

5-31-2016

## State v. Lord Appellant's Brief Dckt. 43733

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SARA B. THOMAS  
State Appellate Public Defender  
I.S.B. #5867

ERIC D. FREDERICKSEN  
Deputy State Appellate Public Defender  
I.S.B. #6555  
P.O. Box 2816  
Boise, ID 83701  
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43733
	)	
v.	)	LATAH COUNTY NO. CR 2014-3308
	)	
DAVID KENNETH LORD,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

David Kenneth Lord appeals from the district court's Order Relinquishing Jurisdiction. On appeal, Mr. Lord asserts that the district court abused its discretion in relinquishing jurisdiction over him, rather than placing him on probation.

Statement of the Facts and Course of Proceedings

In October of 2014, Mr. Lord was charged by Criminal Information with felony eluding a peace officer and misdemeanor failure to purchase a driver's license. (R., pp.33-24.) Mr. Lord entered into a binding Idaho Criminal Rule 11 ("Rule 11") plea agreement wherein Mr. Lord would enter a plea of guilty to felony eluding, and the

district court would impose a unified sentence of four years, with one year fixed, with the district court retaining jurisdiction. (R., pp.36-38.) Pursuant to the Rule 11 agreement, the misdemeanor failure to purchase a driver's license charge would be dismissed. (R., pp.36-38.) The district court imposed the negotiated unified sentence of four years, with one year fixed, but, rather than retaining jurisdiction, the district court placed Mr. Lord on probation for three years. (R., pp.43-51.) After approximately six months on probation, Mr. Lord admitted to violating the terms of his probation and the district court entered an Order Revoking Probation, Imposing Sentence, and Retaining Jurisdiction. (R., pp.88-90.)

At the conclusion of the rider, the district court relinquished jurisdiction over Mr. Lord. (R., pp.100-102.) Mr. Lord filed a Notice of Appeal timely from the district court's Order Relinquishing Jurisdiction.

### ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction over Mr. Lord and executed his sentence?

### ARGUMENT

#### The District Court Abused Its Discretion When It Relinquished Jurisdiction Over Mr. Lord And Executed His Sentence

This Court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. See *State v. Latneau*, 154 Idaho 165, 166 (2013); see also I.C. § 19-2601(4). "A court properly exercises its discretion when it (1) correctly perceives the issue to be one of discretion, (2) acts within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it,

and (3) reaches its decision by an exercise of reason.” *Latneau*, 154 Idaho at 166 (citation omitted).

Mr. Lord asserts that the district court erred in relinquishing jurisdiction over him. Although Mr. Lord admittedly had some struggles during the rider, there were certainly a number of positives coming from the rider program. (Addendum to Presentence Investigation Report (“APSI”), pp.1-11.)<sup>1</sup> While on the rider, Mr. Lord completed 142 hours of substance abuse treatment and obtained over 196 hours of life skills programming. (APSI, pp.10-11.) In addition, Mr. Lord had the ability to obtain employment at Perfection Tire upon his release from incarceration. (Tr., p.63, L.22 – p.64, L.1.) Thus, Mr. Lord, if placed on probation, has the ability to succeed and become a productive member in the community.

Accordingly, in light of the foregoing, Mr. Lord asserts that the district court abused its discretion in relinquishing jurisdiction over him.

### CONCLUSION

Mr. Lord respectfully requests that this Court vacate the district court’s order relinquishing jurisdiction over him and remand his case with instructions to place Mr. Lord on probation.

DATED this 31<sup>st</sup> day of May, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
ERIC D. FREDERICKSEN  
Chief, Appellate Unit

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<sup>1</sup> Although the APSI is not numbered, for ease of reference, it is cited as numbered sequentially starting with the cover letter to Judge Stegner as page 1.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31<sup>st</sup> day of May, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DAVID KENNETH LORD  
INMATE #89853  
ISCC  
PO BOX 70010  
BOISE ID 83707

JOHN R STEGNER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

CATHERINE MABBUTT  
ATTORNEY AT LAW  
E-MAILED BRIEF

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

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

EDF/eas