

2016

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

Utah Court of Appeals

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Case No. 20150568-CA

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IN THE  
UTAH COURT OF APPEALS

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STATE OF UTAH,  
*Plaintiff/Appellee,*

*v.*

GREGORY D. LINEBERRY,  
*Defendant/Appellant.*

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Brief of Appellee

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Appeal from a sentence following a guilty plea for disarming a police officer, a second degree felony, in the Third Judicial District, Salt Lake County, the Honorable Paul B. Parker presiding

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Oral Argument Not Requested

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Brief of Appellee

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**STATEMENT OF JURISDICTION**

Defendant appeals from a sentence following a guilty plea for disarming a police officer, a second degree felony. This Court has jurisdiction under Utah Code section 78A-4-103(2)(e).

**STATEMENT OF THE ISSUE**

Gregory D. Lineberry was using heroin in a bathroom stall at a Maverick gas station when Officer Cody Coggle, acting on a tip, forced his way into the stall. Lineberry grabbed Officer Coggle's holstered gun, tugging at it until the holster had twisted around the officer's waist and the gun was positioned in front of the officer. Officer Coggle regained control of his gun and arrested Lineberry. Lineberry later pleaded guilty to one count of disarming a police officer, a second degree felony. Based on the

seriousness of the offense, the court sentenced Lineberry to prison, consistent with the prosecutor's recommendation and the recommendation in the presentence report.

Did the sentencing court abuse its discretion when it sentenced Lineberry to prison rather than placing him on probation?

*Standard of Review.* Sentencing decisions are reviewed for abuse of discretion. *State v. Helms*, 2002 UT 12, ¶8, 40 P.3d 626.

## **CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES**

There are no dispositive constitutional provisions, statutes, or rules at issue in this appeal.

## **STATEMENT OF THE CASE<sup>1</sup>**

Lineberry challenges the court's decision to sentence him to prison rather than put him on probation. Lineberry was sentenced on May 12, 2015, after pleading guilty to disarming a police officer, a second degree felony. R97-98, 104, 138-39.

The State alleged that on February 26, 2014, Lineberry had been using heroin in a bathroom stall at a Maverick gas station. R93. Someone

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<sup>1</sup> Because Lineberry pleaded guilty and on appeal has not provided a transcript of the preliminary hearing, the facts are taken from the statement of probable cause, Lineberry's statement in support of his guilty plea, and the presentence report.

informed the police, and Officer Coggle and another officer responded. R93. Lineberry did not open the stall door on Officer Coggle's command. R93. When Officer Coggle saw Lineberry place a spoon on the ground with brown residue that later tested positive as heroin, the officer peered over the stall and saw Lineberry put what appeared to be heroin in his mouth. R93-94. Officer Coggle then forced his way into the stall. R93. Lineberry fought with the two officers, who eventually noticed that Lineberry had a firm grip on Officer Coggle's holstered gun and had twisted it around in front of Officer Coggle. R93-94, 156-57. Officer Coggle was able to regain control of his gun and the two officers arrested Lineberry. R94.

The State originally charged Lineberry with five offenses: disarming a police officer, a first degree felony; tampering with evidence, a third degree felony; possession or use of a controlled substance, a third degree felony; possession of drug paraphernalia, a class B misdemeanor; and interfering with an arresting officer, a class B misdemeanor. R1-3. Lineberry pleaded guilty to disarming a police officer; in exchange, the prosecutor amended that count to a second degree felony and dropped the other charges. R97-98, 100, 104. *See* Utah Code Ann. §76-5-102.8(2) (West 2015) (disarming a police officer).

A presentence report (PSR) was prepared, detailing Lineberry's extensive juvenile offense history and adult criminal history.<sup>2</sup> R110-12. According to the PSR, Lineberry reported that he began using heroin in prison and that he suffered from post-traumatic stress disorder (PTSD) as a result of his prior incarceration for another crime. R107-08. The PSR acknowledged the educational progress Lineberry had made in prison and his positive attitude toward change. R107-08. But ultimately, the PSR recommended imprisonment given the seriousness of the offense, Lineberry's criminal history, and the lack of any significant mitigating circumstances. R106, 108.

Lineberry appeared for sentencing on April 27, 2015, but the hearing was continued so that the sentencing court could to review four letters submitted on Lineberry's behalf. R118. The letters detailed Lineberry's work ethic, positive attitude, commitment to change, and positive influence on friends even when incarcerated. R121-32. The letters also acknowledged Lineberry's challenges, including his heroin abuse and PTSD. R123, 127, 131-32.

