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State v. Ruiz Respondent's Brief Dckt. 43069

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43069
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR-2014-6678
)	
EDITH SUZANNE RUIZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issues

1. Must this Court decline to consider Ruiz's claim that the district court abused its discretion by imposing concurrent unified sentences of 14 years, with two years fixed, upon her guilty pleas to four counts of forgery because, pursuant to her plea agreement, Ruiz expressly waived the right to appeal her sentences?

2. Has Ruiz failed to establish that the district court abused its discretion when it relinquished jurisdiction?

I.

Ruiz Waived The Right To Appeal Her Sentence

Pursuant to a plea agreement Ruiz pled guilty to four counts of forgery and waived her rights to appeal her sentence and to file a Rule 35 motion. (R., pp.86-96,

98.) The district court subsequently imposed concurrent unified sentences of 14 years, with two years fixed, and retained jurisdiction for 365 days. (R., pp. 106-13.) After a period of retained jurisdiction, the district court relinquished jurisdiction and ordered Ruiz's underlying sentences executed without reduction. (R., pp.117-20.) Ruiz filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.123-25.)

Ruiz asserts the district court abused its discretion by imposing an excessive sentence in light of her difficult childhood; her substance abuse, mental and physical health issues; "the support she provides for her family;" and her acceptance of responsibility and "commitment to recovery." (Appellant's brief, pp.4-11.) Ruiz's claim should be dismissed as she specifically waived her right to appeal her sentence when she entered into the plea agreement.

The waiver of the right to appeal as a component of a plea agreement is valid and will be enforced if it was made voluntarily, knowingly and intelligently. State v. Murphy, 125 Idaho 456, 872 P.2d 719 (1994).

Pursuant to the plea agreement signed by Ruiz, Ruiz waived her right to "appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court" as long as the district court did not exceed the three-year determinate portion of the state's sentencing recommendation. (R., p.86.) At the change of plea hearing, the district court confirmed the terms of the plea agreement, including Ruiz's waiver of her right to appeal her sentences. (09/18/2014 Tr., p.4, L.7 – p.6, L.4.) The district court subsequently found that Ruiz had entered her plea knowingly, voluntarily, and intelligently, and Ruiz has not challenged that determination

on appeal. (09/18/2014 Tr., p. 11, Ls.15-22.) At sentencing, the district court imposed concurrent unified sentences of 14 years, with two years fixed, and retained jurisdiction. (R., pp.106-13.) Because the district court did not exceed the determinate portion of the state's sentencing recommendation, Ruiz did not retain her rights to appeal her sentences. As such, she cannot claim the district court abused its discretion by imposing excessive sentences. To allow an appellate challenge in these circumstances would allow Ruiz to evade the appeal waiver in her plea agreement. Because Ruiz specifically waived her right to appeal her sentences, she cannot challenge her sentences on appeal and her claim should be dismissed.

II.

Ruiz Has Failed To Establish That The District Court Abused Its Discretion By Relinquishing Jurisdiction

Ruiz next asserts the district court abused its discretion when it relinquished jurisdiction "because the district court did not give her adequate time to benefit from the rider programming." (Appellant's Brief, pp.11-12.) The record supports the district court's decision to relinquish jurisdiction.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). 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

APPENDIX A

MAR - 6 2015

By _____ 5:00 P.M.
Clerk
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,)
)
Plaintiff,)
)
v.) ORDER RELINQUISHING
) JURISDICTION
EDITH SUZANNE RUIZ,)
)
Defendant.)

The Defendant was sentenced on November 4, 2014 following pleas of guilty to four counts of forgery. The Court entered a Judgment of Conviction imposing, for each of the four counts, a unified sentence of 14 years, comprised of a mandatory minimum period of commitment of 2 years, followed by an indeterminate period of custody of 12 years. Pursuant to I.C. § 18-308, the sentences for each of the four counts were ordered to run concurrent with one another. However, the sentence was suspended and the Court retained jurisdiction for the first 365 days. The Defendant was placed in the Therapeutic Community program. On March 6, 2015, the Court received an Addendum to the Presentence Investigation (APSI) from the South Idaho Correctional Institution (SICI) recommending that the Court relinquish jurisdiction over the Defendant. The Court has reviewed the both the APSI and the presentence investigation in this case.

