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### State v. Tipton Appellant's Brief Dckt. 47118

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47118-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-18-52772
v.	)	
	)	
JAMES STEPHEN TIPTON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

A. Nature of the Case

James Stephen Tipton pled guilty to burglary and was sentenced to five years, with two years fixed, and the court retained jurisdiction. Mr. Tipton asserts that the court abused its discretion by relinquishing jurisdiction and imposing his underlying sentence.

B. Statement of the Facts & Course of Proceedings

In November 2018, officers responded to a theft-in-progress at Walmart in Garden City, Idaho. (PSI, p.3.) After a short chase, officers detained and arrested Mr. Tipton. (PSI, p.3.)

Mr. Tipton was then charged with burglary, petit theft, and resisting or obstructing an officer. (R., pp.6-7.) After waiving his preliminary hearing, Mr. Tipton was bound over to district court. (R., p.17.) An Information was subsequently filed charging him with burglary, petit theft, and resisting or obstructing an officer. (R., pp.25-26.)

Mr. Tipton pleaded guilty to burglary, in exchange for the State dropping the other two charges and recommending a sentence of five years, with two years fixed. (R., pp.28-36; Tr., p.5, Ls.11-14.) At sentencing, the State recommended imposing that sentence, arguing it was merited due to Mr. Tipton's criminal history. (Tr., p.19, Ls.14-15.) Mr. Tipton did not recommend a specific sentence beyond asking for the court to retain jurisdiction. (Tr., p.21, Ls.8-9.) Mr. Tipton was subsequently sentenced to five years, with two years fixed, and the court retained jurisdiction. (R., pp.41-42; Tr., pp.16-26.)

But just three and one-half months later, before he was able to complete the rider programming, a rider review hearing was held. (Tr., pp.27-33.) The State asked the court to follow the recommendation from the Department of Correction to relinquish jurisdiction due to Mr. Tipton's involvement in a physical altercation with another inmate. (Tr., p.27, Ls.14-25.) Mr. Tipton asked for the court to continue jurisdiction. (Tr., p.28, Ls.17-18.) He explained that the altercation was the result of another inmate taking offense at Mr. Tipton correcting him about the penalties for striking a correctional officer. (Tr., p.29, L.12 – p.30, L.3.) Mr. Tipton apologized and acknowledged that he was not entirely truthful about the altercation but asked the court for "another chance on the rider." (Tr., p.31, Ls.19-25.) After agreeing that Mr. Tipton had not been truthful and that the Department of Correction considered him "a security risk," the court relinquished jurisdiction. (Tr., p.32, L.16 – p.33, L.14; R., p.47.)

Mr. Tipton timely appeals from the court's order relinquishing jurisdiction. (R., pp.49-50.)

### ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction and imposed the underlying unified sentence of five years, with three years fixed, following Mr. Tipton's plea of guilty to burglary?

### ARGUMENT

#### The District Court Abused Its Discretion When It Relinquished Jurisdiction And Imposed The Underlying Unified Sentence Of Five Years, With Two Years Fixed, Following Mr. Tipton's Plea Of Guilty To Burglary

##### A. Introduction

Mr. Tipton asserts that, given any view of the facts, the district court abused its discretion by relinquishing jurisdiction and imposing his unified sentence of five years, with two years fixed.

##### B. Standard Of Review

There are "four objectives of criminal punishment: (1) protection of society, (2) deterrence of the individual and the public generally, (3) possibility of rehabilitation, and (4) punishment or retribution for wrongdoing." *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982) (citing *State v. Wolfe*, 99 Idaho 382, 384 (1978)). Even so, "the primary consideration is the good order and protection of society, [and a]ll other factors must be subservient to that end." *Toohill*, 103 Idaho at 568 (internal quotation marks and citations removed). When appropriate, a district court may retain jurisdiction instead of imposing sentence because "the purpose of the [sentencing] statute is the reformation and rehabilitation of a defendant . . . and to give him an

opportunity to reform and take his proper place in society.” *State v. O’Dell*, 71 Idaho 64, 69 (1950) (citing I.C. § 19-2601).

