

2015

**The State of Utah, Plaintiff/Appellee, v. Gregory Lineberry,  
Defendant/Appellant**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH,

Plaintiff/Appellee,

v.

GREGORY LINEBERRY,

Defendant/Appellant.

Case No. 20150568-CA

Appellant is incarcerated.

---

**BRIEF OF APPELLANT**

Appeal from a sentence following a guilty plea to one count of Disarming a Police officer, a second degree felony, in violation of Utah Code §76-5-102.8(2) in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Paul Parker presiding.

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FILED  
UTAH APPELLATE COURTS

DEC 14 2015

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THE STATE OF UTAH,

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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH,

Plaintiff/Appellee,

v.

GREGORY LINEBERRY,

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Case No. 20150568-CA

Appellant is incarcerated.

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**JURISDICTIONAL STATEMENT**

This is an appeal from a sentence following a guilty plea to one count of Disarming a Police officer, a second degree felony, in violation of Utah Code §76-5-102.8(2) in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Paul Parker presiding. A copy of the sentence, judgment, and commitment is attached as Addendum A. This court has jurisdiction under Utah Code section 78A-4-103(2)(e).

**ISSUE AND STANDARD OF REVIEW**

Issue: Whether the trial court abused its discretion when it sentenced defendant to prison rather than allowing him the opportunity of probation?

Standard of Review: “The sentencing decision of a trial court is reviewed for abuse of discretion.” *State v. Valdovinos*, 2003 UT App 432, ¶14, 82 P.3d 1167.

“However, the exercise of that discretion is not unlimited.” *State v. Howell*, 707 P.2d

115, 117 (Utah 1985). A trial court's "[a]buse of discretion may be manifest if the actions of the judge in sentencing were inherently unfair or if the judge imposed a clearly excessive sentence." *State v. Schweitzer*, 943 P.2d 649, 651 (Utah Ct.App. 1997) (internal quotations omitted).

Preservation: This issue was preserved when defense counsel argued for probation in lieu of prison as an appropriate sentence based on a number of intangible factors, including that Mr. Lineberry had "already taken substantial steps" towards focusing on his sobriety, that he needed additional substance abuse and mental health treatment, and that he had a responsible attitude and good support system. R. 154, 156.

### **STATUTORY PROVISIONS**

The following is attached hereto in Addendum B: Utah Code §76-5-102.8(2)

### **STATEMENT OF THE CASE AND FACTS**

An Information charged Gregory D. Lineberry ("Mr. Lineberry") with five total felony and misdemeanor counts from an incident occurring on February 26, 2015. R.1-5. On March 9, 2015, Mr. Lineberry entered a guilty plea to an amended count of Disarming a Police Officer, a second degree felony, in violation of Utah Code §76-5-102.8(2), that stemmed from the February incident. R. 95-105. With his guilty plea, Mr. Lineberry took responsibility for being "in a bathroom stall when [an officer] forced his way into the stall and Mr. Lineberry had a firm grip on [the officer's] weapon during the struggle." R. 98. According to the plea agreement contained in the Statement of Defendant in Support of Guilty Plea and Certificate of Counsel, Mr. Lineberry's agreement with the prosecuting attorney was that for his plea to the amended second degree charge of

Disarming a Police Officer, the remaining counts charged against him would be dismissed. R. 100. There was nothing addressed in the plea agreement about sentencing issues. R. 100.

Prior to Mr. Lineberry's sentence, Adult Probation and Parole ("AP&P") prepared a presentence report (dated April 2015). R. 106-117. The report recommended that Mr. Lineberry be incarcerated at the Utah State Prison. R.106-117. The report pointed out Mr. Lineberry's heroin addiction and stated that "[AP&P] screened the defendant for acceptance into the DORA program; however, he does not currently qualify due to the recommendation of a prison commitment." R. 108. The report noted that when Mr. Lineberry was serving a prior prison commitment, "he took advantage of his time by continuing his education." R. 109. The report also commented on the fact that Mr. Lineberry "present[ed] a positive attitude toward community supervision and his continued sobriety." R. 108, 113-114.

