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State v. Heigel Respondent's Brief Dckt. 43340

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43340
Plaintiff-Respondent,)	
)	Boundary County Case No.
v.)	CR-2014-1154
)	
JUSTIN DEAN HEIGEL,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Heigel failed to establish that the district court abused its discretion by relinquishing jurisdiction and executing his underlying unified sentence of six years, with three years fixed, imposed upon his guilty plea to aggravated battery?

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

Heigel pled guilty to aggravated battery and the district court imposed a unified sentence of six years, with three years fixed, and retained jurisdiction for 365 days. (R., pp.81-85, 88-91.) After a period of retained jurisdiction, the district court relinquished

jurisdiction and executed Heigel's underlying sentence without reduction. (R., pp.114-17.) Heigel filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.120-22.)

Heigel asserts the district court abused its discretion when it relinquished jurisdiction in light of his "progress" while on his Rider. (Appellant's brief, pp.4-7.) 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 inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

Heigel is not an appropriate candidate for probation. While on his Rider, Heigel failed to complete all but one of his programs, incurred two written warnings for aggressive behavior, and was placed on two behavioral contracts for repeated "horseplay" and bullying behavior. (See *generally* APSI.¹) NICI staff noted that Heigel "expressed that it is fun to bully other people," and were concerned that his tendency to resort to verbal aggression "suggests he might become physically aggressive." (APSI, p.3.) In recommending the district court relinquish jurisdiction, NICI staff stated:

¹ Citations to "APSI" are to the electronic file "2nd Addendum to PSI.pdf."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 Honor. And I'm questioning whether it was based in
 2 somewhat on his intent to file a complaint.
 3 So the Court has a number of options, Judge.
 4 Certainly sending him to prison is going to make paying
 5 restitution almost impossible. He does feel a lot of
 6 remorse for his crime and he does want to pay the
 7 restitution. If could he get out on probation, then he
 8 could get back to work. He is actually still eligible
 9 for unemployment, from what he tells me. So he could
 10 start making payments almost immediately if he was to
 11 get out.

12 I know he has some things he'd like to say to
 13 the Court. But again, I think it's extreme here when
 14 we don't have a single formal disciplinary sanction.
 15 This is all informal stuff. And sure, it's not -- you
 16 know it's -- a lot of it I think is pretty -- pretty --
 17 shows a lack of maturity, rather than a lack of
 18 intention to succeed.

19 So I think Mr. Helgel does have an intention to
 20 succeed, Your Honor. And certainly the Court could put
 21 him on another Rider. The Court could put him on
 22 probation or the Court could, you know, send him to
 23 prison. I think that society could still be protected
 24 without sending him to prison. And I think that the
 25 restitution in this case is a huge component of his

1 **I was having issues with another counselor. I asked my**
 2 **counselor that morning what to do about it, she told me**
 3 **to write a complaint about it. And then two hours**
 4 **later they relinquished me, before I could even write**
 5 **the complaint. And there's nothing in there that says**
 6 **why exactly I got relinquished other than the minor**
 7 **disciplinary actions.**

8 THE COURT: Mr. Helgel, I'm reading the
 9 report. You know the concern in this case was rage,
 10 violence. A person was severely, severely injured. We
 11 have \$37,000.00 in restitution. The victim received 80
 12 stitches to the head, the right side of his face, had
 13 over \$25,000.00 in medical bills, and then you go on a
 14 retain jurisdiction program and -- because the concern
 15 is uncontrollable rage and violence. And the
 16 behaviors, you call it horse -- they say some horse
 17 play but bullying, touching people, pushing people.

18 The concern is -- seems to be anymore violence.
 19 And I really do not have a lot of options in this case.
 20 You're -- the period of your retain jurisdiction is up
 21 in September. There wouldn't be time for you to be
 22 sent to another program. And you failed in this
 23 program.

24 You're saying they were minor but it says you
 25 were on a behavioral contract, you did fairly well. As

1 sentence that we should try and accomplish.

2 THE COURT: Mr. Helgel, do you want to make a
 3 statement on your own behalf?

4 A. Yeah. Your Honor, I know that I -- like it
 5 says in my report, my worst behavior was horse play.
 6 That's something I've done my whole life. And with all
 7 the problems I've had in my life, I felt that I was
 8 doing good dealing with my anger issues and stuff. I
 9 tried to get enrolled in anger management the first
 10 week I was there. My counselor told me that I was and
 11 then for some reason she didn't enroll me.

12 I got enrolled into stress management. I was
 13 about ready to graduate that. I was only two classes
 14 away from graduating stress management which was
 15 helping quite a bit with my anger.

16 I was enrolled into a 12 step program which was
 17 six months long. I only had a month to go and I would
 18 have graduated that. It was Celebrate Recovery. I
 19 don't know if you know what that is.

20 THE COURT: I do.

21 A. That's a pretty good program. I actually
 22 enjoyed it. I was actually hosting my own AA groups in
 23 there and stuff. I was doing all the work I was
 24 supposed to. I felt that I was doing good. And like
 25 Mr. Waldrup said, the morning that I got relinquished,

1 soon as the contract was over, then you started
 2 violating the rules again. You get on a second
 3 contract, you violated on that one.

4 So I am certainly seeing that you did not
 5 complete the program, you were unable to complete the
 6 program, and given that, I am going to relinquish
 7 jurisdiction and impose the sentence. I think it's
 8 warranted. This was a very, very serious case. I gave
 9 you a chance on a retain jurisdiction program. You
 10 were unable to complete it. This isn't a possession of
 11 meth case. This is -- this is a case where a person
 12 was severely, severely injured. It's unfortunate that
 13 you were unable to complete the program but you're
 14 gonna have to serve your sentence.

15 You'll get credit for all time that you have
 16 served. You had 80 days credit prior to the time you
 17 were sentenced. You'll get that credit plus all the
 18 time you've served as you were sentenced on October 15
 19 so you get --

20 MR. WALDRUP: Judge, he was in custody for
 21 over five months before he was actually sentenced.

22 A. I got arrested in July -- July 12th. I got
 23 out for one week in August, I was rearrested, and then
 24 I left here in November.

25 THE COURT: Okay. His -- his Judgment says