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State v. Bullard Appellant's Brief Dckt. 43783

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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|-----------------------------------|
| STATE OF IDAHO, |) | |
| |) | NOS. 43783 & 43784 |
| Plaintiff-Respondent, |) | |
| |) | BANNOCK COUNTY NOS. CR 2012-10056 |
| v. |) | & CR 2015-4770 |
| |) | |
| CHRISTOPHER DANIEL |) | APPELLANT'S BRIEF |
| BULLARD, |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, twenty-six-year-old Christopher Daniel Bullard pleaded guilty to felony principal to aggravated assault. The district court imposed a unified sentence of five years, with three years fixed, suspended the sentence, and placed Mr. Bullard on probation for a period of five years. Mr. Bullard later admitted to violating his probation, and the district court revoked probation, retained jurisdiction, and after Mr. Bullard participated in a “rider,” placed him back on probation.

Mr. Bullard was subsequently arrested for possession of methamphetamine, and the State alleged he violated his probation and opened a second case against him for felony possession of a controlled substance, methamphetamine. Mr. Bullard admitted

to violating his probation in the first case and pleaded guilty to felony possession of a controlled substance, methamphetamine, in the second case. The district court revoked probation in the first case and imposed a concurrent unified sentence of six years, with three years fixed, in the second case. The district court then retained jurisdiction in both cases. After Mr. Bullard participated in an extended “rider,” the district court relinquished jurisdiction.

In this consolidated appeal, Mr. Bullard asserts the district court abused its discretion when it relinquished jurisdiction in both cases.

Statement of the Facts & Course of Proceedings

Pocatello Police Department officers responded to a shots fired call at a residence. (Presentence Report (*hereinafter*, PSI), p.3.)¹ The occupants of the residence reported that four subjects, among them Mr. Bullard, had gone to the residence and threatened to kill one of the occupants. (PSI, pp.3-4.) After the occupants pushed the subjects out of the residence and closed the front door, one of the subjects fired a shot into the residence through the front window. (PSI, pp.3-4.) When interviewed by the police, Mr. Bullard reportedly stated he went to the residence with three other persons in response to upsetting Facebook comments one of the occupants made about Mr. Bullard and his son. (PSI, p.4.) Mr. Bullard reported another one of the four was in possession of a gun, and that person had fired the shot. (PSI, p.4.)

¹ All citations to the PSI refer to the 74-page PDF electronic document, which includes the Addendum to the Presentence Investigation filed on November 2, 2015.

In Bannock County No. CR 2012-10056 (*hereinafter*, the 2012 case), Mr. Bullard was charged by Prosecuting Attorney's Information with one count of principal to aggravated assault, felony, in violation of Idaho Code §§ 18-901(a), 18-905(b), and 18-204, and one count of principal to unlawful discharge of a firearm at a dwelling, felony, in violation of I.C. § 18-3317. (See R., pp.63-64.) Pursuant to a plea agreement, Mr. Bullard later agreed to plead guilty to aggravated assault, and the State agreed to dismiss the unlawful discharge of a firearm count. (See R., pp.63-64, 102-07, 115-17.) The district court imposed a unified sentence of five years, with three years fixed, suspended the sentence, and placed Mr. Bullard on probation for a period of five years. (R., pp.130-36.)

About a year later, the State issued an Agent's Warrant of Arrest against Mr. Bullard, alleging Mr. Bullard violated his probation by failing to job search as instructed and failing to comply with treatment. (R., p.139; see R., p.140.) After Mr. Bullard admitted the alleged violations, the district court revoked probation and retained jurisdiction. (R., pp.149-56.) Mr. Bullard participated in a "rider," and the district court then placed him on probation for a new period of five years. (See R., pp.157-62.)

Some eight months later, Mr. Bullard was arrested for possession of methamphetamine. (See R., p.164.) In the 2012 case, the State filed a Report of Probation Violation alleging Mr. Bullard had violated his probation by being arrested and charged with possession of a controlled substance—methamphetamine, using methamphetamine, and failing to attend treatment. (R., pp.166-67.)