The presentence report made note of number of desires, goals, and statements that were expressed by Mr. Lineberry about this matter. R. 106-117. The report noted that Mr. Lineberry "had been attending some substance abuse classes in jail, and believe[d] that he would benefit from continued treatment." R. 114. Mr. Lineberry also provided a statement in the amended report. R. 109. In his statement, Mr. Lineberry said that he understood the severity of his crime and that he accepted responsibility for putting the officers and himself in a very difficult situation. *Id.* He also addressed his drug addiction and desire for treatment. *Id.* He stated:



My life has had both a bad and good change. The bad: I'm in jail, so [I've] lost my job my apt, and all I had worked so hard to obtain, my relationship with my [g]irl is stronger but it's hard for both of use with me being in jail. But as for the good I'm clean and am so happy & proud of that!!! *I'm like a brand new me with plans goals & a positive outlook. I want to go to treatment so I can learn better ways to cope with my P.T.S.D.* I self medicated and was lost in a fog for so long. I don't want to return to that. *I started heroin in prison and I know it's got to be the worst thing I did there. If given the chance I'd like to use AP&P as a tool to better my life.* I did 10 years in prison so I haven't really gotten to experience life as an adult yet and as a clean & healthy adult. *I know AP&P and treatment will be a positive adventure for me.* Since my arrest I've cleaned up and had a chance to reflect on my life I want to better myself and become successful, *I have been going to the NA classes to learn better ways to cope.*

R.109 (emphasis added).

Prior to sentencing, defense counsel submitted letters in support of Mr. Lineberry's character. R. 120- 135. In a letter from "Tommy," Mr. Lineberry's fellow jail inmate, Mr. Lineberry was described as a role model to other inmates at the jail because of his positive attitude towards staying sober and continual self-improvement. *See* R. 121-124. In a letter from Chelsea Kinsey, Mr. Lineberry was described as having "an intensely positive impact" on her friend, and that he intended "to move forward with his life surrounded by positivity, integrity, love, peace, and happiness." R. 125. Shonnie Carr, Mr. Lineberry's girlfriend, wrote a letter, and in it she described Mr. Lineberry as ambitious, generous, honest, and kind. R. 127. She also pointed out that Mr. Lineberry "has extreme PTSD from [his] previous incarceration. R. 127. A letter from "Nikki B" also mentioned the difficulties that Mr. Lineberry had in his previous prison term, and that what he needed most was "therapy and rehabilitation" in order to overcome his drug addiction. R. 131.

At a sentencing hearing held on May 11, 2015, defense counsel asked the court to vary from the prison recommendation and allow him the opportunity of probation. R. 136-139, 153, 155. Because this offense was committed while Mr. Lineberry was significantly under the influence of heroin, defense counsel asked that Mr. Lineberry be granted the opportunity to complete the CATS program while at the jail, to be followed by additional substance abuse treatment.<sup>1</sup> R. 153, 156. Counsel pointed out that Mr. Lineberry had “already taken substantial steps” towards focusing on his sobriety as he had taken advantage of all of the classes offered to him at the jail. R. 154. Counsel specifically highlighted that Mr. Lineberry had been given the opportunity to bail out of jail, but that he refused this option so that he could remain at the jail in order to avoid relapsing and focus on being sober. R. 154. Counsel also pointed out that Mr. Lineberry’s girlfriend was a good support system for him because she was sober, supportive, and could provide a stable residence for Mr. Lineberry. R. 154. Counsel emphasized that Mr. Lineberry understood that he put the police officers, as well as himself, in a “very dangerous situation.” R. 156.

At the sentencing hearing Mr. Lineberry addressed the trial judge. R. 106. He stated:

I’ve taken steps while I’m in jail to turn a negative experience into a positive rehabilitative experience. *I understand the severity of the crime. I’ve used heroin and I know that was horrible.* There was a point in my life where I never believed that I would ever stick a needle in my arm and once I was clean and sober and I actually had my mind back, I can’t believe that I even went as far as I did with it, I’m just asking for a chance to prove to you that I can be the man that my family

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<sup>1</sup> The CATS program is a substance abuse program that is offered at the ADC for qualified jail inmates. See R. 153, 155.

has spoke of in the letters. They portrayed me so beautifully. I love that woman with all my heart and there's nothing I want to do more than make that woman happy for the rest of her life."