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<sup>2</sup> "Although a juvenile court record is not considered a criminal record, it may reveal a pattern of law breaking as well as a defendant's response to previous rehabilitative efforts which bear directly upon the appropriateness of the sentence." *State v. McClendon*, 611 P.2d 728, 729 (Utah 1980).

When the sentencing hearing resumed on May 11, 2015, the court began by stating that it had reviewed the letters. R153. Defense counsel asked for probation and at most one year in jail, with appropriate substance abuse treatment. R153-55. She acknowledged the seriousness of the offense and stated that Lineberry was remorseful. R156. She highlighted the “substantial steps” Lineberry had taken to change, his good behavior in jail while awaiting prosecution in this case, his decision to forgo bail so that he would not relapse into drug use, and the positive support system he had. R153-54. Lineberry also acknowledged the severity of the crime and his associated drug use, pointed out that he had taken steps to rehabilitate himself, and asked for a chance to continue on that path. R157. The prosecutor in turn reiterated the PSR’s recommendation of imprisonment, emphasizing Lineberry’s “significant” criminal history – “including multiple violent offenses” – as well as the seriousness of the present offense. R155.

The sentencing court reiterated that it had read the letters and stated that it had “really thought about this.” R158. And the court was affected by the letters: “I was moved as well by the statements of some things about you and I certainly . . . am very sympathetic.” R158. But the court noted that Lineberry’s character was not the only factor weighing in the balance:

“My problem is just the nature of this conduct. . . . At some level I have to balance the dangerousness of your conduct and the threat to the community compared to your ability to get rehabilitation.” R158. The court explained that prison had good opportunities for treatment. R158. Ultimately, given the seriousness of the conduct, the court felt it must sentence Lineberry to prison. R158. It did so, sentencing Lineberry to an indeterminate term of one to fifteen years in prison, with the recommendation that the Board of Pardons and Parole give him credit for time served in jail. R138, 158.

Lineberry timely appealed. R140.

### **SUMMARY OF ARGUMENT**

Lineberry argues that the sentencing court abused its discretion when it sentenced him to prison rather than probation because the trial court did not adequately consider his rehabilitative needs, his amenability to treatment, his attitude and character, and his mental health issues.

Lineberry implicitly acknowledges – as he must – that the sentencing court did consider those factors. He takes issue only with the court’s weighing of the relevant sentencing factors. But Lineberry cannot show that no reasonable person would conclude that the seriousness of disarming a police officer and the treatment options available in prison outweighed any factors favoring a more lenient sentence.

## ARGUMENT

### THE SENTENCING COURT ACTED WELL WITHIN ITS DISCRETION WHEN IT SENTENCED LINEBERRY TO PRISON RATHER THAN PLACING HIM ON PROBATION.

Lineberry contends that the sentencing court abused its discretion in sentencing him to prison rather than placing him on probation. He argues that the court's abuse of discretion lies in its failure to "adequately consider" four favorable factors: Lineberry's rehabilitative needs, his amenability to treatment, his attitude and character, and his mental health issues. Aplt. Br. at 9-11. As a result, Lineberry argues, his sentence was inherently unfair.

The sentencing court considered those four factors—as Lineberry implicitly acknowledges. But Lineberry ignores the competing factors that supported the court's sentence, namely the seriousness of the offense, the danger to the community, and the treatment opportunities available in prison. Lineberry cannot show that the court's balancing of *all* relevant factors was unreasonable and rendered the result inherently unfair.

"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." *State v. McClendon*, 611 P.2d 728, 729 (Utah 1980). However, the court's

sentencing decision “necessarily reflects the personal judgment of the court.” *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978).

Sentencing courts traditionally have “wide latitude and discretion in sentencing.” *State v. Woodland*, 945 P.2d 665, 671 (Utah 1997). A sentence will not be overturned unless the sentencing court bases its decision on some wholly irrelevant or improper factor, fails to consider all legally relevant factors, imposes a sentence that exceeds statutory or constitutional limits, or otherwise rules in a manner so inherently unfair that the sentence is an abuse of discretion. *State v. Helms*, 2002 UT 12, ¶8, 40 P.3d 626; *State v. Sibert*, 310 P.2d 388, 393 (Utah 1957); *State v. Sotolongo*, 2003 UT App 214, ¶3, 73 P.3d 991. And absent a showing to the contrary, this Court must presume that the sentencing court considered all relevant factors and did not consider irrelevant ones. *See Helms*, 2002 UT 12, ¶¶11–12; *see also State v. Robison*, 2006 UT 65, ¶21, 147 P.3d 448 (discussing presumption of regularity attaching to court rulings). In short, a sentencing court abuses its discretion only when “no reasonable [person] would take the view” adopted by the sentencing court. *State v. Valdovinos*, 2003 UT App 432, ¶14, 82 P.3d 1167 (alteration in original) (internal quotation marks omitted).