A court’s decision whether to continue a retained jurisdiction is a discretionary one. *State v. Reed*, 163 Idaho 681, 684 (Ct. App. 2018).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial 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.

*Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018) (emphasis in original). “However, in exercising that discretion, reasonableness is a fundamental requirement.” *State v. Nice*, 103 Idaho 89, 90 (1982) (citing *State v. Dillon*, 100 Idaho 723 (1979)). “[R]easonableness’ implies that a term of confinement should be tailored to the purposes for which the sentence is imposed.” *Toohill*, 103 Idaho at 568.

Courts are required to consider mitigating evidence in favor of the defendant. *See State v. Strand*, 137 Idaho 457, 460 (2002) (noting that when reviewing a sentence, Idaho’s appellate courts will “review the record on appeal, having due regard for the nature of the offense, *the character of the offender*, and the protection of the public interest”) (emphasis added); *State v. Oliver*, 144 Idaho 722, 726 (2007) (same). Sentencing courts are required to consider the defendant’s mental health condition if it is a significant factor, and “the record has to show that ‘the court adequately considered the substance of the factors’ [in I.C. § 19–2523(1)] when it imposed the sentence.” *State v. Delling*, 152 Idaho 122, 132–33 (2011) (quoting *State v. Strand*, 137 Idaho 457, 461 (2002)). The impact of substance abuse on the defendant’s criminal conduct is also “a proper consideration in mitigation of punishment.” *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). A sentencing court must give “proper consideration of the defendant’s alcoholic

problem, the part it played in causing defendant to commit the crime and the suggested alternatives for treating the problem.” *State v. Nice*, 103 Idaho at 91 (reducing defendant’s sentence, in part, because “the trial court did not give proper consideration of the defendant’s alcoholic problem”). Courts should also look at “a willingness to seek treatment for an alcohol [or drug] problem” as a mitigating factor. *State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008).

C. The District Court Did Not Adequately Consider Mental Health And Addiction Issues When It Relinquished Jurisdiction

Mr. Tipton asserts the district court abused its discretion by relinquishing jurisdiction and imposing his underlying sentence of five years, with two years fixed. Specifically, Mr. Tipton asserts that by not allowing him to complete the rehabilitative resources and programming available in the retained jurisdiction program, the court abused its discretion because relinquishment and imposition of his “sentence essentially discounts any possibility of rehabilitation and successful reentry into society.” *Cook v. State*, 145 Idaho 482, 489 (Ct. App. 2008).

Mr. Tipton submits that the district court abused its discretion by not adequately considering his mental health during sentencing or when it relinquished jurisdiction. *See Delling*, 152 Idaho at 132-33. Here, there was ample evidence in the record regarding Mr. Tipton’s mental health issues. During the presentence investigation process, he wrote down that “he was diagnosed with bipolar and depression by [a] ‘prison doctor’ in 2002-2008.” (PSI, p.12.) He informed the investigator that there was “a history of mental health problems in the family” and shared that his father had committed suicide and that “he considered suicide in the past.” (PSI, p.12.) He had also previously disclosed that before dropping out of school in the sixth grade, “he was in Special Education Classes because he has trouble reading and comprehending what he reads.” (PSI, p.66.) The Mental Health evaluator recommended Mr. Tipton be evaluated for

“psychiatric medication along with individual and/or group therapy.” (PSI, p.34.) His attorney told the court

He has some mental health issues that obviously need to be regulated in a better fashion and consistently with medication. As we’ve seen recently with the riders, they get -- the folks coming off the riders have the opportunity to have the prescriptions and medications carried forward so they have some of that ability to transition more smoothly into the community rather than just simply being on meds in the institution and walking out the door the next day to try to figure it out.

(Tr., p.23, L24 – p.24, L9.) However, all the court said at sentencing regarding his mental health was that it appeared there were “possibly mental health issues that would be useful to address.”

(Tr., p.25, Ls.17-18.) Considering all the information the court had available regarding his mental health issues, Mr. Tipton submits that the district court abused its discretion by not adequately considering his mental health as a mitigating factor.

