

4-28-2016

## State v. Nally Appellant's Reply Brief Dckt. 43208

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43208
	)	
v.	)	KOOTENAI COUNTY NO.
	)	CR 2015-2289
JEFFREY SCOTT NALLY,	)	
	)	APPELLANT'S
Defendant-Appellant.	)	REPLY BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Jeffery Nally appeals, contending the district court abused its discretion by refusing to continue retaining jurisdiction in light of the rushed decision, based on inaccurate reports from the rider staff, to remove him from the rider program after only two days in the program. The State's responses fail to appreciate the facts and evidence in the record, as well as the entirety of Mr. Nally's arguments. As such, its arguments are baseless. The information and evidence in the record demonstrates that the rushed decision to relinquish jurisdiction over Mr. Nally constituted an abuse of the district court's discretion. Therefore, this Court should grant requested relief in this case.

## Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Nally's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

## ISSUE

Whether the district court abused its discretion by refusing to continue retaining jurisdiction in this case.

## ARGUMENT

### The District Court Abused Its Discretion By Refusing To Continue Retaining Jurisdiction In This Case

The State makes several points in its Response Brief which fail to appreciate all the facts in the record and the entirety of Mr. Nally's overarching argument against the recommendation and ultimate decision to relinquish jurisdiction in his case. As a result, those arguments are baseless and should be rejected by this Court.

For example, the State asserts that Mr. Nally's arguments on appeal should be disregarded based on the report from the rider staff that he had admitted making some of the alleged inappropriate statements at issue in one of the DORs. (Resp. Br., p.3.) However, Mr. Nally refuted that report, asserting in his allocution statement at the rider review hearing: "I never said that to those inmates" and "I never called those inmates out." (Tr., Vol.2, p.12, Ls.6, 17.) Mr. Nally's refutations were supported by evidence he presented to the district court at that hearing – the letters of the other inmates present when the statements were allegedly made. (See Augmentation 2, pp.2-4.) Those inmates, who do not appear to have any stake in the resolution of those allegations,

asserted Mr. Nally said nothing inappropriate to the other inmates. (See Augmentation 2, pp.1-4.) Thus, the evidence in the record actually disproves the report that he had admitted those statements. Thus, the State's arguments based on his supposed admissions is unfounded.

Furthermore, Mr. Nally's overarching position has been, and continues to be, that the reports in the APSI were inaccurate, and that the DORs based on them were ultimately dismissed upon internal appeal. (See, e.g., Tr., Vol.3, p.14, Ls.18-22 (Mr. Nally testifying to this fact); App. Br., p.8).) It is unlikely that, were the reports accurate about Mr. Nally's alleged admission, the DORs would be dismissed. To that point, the State contends that because Mr. Nally did not present any documentation that the DORs had, in fact, been dismissed, his testimony to that fact should be disregarded. (Resp. Br., p.3.) Again, the State's arguments fail to appreciate the entirety of the evidence in the record. At the hearing on Mr. Nally's Rule 35 motion, he testified as to his and his attorney's efforts to locate a copy of that documentation, but their efforts were unsuccessful because the documentation no longer existed. (Tr., Vol.3, p.14, L.23 - p.15, L.7.) The prosecutor below did not contest that testimony or offer contradictory evidence. (See *generally* R., Tr.) Therefore, Mr. Nally's testimony reveals the State's argument on that point to be baseless.

Similarly, the State's assertion, that Mr. Nally's arguments should be disregarded because he did not offer any corrections to the APSI at the outset of the rider review hearing, is mistaken. (See Resp. Br., p.3.) When the district court asked whether either party had "[a]ny corrections or additions" to the APSI, defense counsel responded, "The only thing I do have, I have some letters of Mr. Nally's behalf . . . from inmates who

were present with Mr. Nally at the time these incidents allegedly took place.” (Tr., Vol.2, p.5, L.18 - p.6, L.20). By offering additional information which directly contradicted the report, Mr. Nally did “offer corrections” as to what actually happened. Thus, the State’s argument in this regard is unfounded.

Finally, the State defends the accuracy of the APSI by trying to draw a distinction between events occurring at the RDU facility and the rider facility. (Resp. Br., pp.2-3.) However, that is a meaningless distinction in this case. The rider staff was relying on the disciplinary reports to remove Mr. Nally from the rider program, and so, the inconsistency is in the report’s representation that he had not been a disciplinary issue at the rider facility, when that was, in fact, the basis on which they were trying to expel him from the rider program. (See App. Br., p.9.) The facility at which the event occurred is also irrelevant in this case because the alleged events reportedly occurred in the orientation for the rider program. (See APSI, p.4.) Thus, the event for which the DOR was issued did, in fact, occur as part of the rider program, meaning the APSI is unreliable, or at best, unclear, on that point.

The fact that the APSI is, at best, unclear only fuels Mr. Nally’s overarching argument – that the rushed decisions during this whole retained jurisdiction process meant he was not afforded a meaningful opportunity to even start the program. (App. Br., p.11.) That is the flaw in the reasons the district court gave for relinquishing jurisdiction. The district court reached a rushed, unreasonable conclusion, in light of a complete understanding of Mr. Nally’s character and the evidence actually presented in the record, about whether to continue retaining jurisdiction in this case, such that Mr. Nally might actually be given the opportunity to rehabilitate in that program.

(See App. Br., pp.7-12.) As such, the State's remaining argument on appeal, which is based on adopting the district court's rationales (Resp. Br., pp.3-4), are similarly flawed. However, as Mr. Nally has already discussed those issues in depth, no further reply is necessary in that regard. He simply refers this Court back to pages 7-12 of his Appellant's Brief.

### CONCLUSION

Mr. Nally respectfully requests that this Court remand this case to the district court with instruction it retain jurisdiction so he can participate in the rider program. Alternatively, he requests this Court reduce his sentence as it deems appropriate or remand the case for such a decision from the district court.

DATED this 28<sup>th</sup> day of April, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28<sup>th</sup> day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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CYNTHIA K C MEYER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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E-MAILED BRIEF

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BRD/eas