The standards governing the Court's decision are as follows:

ORDER RELINQUISHING JURISDICTION - 1

Refusal to retain jurisdiction will not be deemed a "clear abuse of discretion" if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under [the statute]. While a Review Committee report may influence the court's decision to retain jurisdiction, it is purely advisory and is in no way binding upon the court. Idaho Code § 19-2521 sets out the criteria a court must consider when deciding whether to grant probation or impose imprisonment.... A decision to deny probation will not be held to represent an abuse of discretion if the decision is consistent with [the § 19-2521] standards.

State v. Merwin, 131 Idaho 642, 648-49, 962 P.2d 1026, 1032-33 (1998) (citations omitted). In reaching its decision in this case, this Court has considered the provisions of Idaho Code § 19-2521 and applicable case law.

The APSI recommends that this Court relinquish jurisdiction in this case because, among other reasons, when confronted by others for being "rude, aggressive, and vindictive to other offenders," the Defendant has regularly reacted in a retaliatory manner. APSI at 5. In particular, the APSI details an instance of such retaliatory behavior in which the Defendant became agitated by the comment of another offender and, in response to that comment, stood up from the chair in which she was sitting and slammed it into the table, made a threatening comment to the other offender, and later approached the other offender for purposes of intimidating her. *Id.* The APSI relates the fact that, in the Therapeutic Community program, engaging in threatening behavior towards other offenders constitutes a cardinal rule violation. *Id.* Accordingly, on February 5, 2015, the Defendant was discharged from the program.

The Court agrees that the Defendant's behavior thus far in the retained jurisdiction program indicates that the Defendant is neither a candidate for continued participation in the program nor for probation at this time. Through her behavior, the Defendant has demonstrated a strong unwillingness to engage in a constructive manner with other

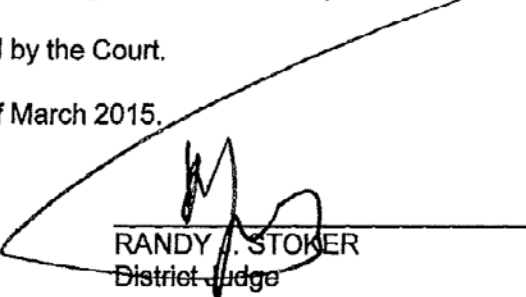
ORDER RELINQUISHING JURISDICTION - 2

offenders, which is antithetical to the structure of and eventual success in the Therapeutic Community program. The Therapeutic Community program requires offenders "to practice building healthy peer relationships" and to engage in "positive community leadership through roles and responsibilities designed to maintain a pro-social lifestyle." APSI at 2. The Defendant's behavior clearly demonstrates that she is unwilling to participate in this type of programming.

Accordingly, the Court hereby relinquishes any further jurisdiction over this action and the sentence heretofore pronounced shall be imposed. The Defendant shall be given credit for time served awaiting sentence and for the time served in the custody of the Department of Corrections pursuant to the retained jurisdiction order previously entered. The Court recognizes that it has the discretion to *sua sponte* reduce the Defendant's sentence. However, the Court declines to do so based upon the Defendant's performance in the retained jurisdiction program.

IT IS FURTHER ORDERED that the Defendant be held in the custody of the Idaho Department of Correction to continue serving the sentence imposed in this case. No jurisdictional review hearing will be held by the Court.

DATED this 6th day of March 2015.



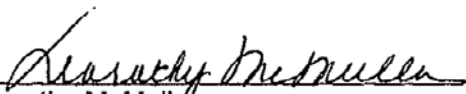
RANDY J. STOKER
District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of March 2015, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Stan Holloway	() U.S. Mail
Twin Falls County Prosecuting Attorney	() Hand delivered
P.O. Box 126	() Faxed
Twin Falls, ID 83303	(<input checked="" type="checkbox"/>) Court Folder
Tim Williams	() U.S. Mail
Twin Falls County Public Defender	() Hand delivered
P.O. Box 126	() Faxed
Twin Falls, ID 83303	(<input checked="" type="checkbox"/>) Court Folder
Idaho Department of Corrections	(<input checked="" type="checkbox"/>) Email
Central Records	
1299 N. Orchard Ste. 110	
Boise, ID 83706	
Twin Falls County Jail	(<input checked="" type="checkbox"/>) Court Folder
Idaho Department of Probation	(<input checked="" type="checkbox"/>) Court Folder


Dorothy McMullen
Deputy Clerk

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