

4-12-2016

State v. Nally Respondent's Brief Dckt. 43208

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Nally Respondent's Brief Dckt. 43208" (2016). *Not Reported*. 2422.
https://digitalcommons.law.uidaho.edu/not_reported/2422

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43208
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2015-2289
)	
JEFFREY SCOTT NALLY,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Nally failed to establish that the district court abused its discretion by relinquishing jurisdiction?

Nally Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Nally pled guilty to burglary and the district court imposed a unified sentence of 10 years, with five years fixed, and retained jurisdiction. (R., pp.55-57.) Following the period of retained jurisdiction, the district court relinquished jurisdiction and *sua sponte* reduced Nally's sentence to a unified sentence of eight years, with three years fixed.

(R., pp.122-24.) Nally filed a notice of appeal timely from the judgment of conviction. (R., pp.58-61.) He also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.128-29; 10/2/15 Tr., p.24, Ls.16-17.)

Nally asserts that the district court abused its discretion by relinquishing jurisdiction in light of his cooperation with authorities prior to sentencing and because, he claims, the district court relinquished jurisdiction based on inaccurate information. (Appellant's brief, pp.7-12.) Nally has failed to establish an abuse of discretion.

“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 inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

On appeal, Nally contends that the APSI was inaccurate and therefore “does not constitute competent and substantial evidence.” (Appellant's brief, p.9.) He first claims that the APSI is “internally inconsistent” (Appellant's brief, p.9) because it indicates that he did not receive any disciplinary sanctions “while at CAPP” (APSI, pp.2-3), but it later indicates that two DOR's were filed against him (APSI, pp.3-4). These statements are neither inaccurate nor inconsistent, as Nally was only at the CAPP facility for two days and, as indicated in the APSI and the C-Notes, the incident reports were filed *before*

Nally was transferred to the CAPP facility (while he was in the RDU at ISCI), and the DOR's were filed *after* he was removed from the CAPP program and transferred back to ISCI (Nally was removed from the CAPP program on April 25, 2015 and the first DOR was not issued until after staff conducted investigative interviews on April 29, 2015). (APSI, pp.3-4, 6-8.) Because Nally's disciplinary sanctions were, in fact, not filed against him while he was at the CAPP facility itself, but rather while he was housed at other facilities during his period of retained jurisdiction, the APSI was neither inconsistent nor unreliable.

Nally next claims that the APSI is inaccurate because four inmates wrote letters indicating that they did not hear Nally use the inappropriate language that was alleged in the first DOR and because, he claims, the two DOR's were later dismissed. (Appellant's brief, pp.9-10.) However, when interviewed by security staff, Nally "admitted making motions of stroking a large penis and saying 'your moma', to calling one [inmate] a 'king pin bitch', and telling others to 'shut the fuck up,'" and Nally did not later dispute these admissions. (APSI, p.3; see generally 6/12/15 Tr.) Furthermore, Nally did not offer any evidence to support his claim that the two DOR's were later dismissed. In fact, when offered the opportunity to make corrections or additions to the APSI that he is now claiming was inaccurate and incomplete, Nally's counsel indicated that there were no corrections or additions to be made. (6/12/15 Tr., p.5, Ls.18-20.) As such, the district court did not rely on inaccurate or incomplete information, nor did it make erroneous factual findings when deciding to relinquish jurisdiction.

At the hearing on Nally's Rule 35 motion, the district court articulated its consideration of Nally's claims and set forth its reasons for declining to continue

retaining jurisdiction. (10/2/15 Tr., p.21, L.5 – p.24, L.17.) The state submits that Nally has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the Rule 35 hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's orders relinquishing jurisdiction and denying Nally's Rule 35 motion for a reduction of sentence.

DATED this 12th day of April, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of April, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 disturbed, as we view it as wise and fair.
 2 THE COURT: Thank you.
 3 Last word, Mr. Lawlor?
 4 DEFENSE ATTORNEY: We'll submit.
 5 THE COURT: All right. Well, just to correct the
 6 record, the last hearing I don't believe was a Rule 35
 7 hearing. I believe it was a jurisdictional review hearing,
 8 and I was not the original sentencing judge, Judge Simpson
 9 was. And he sentenced Mr. Nally to five years fixed and five
 10 years indeterminate for a total sentence of ten years, which,
 11 of course, is within the maximum sentence allowable for
 12 burglary. And in it, he took into consideration Mr. Nally's
 13 criminal history and the circumstances surrounding the crime
 14 committed and everything that was submitted at the sentencing
 15 hearing.
 16 Mr. Nally and the State entered into a Rule 11
 17 agreement in which the underlying sentence was subject to open
 18 recommendations and that the parties would recommend retained
 19 jurisdiction, and they intended for the Court to be bound to
 20 that provision, and, of course, that's what happened. Judge
 21 Simpson did retain jurisdiction and sent Mr. Nally on a rider.
 22 Now, when we had the jurisdictional review
 23 hearing in June, I heard all about the C-Notes and all about
 24 the wheelchair incident. There is some information I'm
 25 hearing that I do not recall hearing before, such as the four

