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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47118-2019
Plaintiff-Respondent,	)	
	)	Ada County Case No. CR01-18-52772
v.	)	
	)	
JAMES STEPHEN TIPTON, JR.,	)	RESPONDENT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

Has Tipton failed to show that the district court abused its sentencing discretion when it relinquished jurisdiction?

ARGUMENT

Tipton Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Tipton was observed placing merchandise into his backpack by store security, who called the police. (PSI, p. 3.) Tipton attempted to flee, but was apprehended. (Id.) The state charged him with burglary, petit theft, and resisting and obstructing an officer. (R., pp. 25-26.) Tipton pled guilty to burglary in a plea agreement where the state dismissed the misdemeanors and agreed

to not file a persistent violator enhancement. (R., pp. 27, 35-36.) The district court imposed a sentence of five years with two years determinate and retained jurisdiction. (R., pp. 41-42.)

Less than two months into his rider, Tipton was involved in a “physical altercation” with another inmate, was “considered a failure to program and a security risk,” and was transferred to the general prison population. (APSI, p. 3.) The district court relinquished jurisdiction. (R., p. 47.) Tipton timely appealed. (R., pp. 49-50.)

Tipton argues that the district court abused its discretion by relinquishing jurisdiction. (Appellant’s brief, p. 3.) He specifically argues the district court did not “adequately consider” his drug abuse and mental health. (Appellant’s brief, pp. 5-8.) Because how much weight to give mitigating factors is the core of the district court’s exercise of sentencing discretion, Tipton’s argument does not show an abuse of discretion.

#### B. Standard Of Review

“The decision to relinquish jurisdiction or grant probation is committed to the district judge’s discretion.” State v. Le Veque, 164 Idaho 110, 113, 426 P.3d 461, 464 (2018) (internal quotation marks omitted). See also State v. Reed, 163 Idaho 681, 684, 417 P.3d 1007, 1010 (Ct. App. 2018) (“The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion.”). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “whether the 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.” State v.

Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Tipton Has Shown No Abuse Of The District Court's Discretion

“A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate.” State v. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013). In deciding to relinquish jurisdiction, the district court started by noting that “it was kind of a stretch to put [Tipton] on a rider in the first place.” (Tr., p. 32, Ls. 6-8.) Tipton had been incarcerated in the past for a significant amount of time, had an “extensive prison record,” had been “relinquished on a prior rider,” and had previously absconded parole. (Tr., p. 32, Ls. 8-15.) Based on his behavior during the retained jurisdiction, Tipton was deemed “a danger and security risk” by the rider program. (Tr., p. 32, Ls. 16-22.) “[I]n light of everything” the recommendation for relinquishment was appropriate. (Tr., p. 33, Ls. 11-14.)

On appeal Tipton does not challenge the district court’s finding that he was a marginal candidate for retained jurisdiction in the first instance or that he was at the time of relinquishment a danger and a security risk to the rider program. (Appellant’s brief, pp. 5-8.) He argues instead that the district court erred by failing to “adequately consider” his mental health and substance abuse and the court’s ruling “essentially discounts any possibility of rehabilitation and successful reentry into society.” (Appellant’s brief, pp. 5-8 (quoting Cook v. State, 145 Idaho 482, 489, 180 P.3d 521, 528 (Ct. App. 2008).) This argument is meritless, because it is unsupported by the legal authority cited.

In Cook the district court imposed a combined 78-year sentence, with 29 years fixed, for nine counts of grand theft by deception. Id. at 485, 180 P.3d at 524. Cook had no prior criminal

record. Id. at 487, 180 P.3d at 526. Under his sentence he was ineligible for parole until he was “well into his seventies.” Id. The district court abused its discretion by ordering the nine sentences to run all consecutive. Id. at 488-90, 180 P.3d at 527-29.

In contrast to Cook’s aggregate sentences of 78 years with 29 years fixed, Tipton’s sentence was five years with two years fixed. (R., pp. 41-42.) Whereas Cook was a first-time offender Tipton had a criminal history spanning more than two decades. (PSI, pp. 4-7.) While Cook could not expect release on parole until his seventies, Tipton will be out before he’s fifty even if he serves the entire sentence. (PSI, p. 2 (Tipton was age 43 at sentencing).) The district court’s sentence would allow Tipton to rehabilitate through parole in his mid-forties, after two years of incarceration. Tipton’s argument that his sentence “essentially discounts any possibility of rehabilitation and successful reentry into society” (Appellant’s brief, pp. 5-8) finds no support in the record. Indeed, he is the anti-Cook.

Tipton has a long history of criminal behavior, decades of theft and violence littered with failed rehabilitation. (PSI, pp. 4-8, 60-62, 89-93.) His current failure on the retained jurisdiction program looks a lot like his last one. (PSI, p. 7 (reporting he “flopped a rider” for “fighting and DORs”).) Two years of incarceration to make himself parole eligible gave a very reasonable opportunity for rehabilitation in this case. Tipton has shown no abuse of discretion.

#### CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 27th day of April, 2020.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of April, 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:

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