R. 157 (emphasis added); *see also* Addendum C (Sentencing Transcripts of June, 22, 2015).

The State prosecutor asked the trial court to sentence Mr. Lineberry to prison.

R.155. The prosecutor pointed out that Mr. Lineberry had previously been to prison and that his criminal record was "significant[,] including multiple violent offenses." R.155.

The prosecutor also highlighted that this was "a very serious offense" because Mr.

Lineberry had a "very firm grip on the butt of the gun and was yanking and pulling it." R.

155-156. Mr. Lineberry's conduct almost resulted in him being shot. R. 155-156.

Over Mr. Lineberry's and defense counsel's request, the trial court imposed a prison sentence of one to fifteen years, with a recommendation to the Board of Pardons that Mr. Lineberry receive credit for the time that he had already served at the jail. R.

157. The trial judge pointed out that he had read all of the letters in support of Mr.

Lineberry that had been provided to him. R. 153, 158. Nevertheless, the trial judge

sentenced Mr. Lineberry to prison because of the nature of Mr. Lineberry's conduct. R.

157. The trial judge pointed out there would be "good prison opportunities for treatment"

for Mr. Lineberry. R. 157. Mr. Lineberry timely appealed his sentence. R.140, 148-149.

## **SUMMARY OF THE ARGUMENT**

Mr. Lineberry contends that the trial court abused its discretion when it sentenced him to prison despite the intangible factors supporting probation, including his character, attitude, and rehabilitative needs. Specifically, the trial court abused its discretion in sentencing Mr. Lineberry to prison without adequately considering that Mr. Lineberry had a severe heroin addiction, that he had taken advantage of all of the treatment opportunities available to him at the jail, and that he was in further need of substance abuse treatment. In addition, the trial court failed to adequately consider Mr. Lineberry's strong desire to complete probation and treatment goals, as well as the strong support system that he had available to him. The trial court also failed to adequately consider the mental health problems that Mr. Lineberry suffered from as a result of his prison commitment from a previous matter.

## **ARGUMENT**

### **THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT SENTENCED MR. LINEBERRY TO PRISON DESPITE THE INTANGIBLE FACTORS JUSTIFYING PROBATION.**

Mr. Lineberry argues that the trial court abused its discretion by sentencing him to prison despite the intangible factors that counseled against prison. "The sentencing decision of a trial court is reviewed for abuse of discretion." *State v. Valdovinos*, 2003 UT App 432, ¶14, 82 P.3d 1167. This is also true of the question of whether probation is appropriate, which "must of necessity rest within the discretion of the judge who hears the case." *State v. Sibert*, 310 P.2d 388, 393 (1957). A trial court's "[a]buse of discretion may be manifest if the actions of the judge in sentencing were inherently unfair or if the

judge imposed a clearly excessive sentence.” *State v. Schweitzer*, 943 P.2d 649, 651 (Utah Ct.App. 1997) (internal quotations omitted). “[A] trial court’s sentencing decision will not be overturned unless it exceeds statutory or constitutional limits, the judge failed to consider all the legally relevant factors, or the actions of the judge were so inherently unfair as to constitute abuse of discretion.” *State v. Killpack*, 2008 UT 49, ¶59, 191 P.3d 17 (quoting *State v. Sotolongo*, 2003 UT App 214, ¶ 3, 73 P.3d 991). “Alternatively, a defendant may demonstrate an abuse of discretion if he or she can show that no reasonable [person] would take the view adopted by the trial court.” *State v. Goodluck*, 2013 UT App 263, ¶2, 315 P.3d 1051 (alteration in original) (internal quotations omitted).

It is well-established that a trial court “is empowered to place [a] defendant on probation if it thinks that will best serve the ends of justice and is compatible with the public interests.” *Valdovinos*, 2003 UT App 432, ¶23, 82 P.3d 1167 (quoting *State v. Rhodes*, 818 P.2d 1048, 1051 (Utah Ct. App. 1991)); see also Utah Code § 77-18-1(2)(a) (granting trial court the discretion to “suspend the execution of the sentence and place the defendant on probation”). That is true even though a “defendant is not entitled to probation.” *Valdovinos* at ¶23 ((quoting *State v. Rhodes*, 818 P.2d 1048, 1051 (Utah Ct. App. 1991)). “When determining whether probation is appropriate, the trial court may consider several factors, including what is necessary to protect society from an individual deemed to be a danger to the community, as well as rehabilitation . . . deterrence, punishment, restitution, and incapacitation.” *State v. Tompkins*, 2002 UT App 344, \*1. (mem.)(internal quotations omitted). Moreover, the decision whether to “grant[] or