Mr. Tipton also asserts the district court did not adequately consider his substance abuse issues and desire for treatment when it relinquished jurisdiction. *See Osborn*, 102 Idaho at 414 n.5; *Nice*, 103 Idaho at 91; *Coffin*, 146 Idaho at 171. Mr. Tipton has not shied away from admitting he has an addiction or that he needs help, telling the court when he pled guilty that he was addicted. (Tr., p.10, Ls.1-3.) During the presentence investigation process, he told the investigator he stole the items from Walmart so he could “trade them for meth.” (PSI, p.4.) He said, “I have a drug addiction and I often would steal things to pay for my meth [habit].” (PSI, p.4.) He acknowledged the problems his drug use had caused him throughout his life, including his substantial criminal history. (PSI, p.14.) He admitted that “[i]f it wasn’t for [his] drug addiction [he] wouldn’t have done this crime.” (PSI, p.4.)

At sentencing, the prosecutor agreed that Mr. Tipton clearly needed help because “[h]e admits in the PSI, to his credit, going into Walmart to steal the items. He admits he did that to trade for drugs. He admits also that he often steals to support his habit.” (Tr, p.18, Ls.4-8.)

Mr. Tipton's attorney said that Mr. Tipton was "hungry for treatment. He wants treatment. And doing that now, is something that would give him a better chance of having that treatment sink in at a time that he is looking for it and desiring to do so." (Tr, p.22, Ls.14-18.) He also described how Mr. Tipton showed his motivation for treatment by independently reaching "out to the New Life program to try to obtain treatment and programming through the community." (Tr., p.22, Ls.20-22; PSI, p.10) (reporting his housing plans after incarceration were to "live at the River of Life – New Life Program"), p.15 (discussing how the River of Life program would help with his recovery).) The court agreed, telling Mr. Tipton that it "[s]eems to me that what you are likely to have trouble with going forward is your addiction. If you can get some tools to deal with that, probably everybody would be better off." (Tr., p.26, Ls.4-9.) And when it explained why it was retaining jurisdiction, the court told Mr. Tipton it was "willing to give [him] a chance at seeing if [he could] address those issues." (Tr., p.25, Ls.21-22.)

But just seven weeks after Mr. Tipton was sentenced, the Department of Correction sent a letter to the court asking that it relinquish jurisdiction as he had "received a Class B DOR for Violence 2 for an altercation that occurred between him and another inmate." (Sealed, p.3.) A rider review hearing was then held two months after the court received that letter. (Tr., pp.27-33.) At that hearing, the court said "that it was kind of a stretch to put [Mr. Tipton] on a rider in the first place" due to his previous record and problems in prison. (Tr., p.32, Ls.7-15.) The State argued that jurisdiction should be relinquished because the Department of Correction said he was "a security risk as well as a danger to the community." (Tr., p.27, Ls.24-25.) Counsel for Mr. Tipton argued that he could complete his programming at another facility within the Department of Corrections because "the security concerns that the State references can certainly be addressed" at a different facility. (Tr., p.30, L.24 – p.31, L.16.) But the court focused on his

prior record, instead of his opportunity for rehabilitation, explaining that it “just can’t see [the Department of Correction] even accepting an alternate placement in light of all that’s gone on in the past.” (Tr., p.32, Ls.6-14.) Accordingly, Mr. Tipton asserts the court abused its discretion by not continuing to retain jurisdiction.

Mr. Tipton recognizes that he has serious mental health and substance addiction problems. But the court abused its discretion in relinquishing jurisdiction by not giving him an opportunity to complete his programming which “essentially discounts any possibility of rehabilitation and successful reentry into society.” *Cook*, 145 Idaho at 489.

#### CONCLUSION

Mr. Tipton respectfully requests that this Court remand his case with instructions that the district court retain jurisdiction. Alternatively, he requests that his sentence be reduced as this Court deems appropriate.

DATED this 3<sup>rd</sup> day of April, 2020.

/s/ R. Jonathan Shirts  
R. JONATHAN SHIRTS  
Deputy State Appellate Public Defender

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of April, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

RJS/eas