21

1 surgeries rather than one. There is a reference to at least
 2 one in his C-Notes.
 3 The C-Notes were not my biggest concern. The
 4 medical information was not my biggest concern. What was my
 5 biggest concern was Mr. Nally's engaging in terribly
 6 inappropriate behavior and manipulative behavior with respect
 7 to things that happened.
 8 So, for example, and just remaining with the
 9 medical information, there are the statements in the APSI that
 10 when the wheelchair was taken away from him, he threatened to
 11 throw himself on the ground --
 12 THE DEFENDANT: And I didn't, Your Honor.
 13 THE COURT: Mr. Nally, stand down. I do not want
 14 to hear a word from you when I'm talking.
 15 THE DEFENDANT: All right. Okay.
 16 THE COURT: I understand that you dispute this.
 17 THE DEFENDANT: Okay.
 18 THE COURT: I do understand that. But there is
 19 that allegation, that you threatened to create a medical
 20 emergency so that they would have to respond accordingly.
 21 Of greater concern are the allegations that
 22 Mr. Nally engaged in extremely provocative behavior with other
 23 inmates in terms of making gestures and calling names,
 24 extremely provocative names, and that while he denied some of
 25 the conduct, he admitted to it.

22

1 For example, the APSI indicates that when
 2 interviewed by staff, Mr. Nally admitted making motions of
 3 stroking a large penis and saying, Your mama, and calling one
 4 a kingpin bitch and telling others to shut the F up.
 5 Mr. Nally denied the other allegations, but he did admit,
 6 apparently, what I just indicated.
 7 This is behavior along with the other alleged
 8 manipulative behavior of the medical staff that indicates that
 9 Mr. Nally was not going to be successful on the rider. And I
 10 think that the RDU staff flopping him on the rider and sending
 11 him back for review was entirely appropriate.
 12 To a certain extent, I believe that being on a
 13 rider is a privilege, and if people cannot demonstrate a
 14 willingness to comply with the rules and to behave in
 15 appropriate ways, they are not going to be successful.
 16 And then on top of everything else, I did reduce
 17 the sentence. The sentence in the beginning was entirely
 18 appropriate, but I exercised the discretion that I had to
 19 modify the sentence and reduced the terminate portion by two
 20 years.
 21 I am not inclined to reduce the sentence further
 22 or to reconsider the decision to impose the sentence. I
 23 recognize that I have discretion whether to do so. I intend
 24 to act within the bounds of that discretion and according to
 25 the law that applies and to exercise my discretion reasonably,

23

1 and under the circumstances, I do find Mr. Nally's credibility
 2 to be lacking to a certain extent, but I do happen to agree
 3 with a statement made by the State that even if we went along
 4 with everything that was said here today concerning the
 5 wheelchair, for example...
 6 And let me just say this, Mr. Nally. I believe
 7 you when you say that sitting is what causes you pain and not
 8 walking. I don't think that that's uncommon, and I do find
 9 that to be believable, and so I can envision a situation where
 10 walking is certainly not an issue for you and where a walker
 11 may not be something that was really all that helpful to you,
 12 but a wheelchair or a cushion may have been very helpful with
 13 respect to sitting. However, those are situations that need
 14 to be taken up with the Department of Corrections, and they
 15 are not something that convinces me that I should be retaining
 16 jurisdiction and returning you to the rider program. And with
 17 that, the Court will deny the motion.
 18 Thank you very much. Anything further from
 19 counsel?
 20 MR. ROBINS: May I prepare an order for you, Your
 21 Honor?
 22 THE COURT: You may.
 23 MR. LAWLOR: No, Your Honor. Thank you.
 24 THE COURT: Thank you very much.
 25 All right, Mr. Nally, we're signing off.

24