withhold[] probation involves considering intangibles of character, personality and attitude,” and a defendant’s criminal record. *State v. Sibert*, 310 P.2d 388, 393 (1957). Because consideration of these intangibles is necessary for a trial court to properly exercise its discretion, “the problem of probation must of necessity rest within the discretion of the judge who hears the case.” *Valdovinos* at ¶23 (internal quotations omitted); *see also* Utah Code § 77-18-1(2)(a).

In this case, Mr. Lineberry maintains that the trial court’s failure to adequately consider his character, attitude, and rehabilitative needs before denying him the opportunity for a non-prison sentence was an abuse of discretion. Indeed, the record shows that these intangibles were conducive to some jail time, probation, and a substance abuse program, as opposed to the prison sentence that the trial court chose to impose. R. 77-84, 107-108.

First, the trial court failed to adequately consider the rehabilitative needs that Mr. Lineberry had before sentencing him to prison. That is, Mr. Lineberry had a heroin addiction and needed substance abuse treatment. R. 153, 156. This incident occurred when Mr. Lineberry was under a substantial influence of heroin. R. 153, 156. Mr. Lineberry had completed substance programs offered to him at the jail, but he needed additional treatment to properly address his addiction. R. 154. Thus, in sentencing Mr. Lineberry to prison, the trial judge failed to properly address the rehabilitative needs of Mr. Lineberry.

Second, the record shows that Mr. Lineberry was amenable to treatment and rehabilitation. Mr. Lineberry proved his desire for sobriety because had been given the

opportunity to bail out of jail, but he refused this option so that he could remain at the jail in order to avoid relapsing and focus on being sober. R. 154. In addition, in his statement attached to the amended presentence report, Mr. Lineberry stated that he needed help with his drug addiction and mental health issues. R. 108, 113-114; *see also* R.109 (“I want to go to treatment so I can learn better ways to cope with my P.T.S.D.”). At sentencing, Mr. Lineberry told the trial court that he was hopeful that he could continue working on his rehabilitative progress. *See* R. 157 (“I’ve taken steps while I’m in jail to turn a negative experience into a positive rehabilitative experience...I’ve used heroin and I know that was horrible... I’m just asking for a chance to prove to you that I can be the man that my family has spoke of in the letters.”).

Third, the trial court failed to adequately consider the evidence about Mr. Lineberry’s attitudes and character before sentencing him to prison. Mr. Lineberry demonstrated a positive attitude about this case, as well as remorse and an acceptance of responsibility for his actions. *See* R.109 (“I understand the severity of the crime and can only state that had I not been on heroin I know it never would have happened... It’s not something I would do with malice, but *I will accept responsibility* for being in that situation.”) (emphasis added). Regarding his character, Mr. Lineberry’s friends described him in letters as being ambitious, generous, honest, kind, supportive, and a good role model. R. 120- 135. Thus, the trial court failed to properly consider Mr. Lineberry’s responsible character and motivated attitudes towards completing substance abuse treatment prior to sentencing him to prison.

Fourth, the trial court failed to adequately consider the mental health issues that Mr. Lineberry suffered from as a result of his prison sentence for a previous matter. Mr. Lineberry pointed out that he still suffers from PTSD as a result of his previous prison stay, and that it was while at prison that he became addicted to heroin. *See* R.109 (“I started heroin in prison and I know it’s got to be the worst thing I did there.”); *see also* R. 127, 131 (In the letters from Shonnie Carr and Nikki B, they mention the difficulties that Mr. Lineberry had in his previous prison term, and that what he needed most was help in overcoming his drug addiction.).

Mr. Lineberry contends that the prison sentence ran contrary to the ideals this Court has established for criminal sentences. *See State v. Wanosik*, 2001 UT App 241, ¶34, 31 P.3d 615 (“A sentence in a criminal case should be appropriate for the defendant in light of his background and the crime committed and also serve the interests of society which underlie the criminal justice system.”)(internal quotations omitted).