Defendants have no right to probation. *State v. Munguia*, 2011 UT 5, ¶24, 253 P.3d 1082. Rather, the sentencing court may grant probation in its

discretion. *Id.* That is because the “granting or withholding of probation involves considering intangibles of character, personality and attitude, of which the cold record gives little inkling.” *Sibert*, 310 P.2d at 393; accord *State v. Killpack*, 2008 UT 49, ¶58, 191 P.3d 17; see also *State v. Rhodes*, 818 P.2d 1048, 1051 (Utah Ct. App. 1991) (“[T]he discretionary imposition of probation rests in many cases upon subtleties not apparent on the face of a cold record . . .”). Furthermore, these intangibles must be “considered in connection with the prior record of the accused,” *Sibert*, 310 P.2d at 393, along with considerations of “rehabilitation[,] . . . deterrence, punishment, restitution, and incapacitation,” *Rhodes*, 818 P.2d at 1051. Ultimately, the sentencing court must exercise its discretion in determining what it believes “will best serve the ends of justice and is compatible with the public interest.” *Id.*

As stated, Lineberry does not claim that the sentencing court failed to consider any required factor. Nor could he. Lineberry’s criminal history, attitude and character, rehabilitative needs and opportunities, and the gravity of his crimes were all addressed at the sentencing hearing—not only in the PSR, but also by Lineberry’s counsel and in supporting letters. Lineberry’s complaint is that the sentencing court did not “adequately” consider factors favorable to him. *Aplt. Br.* at 9–11. In other words,

Lineberry disagrees with how the court assessed and weighed the competing factors. But mere disagreement with the sentencing court's assessment is not enough. Lineberry must show that "no reasonable [person] would take the view" adopted by that court. *Valdovinos*, 2003 UT App 432, ¶14 (alteration in original) (internal quotation marks omitted).

He cannot make that showing here. The sentencing court balanced the various factors weighing for and against prison, including Lineberry's positive attitude and character traits and his need and potential for rehabilitation. The court was aware of Lineberry's substance abuse and his rehabilitative needs, as well as his claim that he was suffering from PTSD from his prior incarceration. But the court concluded that sufficient treatment opportunities existed in prison. R158. The court was also aware of Lineberry's positive attitude, determination to change, good behavior in jail, positive influence on those around him, and other beneficial character traits. In fact, the court was "moved" by how the letters depicted Lineberry. R158. But the court ultimately concluded that the seriousness of grabbing a police officer's holstered gun and fighting with the officer to free the gun outweighed Lineberry's positive attitude and character. Lineberry has pointed to nothing inherently unfair or unreasonable about that conclusion. *See Killpack*, 2008 UT 49, ¶59 ("[O]ne factor in mitigation or aggravation may

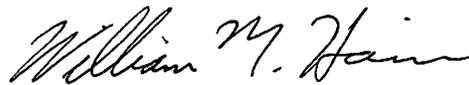
weigh more than several factors on the opposite scale.” (internal quotation marks omitted)). Nor is the sentence rendered an abuse of discretion by virtue of Lineberry weighing the factors differently than the sentencing court. *See id.* ¶¶59-61 (rejecting defendant’s claim that mitigating factors considered by the sentencing court should have weighed in favor of probation). In short, the sentencing court acted well within its discretion when it determined that the seriousness of the offense and the availability of treatment in prison outweighed any factors favoring probation.

### CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted on March 16, 2016.

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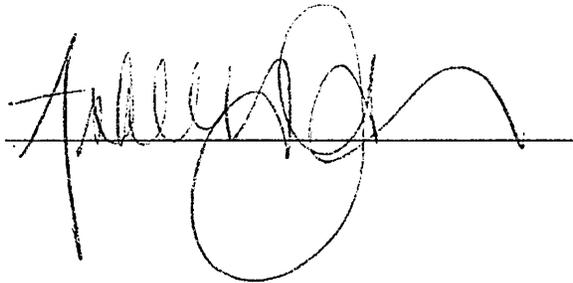
## CERTIFICATE OF SERVICE

I certify that on March 16, 2016, two copies of the Brief of Appellee were  mailed  hand-delivered to:

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Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (pdf):

- was filed with the Court and served on appellant.
- will be filed and served within 14 days.

A handwritten signature in black ink, appearing to read "Teresa Welch", is written over a horizontal line. The signature is stylized and cursive.