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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47326-2019
Plaintiff-Respondent,	)	
	)	Bonner County Case No.
v.	)	CR09-18-4227
	)	
RICHARD KAINOUA BORJA,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Richard Borja failed to show that the district court abused its sentencing discretion when it imposed a sentence of four years with two years determinate for the crime of felon in possession of a firearm, retained jurisdiction, and ultimately relinquished jurisdiction?

ARGUMENT

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

A. Introduction

Police began an investigation when Borja’s girlfriend reported “she had been physically beaten by Borja, including with a baseball bat, forced to strip naked in front of others, and threatened with a firearm.” (PSI, pp. 18-22 (citation to page numbers of confidential exhibits

electronic file); R., pp. 14-17.) The state charged Borja with two counts of aggravated assault, with an enhancement for use of a deadly weapon, and two counts of unlawful possession of a firearm. (R., pp. 54-57.) Borja pled guilty to one count of illegal possession of firearm. (R, p. 86.)

The district court imposed a sentence of four years with two years determinate and retained jurisdiction. (R., pp. 112-14.) A few weeks later the Court received a report that Borja “assaulted another inmate.” (Tr., p. 26, L. 24 – p. 27, L. 1 (page citations to pages in the electronic file).) “[M]ultiple witnesses reported that Mr. Borja confronted the victim about the victim being responsible for Mr. Borja getting the felony weapons charge” and then “[s]truck the victim several times, knocking him to the ground” where Borja “kicked him several times causing several lacerations” making the “victim's face bleed profusely.” (Tr., p. 27, Ls. 1-8.)

Borja did not dispute that “the incident occurred.” (Tr., p. 27, Ls. 13-18.) He did, however, contend that the attack was in response to threats made by the other man. (Tr., p. 28, L. 9 – p. 28, L. 4.) The defense acknowledged that the victim of the attack had provided information to the police incriminating Borja in the weapon charge. (Tr., p. 29, L. 21 – p. 30, L. 14.)

The district court relinquished jurisdiction. (R., pp. 133-38.) Borja filed a timely appeal. (R., pp. 140-42.)

## B. Standard Of Review

“We review a decision to relinquish jurisdiction for abuse of discretion.” State v. Flores, 162 Idaho 298, 300, 396 P.3d 1180, 1182 (2017) (internal quotation marks and brackets omitted). “[T]he 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.” State v. Pelland, 159 Idaho 870, 874,

367 P.3d 265, 269 (Ct. App. 2016). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “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.” 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. Borja Has Shown No Abuse Of The District Court’s Discretion

“Denial of probation will not be viewed as a clear abuse of discretion if the decision comports with the sentencing criteria articulated in I.C. § 19-2521.” State v. Moore, 131 Idaho 814, 824, 965 P.2d 174, 184 (1998) (internal quotation marks omitted). Factors weighing in favor of executing a sentence instead of granting probation include an “undue risk” of additional criminal acts, that a lesser sentence would “depreciate the seriousness of the defendant’s crime,” that incarceration would provide appropriate punishment and deterrence, or that “defendant is a multiple offender or professional criminal.” I.C. § 19-2521(3).

In imposing sentence the court’s first concern was that Borja has “a problem with violence.” (Tr., p. 15, L. 18 – p. 16, L. 2; p. 17, L. 25 – p. 17, L. 1.) He had prior convictions for violence, including two felonies, and domestic violence. (Tr., p. 16, Ls. 9-15.) In prior probation he “did not comply at all.” (Tr., p. 16, Ls. 16-17.) Nor did he “take much responsibility” in this case. (Tr., p. 16, Ls. 17-18.) All of these factual determinations are supported by the record. (PSI, pp. 22-28.) The district court’s concern about Borja’s violence proved well-founded when he attacked another inmate who had provided evidence to police in his case and badly beat the man. (Tr., p. 26, L. 24 – p. 27, L. 8.) The record supports the district court’s exercise of discretion in not granting probation and then relinquishing jurisdiction.

On appeal Borja asserts the district court did not properly weigh “all of the mitigating evidence in the record.” (Appellant’s brief, pp. 4-7.) The record, however, shows that the district court did weigh mitigating factors. (Tr., p. 15, L. 23 – p. 16, L. 8.) The need to address Borja’s violence, however, simply outweighed those other considerations. (Tr., p. 15, L. 18 – p. 17, L. 6.) Borja has shown no abuse of discretion.

Borja also claims the district court abused its discretion by relinquishing jurisdiction because the Department of Correction could prevent future attacks on the other inmate by incarcerating Borja and him in different facilities. (Appellant’s brief, pp. 8-9.) This argument is unpersuasive. Ultimately Borja must not batter others; the state cannot keep him separated from everyone he might savagely beat. The district court did not abuse its discretion when it concluded that Borja’s violence, just as it weighed in favor of retaining jurisdiction instead of granting probation, required relinquishment of jurisdiction.

#### CONCLUSION

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

DATED this 31st day of July, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of July, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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