Instead of adequately considering the circumstances, affirmative character traits, and rehabilitative needs that counseled against prison, the trial court imposed what Mr. Lineberry believes to be an unjustified prison sentence that runs contrary to Utah law. Where it is “clear that the actions of the judge were so inherently unfair as to constitute an abuse of discretion . . . a reviewing court [will] overturn a trial court’s sentence.” *Valdovinos* at ¶23 (internal quotations omitted). In light of the intangibles which supported Mr. Lineberry’s request for probation and the opportunity of substance abuse treatment, Mr. Lineberry argues that the trial court abused its discretion by sentencing him to prison. Therefore, this Court should reverse.



**CONCLUSION**

Based on the foregoing, Mr. Lineberry respectfully asks this Court to reverse and remand for a new sentencing hearing.

SUBMITTED this 11<sup>th</sup> day of December, 2015.

A handwritten signature in black ink, appearing to read 'Teresa Welch', is written over a horizontal line.

TERESA WELCH  
Attorney for Defendant/Appellant

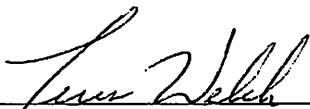
**CERTIFICATE OF DELIVERY**

I, TERESA WELCH, hereby certify that I have caused to be hand-delivered an original and seven copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5th Floor, Salt Lake City, Utah 84114; and three copies to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114, this 11 day of December, 2015.


  
\_\_\_\_\_  
TERESA WELCH

**CERTIFICATE OF COMPLIANCE**

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains 3066 words, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery. In compliance with the typeface requirements of Utah R. App. P. 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2010 in Times New Roman 13 point.

  
\_\_\_\_\_  
TERESA WELCH

DELIVERED this 11 day of December, 2015.

  
\_\_\_\_\_

## ADDENDUMM A

Tab A

3RD DISTRICT COURT - SALT LAKE  
SALT LAKE COUNTY, STATE OF UTAH

---

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 141902257 FS
GREGORY D LINEBERRY,	:	Judge: PAUL B PARKER
Defendant.	:	Date: May 11, 2015

---

PRESENT

Clerk: nicolemb  
Prosecutor: BOEHM, MICHAEL P  
Defendant  
Defendant's Attorney(s): BUCHI, HEIDI A

DEFENDANT INFORMATION

Date of birth: April 6, 1985  
Sheriff Office#: 262655  
Audio  
Tape Number: s34 Tape Count: 11:19-11:26

CHARGES

1. DISARMING A POLICE OFFICER - FIREARM - 2nd Degree Felony  
Plea: Guilty - Disposition: 03/09/2015 Guilty  
SENTENCE PRISON

Based on the defendant's conviction of DISARMING A POLICE OFFICER - FIREARM a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

CUSTODY

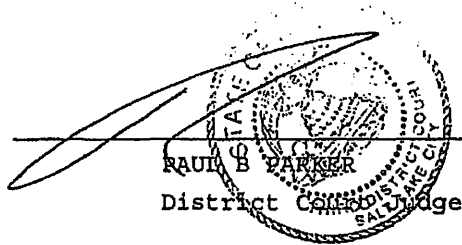
Case No: 141902257 Date: May 11, 2015

---

The defendant is present in the custody of the Salt Lake County jail.

Date: \_\_\_\_\_

5/17/15



## ADDENDUM B

Tab B



## **76-5-102.8 Disarming a peace officer -- Penalties.**

### **76-5-102.8**

- (1) As used in this section:
  - (a) "Conductive energy device" means a weapon that uses electrical current to disrupt voluntary control of muscles.
  - (b) "Firearm" has the same meaning as in Section 76-10-501.
- (2) An actor is guilty of an offense under Subsection (3) who intentionally takes or removes, or attempts to take or remove a firearm or a conductive energy device from the person or immediate presence of a person the actor knows is a peace officer:
  - (a) without the consent of the peace officer; and
  - (b) while the peace officer is acting within the scope of his authority as a peace officer.
- (3)
  - (a) Conduct under Subsection (2) regarding a firearm is a first degree felony.
  - (b) Conduct under Subsection (2) regarding a conductive energy device is a third degree felony.

