kid, and eventually diagnosed as a teen with ADHD and Bi-Polar Disorder. (PSI, pp.27-30.) He was taking medication on and off through his teens. (PSI,

p.30). He had entanglements with the juvenile justice system, and was detained when he was sixteen; he has been in and out of prison ever since. (PSI, pp.3, 25.) During his detention, he was committed to Mercy Medical Center for his chemical dependence and psychiatric problems, but released back to detention without meaningful. (PSI, p.31.) He used methamphetamine to self-medicate, specifically to recover from mood swings that he experiences. (PSI, p.19.) His succession of criminal offenses result from conduct related to his abuse and addiction to drugs, and were committed while he was high or drunk. (PSI, pp.19, 22.)

Mr. Cunningham has an intractable drug problem. Recovery has remained elusive for him, but he is not without hope or support. According to his recent GAIN assessment, he is highly motivated for treatment. (PSI, p.12.) Residential treatment, including testing, cognitive testing, and relapse prevention programming, was recommended. (PSI, p.16.) Mr. Cunningham also has a mother and sister who can provide him with strong support as he works his recovery. (PSI, p.27.)

Mr. Cunningham has shown remorse for his actions, which should be taken into account. In his letter to the district court, prior to sentencing, he took responsibility for his relapse. (PSI, p.478.) He was remorseful for the harm he had caused, especially to his young daughter who was looking forward to seeing him, and to his mother who is in very poor health. (PSI, p.478.)

Additionally, Mr. Cunningham had complicated start to his rider. He was initially sent to the wrong facility and placed on an incorrect programming/release schedule (PSI, p.488). However, his subsequent conduct, while flawed, did not justify the district court's decision to relinquish jurisdiction over him. He received reprimands for drinking coffee in a unit where he did not live, for engaging in horseplay, for a misunderstanding about whether he could step out

of the area in order to get toilet paper, and for hanging out near doorways and hallways. (*See* PSI, pp.501-05.)

At 39, Mr. Cunningham finds himself taking a hard look at who he is and how he will move forward. He still struggles to understand his addiction and the choices he has made. He knows that none of the events noted above excuses his conduct. However, all of these circumstances should be taken into account, and if properly considered, weigh in favor of retaining jurisdiction with the potential for probation, or at least in favor of granting him a one-year reduction of the fixed portion of his sentence. The district court abused its sentencing discretion. Therefore, this Court should vacate Mr. Cunningham's sentence and remand his case to the district court with instructions that the court retain jurisdiction, or alternatively reduce the fixed term of his sentence.

CONCLUSION

Mr. Cunningham respectfully asks this Court to vacate his sentence and remand his case to the district court with instructions that the district retain jurisdiction and allow him to complete a rider. Alternatively, he asks this Court to reduce his sentence.

DATED this 12th day of December, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 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