## ADDENDUM C

Tab C

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE  
SALT LAKE COUNTY, STATE OF UTAH

---

STATE OF UTAH,	:	Case No. 141902257FS
	:	
Plaintiff,	:	
	:	
v	:	
	:	
GREGORY D. LINEBERRY,	:	
	:	
Defendant.	:	With Keyword Index

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SENTENCING MAY 11, 2015

BEFORE

THE HONORABLE PAUL B. PARKER

---

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CAROLYN ERICKSON, CSR  
CERTIFIED COURT TRANSCRIBER  
1775 East Ellen Way  
Sandy, Utah 84092  
801-523-1186

APPEARANCES

For the Plaintiff:

MICHAEL P. BOEHM  
Assistant District Attorney

For the Defendant:

HEIDI A. BUCHI  
Attorney at Law

\* \* \*

1 SALT LAKE CITY, UTAH; MAY 11, 2015

2 JUDGE PAUL B. PARKER

3 (Transcriber's note: Identification of speakers  
4 may not be accurate with the audio recordings.)

5 PROCEEDINGS

6 MS. BUCHI: - received those?

7 THE COURT: I did receive and review the letters and  
8 I have a copy of them in my packet here.

9 MS. BUCHI: And then we are prepared to go forward.

10 THE COURT: Any corrections, additions?

11 MS. BUCHI: No.

12 THE COURT: All right. State anything before we  
13 proceed?

14 MR. BOEHM: No, Your Honor.

15 THE COURT: All right, go ahead then.

16 MS. BUCHI: Your Honor, we would ask the Court not  
17 to follow AP&P's recommendation and instead consider placing  
18 Mr. Lineberry in the jail for a period of about a year  
19 requiring him to complete the CATS program and then requiring  
20 him to finish Substance Abuse and then a whole treatment with  
21 Intermountain Specialized Abuse Treatment. We had Mark  
22 Augustine do an evaluation and that's his recommendation.

23 As the presentence report notes, Mr. Lineberry committed  
24 this offense while he was under the influence of heroin. He  
25 would have had a defense before a jury of voluntary

1     intoxication but he wanted to take the deal and talk to the  
2     Court about that possibility of giving him probation.

3             I think he comes before the Court today with  
4     evidence, not that he's promising to change but that he has  
5     already taken substantial steps. As the Court is aware he  
6     has a history that would suggest that he would be appearing  
7     before this Court in yellow. At some point he had behaved  
8     himself so well that they accidentally put him in minimum  
9     which with these charges he was not allowed to be. He is at  
10    the lowest level, he has had no problems in the jail. I  
11    think as his letters demonstrate, he had an opportunity at  
12    some point to bail out while this was still a first degree  
13    felony which he refused. He did that knowing that he was  
14    looking at a possibility of up to life in prison but he felt  
15    that if he got out he was going to relapse and he wanted very  
16    much not to relapse and he wants to be sober.

17            I think the Court knows that a lot of people in his  
18    situation would have taken advantage of that. Instead he has  
19    used his time in jail to reflect, to focus on getting sober.  
20    When there have been classes available he's taken them. The  
21    letters also show that he has a support system, particularly  
22    his girlfriend who is here. She has a place that she could  
23    stay. She is sober, she is supportive and she is also  
24    understanding that he has this addiction problem and wants to  
25    help him get that treatment and will provide the support. I

1 know she would like a chance to talk to you today if you are  
2 willing but we are asking - he's done over 150 days so far.  
3 If the Court doesn't want to give him credit for that and  
4 just order him to do another year and the CATS program, he is  
5 more than happy to do that but he would like that opportunity  
6 on probation, zero tolerance to show you that he has changed.

7 THE COURT: So what are you asking for  
8 specifically?

9 MS. BUCHI: Specifically we are asking for a year  
10 of jail. We are asking that while he's in custody you order  
11 him to complete the CATS program. Obviously Mr. Lineberry  
12 would prefer to get credit for the 150 days but if the Court  
13 chooses not to, zero tolerance probation and a shot with AP&P  
14 and require him to continue after care at Intermountain  
15 Specialized Abuse Treatment.

16 THE COURT: Okay. State?

17 MR. BOEHM: Your Honor, the State would ask the  
18 Court to follow AP&P's recommendations for imprisonment.  
19 He's already been to prison, he's had a significant history  
20 including multiple violent offenses. This particular case  
21 was tugging (inaudible) gun so hard that it actually spun all  
22 the way, twisted all the way around into the front. He was  
23 about two seconds away from getting shot himself by other  
24 officers. This is a very serious offense and given his  
25 history, the State believes that imprisonment is the correct



1 outcome.

2 MS. BUCHI: And Your Honor, Mr. Lineberry's  
3 statements that the reporting of this incident immediately  
4 after the officer was unsure whether Mr. Lineberry was trying  
5 to get, to get that weapon. Both the officers said that he  
6 was so high and so out of it and Mr. Lineberry's presentence  
7 report, I mean, to the extent that he remembers, I mean he  
8 understands that he put himself in a very dangerous situation  
9 and he put those officers in a very dangerous situation and  
10 he is very remorseful for that.

11 THE COURT: Have you talked to the officers  
12 directly?

13 MR. BOEHM: I believe Mr. Gibbon has. I just  
14 inherited this case.

15 MR. GIBBON: I have, Your Honor, this was my case  
16 before it was Mr. Boehms.

17 THE COURT: And what did they say about it?

18 MR. GIBBON: Well, the officer whose gun was  
19 actually pulled on (inaudible), there is some point in the  
20 recording where he said he wasn't sure if it was on purpose  
21 or not. I mean, he didn't have quite the view that the other  
22 officer did. The second officer is the one who actually,  
23 frankly, almost shot the defendant as a result of this. He  
24 was very clear that he had a very firm grip on the butt of  
25 the gun and was yanking and pulling it (inaudible) all the

1 way around so the gun was actually right in the front of his  
2 belt when he put his hands around it. You know, are you  
3 asking if the officers -

4 THE COURT: No, I'm asking that, that set of facts.

5 MR. GIBBON: Your asking what facts (inaudible)?

6 THE COURT: What you just told me.

7 MR. GIBBON: Okay.

8 THE COURT: Okay, sir, is there anything that you  
9 want to say to me?

10 DEFENDANT LINEBERRY: Yes sir. I've taken steps  
11 while I'm in jail to turn a negative experience into a  
12 positive rehabilitative experience. I understand the  
13 severity of the crime. I've used heroin and I know that was  
14 horrible. There was a point in my life where I never  
15 believed that I would ever stick a needle in my arm and once  
16 I was clean and sober and I actually had my mind back, I  
17 can't believe that I even went as far as I did with it. I'm  
18 just asking for a chance to prove to you that I can be the  
19 man that my family has spoke of in the letters. They  
20 portrayed me so beautifully. I love that woman with all my  
21 heart and there's nothing I want to do more than make that  
22 woman happy for the rest of her life.

23 Thank you.

24 THE COURT: I want you to know that I have thought  
25 about this.

1 MS. BUCHI: And, Your Honor, I know that Shaunie  
2 wanted to speak. I don't know if the Court -

3 THE COURT: No, I have read her letter. I don't  
4 think that's what needs to happen in this case. And again,  
5 as I was saying, I want you to know I've really thought about  
6 this. I was moved as well by the statements of some things  
7 about you and I certainly do, am very sympathetic.

8 My problem is just the nature of this conduct.  
9 That's why I was so concerned about what the officers  
10 actually said and what you actually did. At some level I  
11 have to balance the dangerousness of your conduct and the  
12 threat to the community compared to your ability to get  
13 rehabilitation. I don't look at prison as throwing anyone  
14 away. There's certainly good prison opportunities for  
15 treatment there but I just don't have any other alternative  
16 in a case like this, given that conduct but to send you back  
17 there.

18 So on the second degree felony I am going to impose  
19 1 to 15 years in the Utah State Prison and wish you the best  
20 of luck and I will recommend to the board that they at least  
21 give you credit for the time you've served so far.

22 Good luck to you, sir.

23 (Whereupon the hearing was concluded)

24

25

(6-10-15)

<p><b>1</b></p> <p>11 1:1 15 6:20 150 3:3,13</p> <p><b>2</b></p> <p>2015 1:1</p> <p><b>6</b></p> <p>6-10-15 6:25</p> <p><b>A</b></p> <p>ability 6:13 abuse 1:20,21 3:16 accidentally 2:9 accurate 1:4 addiction 2:25 additions 1:10 advantage 2:19 ahead 1:15 allowed 2:10 alternative 6:16 ap&amp;p 3:14 ap&amp;p's 1:17 3:19 appearing 2:7 arm 5:16 around 3:23 5:2,3 audio 1:4 augustine 1:22 available 2:21 aware 2:6 away 3:24 6:15</p> <p><b>B</b></p> <p>back 5:17 6:17 bail 2:13 balance 6:12 beautifully 5:21 behaved 2:8 believe 4:14 5:18 believed 5:16 believes 4:1 belt 5:3 best 6:20 board 6:21 boehm 1:14 3:18 4:14 boehms 4:17 both 4:6 buchi 1:6,9,11,16 3:10 4:3</p>	<p>6:2 butt 4:25</p> <p><b>C</b></p> <p>care 3:15 case 3:21 4:15,16 6:5,17 cats 1:19 3:5,12 certainly 6:8,15 chance 3:2 5:19 change 2:5 changed 3:7 charges 2:10 chooses 3:14 city 1:1 classes 2:21 clean 5:17 clear 4:25 comes 2:4 committed 1:24 community 6:13 compared 6:13 complete 1:19 3:12 concerned 6:10 concluded 6:24 conduct 6:9,12,17 consider 1:17 continue 3:15 copy 1:8 corrections 1:10 credit 3:4,13 6:22 crime 5:14 custody 3:11</p> <p><b>D</b></p> <p>dangerous 4:9,10 dangerousness 6:12 days 3:3,13 deal 2:1 defendant 4:24 5:11 defense 1:25 degree 2:13 6:19 demonstrate 2:12 directly 4:13</p> <p><b>E</b></p> <p>evaluation 1:22 even 5:18 evidence 2:5 experience 5:12,13</p>	<p>extent 4:8</p> <p><b>F</b></p> <p>facts 5:5,6 family 5:20 far 3:3 5:18 6:22 felony 2:14 6:19 felt 2:15 finish 1:20 firm 4:25 focus 2:20 follow 1:17 3:19 forward 1:9 frankly 4:24 front 3:23 5:2</p> <p><b>G</b></p> <p>getting 2:20 3:24 gibbon 4:14,16,19 5:6,8 girlfriend 2:23 given 3:25 6:17 giving 2:2 grip 4:25 gun 3:22 4:19 5:1,2</p> <p><b>H</b></p> <p>hands 5:3 happen 6:5 happy 3:6 5:23 hard 3:22 hearing 6:24 heart 5:22 help 3:1 heroin 1:25 5:14 high 4:7 himself 2:9 3:24 4:9 history 2:7 3:20 4:1 horrible 5:15</p> <p><b>I</b></p> <p>identification 1:3 immediately 4:4 impose 6:19 imprisonment 3:19 4:1 incident 4:4 including 3:21 influence 1:24 inherited 4:15 instead 1:17 2:19</p>	<p>intermountain 1:21 3:15 intoxication 2:1</p> <p><b>J</b></p> <p>jail 1:18 2:11,20 3:11 5:12 jury 1:25</p> <p><b>K</b></p> <p>knowing 2:14 knows 2:18</p> <p><b>L</b></p> <p>lake 1:1 least 6:21 letter 6:4 letters 1:7 2:12,22 5:20 level 2:11 6:11 life 2:15 5:15,23 lineberry 1:18,23 3:12 4:5 5:11 lineberry's 4:3,7 look 6:14 looking 2:15 lot 2:18 love 5:21 lowest 2:11 luck 6:21,23</p> <p><b>M</b></p> <p>man 5:20 mark 1:21 mean 4:8,8,22 mind 5:17 minimum 2:9 moved 6:7 multiple 3:21</p> <p><b>N</b></p> <p>nature 6:9 needle 5:16 needs 6:5 negative 5:12 never 5:15 note 1:3 notes 1:23 nothing 5:22</p> <p><b>O</b></p> <p>obviously 3:12 offense 1:24 3:25</p>
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