In Bannock County No. CR 2015-4770 (*hereinafter*, the 2015 case), Mr. Bullard was charged by Prosecuting Attorney's Information with one count of possession of a controlled substance, methamphetamine, felony, in violation of I.C. § 37-2732(c)(1). (R., pp.252-53.)

Mr. Bullard admitted to the alleged probation violations in the 2012 case. (R., pp.173-74.) In the 2015 case, Mr. Bullard agreed to plead guilty to possession of a controlled substance, methamphetamine. (R., pp.255-59, 261-64.)

At the probation violation disposition/sentencing hearing, the parties recommended the district court retain jurisdiction in the 2012 case, impose a concurrent unified sentence of six years, with three years fixed, in the 2015 case, and retain jurisdiction in the 2015 case. (Tr., p.13, L.21 – p.15, L.17.) In the 2012 case, the district court revoked Mr. Bullard's probation and retained jurisdiction. (R., pp.179-85.) In the 2015 case, the district court imposed a unified sentence of six years, with three years fixed, to run concurrently with the sentence in the 2012 case. (R., pp.270-76.) The district court also retained jurisdiction in the 2015 case. (R., pp.271-74.)

After Mr. Bullard participated in an extended "rider," the rider program staff recommended the district court relinquish jurisdiction. (PSI, pp.61-74 (Addendum to the Presentence Report, filed Nov. 2, 2015).) The district court then relinquished jurisdiction in both cases. (R., pp.193-94, 278-79.)

In both cases, Mr. Bullard filed Notices of Appeal timely from the district court's decision to relinquish jurisdiction. (R., pp. 187-90, 287-90.) The Idaho Supreme Court consolidated the appeals. (Order to Consolidate Appeal Nos. 43783 and 43784 for All Purposes, Dec. 23, 2015.)

ISSUE

Did the district court abuse its discretion in both cases when it relinquished jurisdiction?

ARGUMENT

The District Court Abused Its Discretion In Both Cases When It Relinquished Jurisdiction

Mr. Bullard asserts the district court abused its discretion in both cases when it relinquished jurisdiction. The district court should have instead placed Mr. Bullard on probation.

An appellate court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). The district court's discretion in deciding whether to relinquish jurisdiction is not limitless. *State v. Rhoades*, 122 Idaho 837, 837 (Ct. App. 1992).

When an exercise of discretion is reviewed on appeal, the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.

State v. Hedger, 115 Idaho 598, 600 (1989) (internal quotation marks omitted).

Mr. Bullard submits that his performance while on the rider reflects that the district court abused its discretion when it relinquished jurisdiction. The rider program staff recommended the district court relinquish jurisdiction after an incident where Mr. Bullard hit another inmate on the head with a book, and the other inmate pushed Mr. Bullard. (PSI, pp.68-70.) The rider program staff reported that Mr. Bullard had been involved in other horseplay activities, had disregard for other inmates and the rules, and continued in his criminal thinking and behavior without showing progress in making

changes. (See PSI, p.68.) However, Mr. Bullard's Relapse Prevention Group program facilitator reported "Mr. Bullard has been very thorough in his written work." (PSI, p.66.) While the facilitator stated Mr. Bullard did not seem to be improving his behavior, Mr. Bullard "had completed two of the five Hazeldon *Relapse Prevention* workbooks, and they were very well written." (PSI, p.66.)

The facilitator for the Cognitive Self-Change (CSC) program reported that, although Mr. Bullard became upset when at first he was unable to present his Fearless Criminal Inventories (FCIs) in group, when he presented his FCIs he "was given minimal feedback as they were very well written." (PSI, p.66.) When Mr. Bullard moved to Level 2 of the CSC program, he initially "struggled with writing his Thinking Reports," but "[h]e was given constructive feedback, and the next group he came to his Thinking Reports were a lot better written." (PSI, p.66.)

Mr. Bullard also contributed outside his programming. Mr. Bullard "volunteered to help clean the State bus directly after transport." (PSI, p.74.) About a month before the incident with the book, Mr. Bullard "volunteered to help with deep clean of the unit and performed extra duties that were not required. His hard work and willingness to help is greatly appreciated." (PSI, p.71.)

In light of the above, Mr. Bullard submits his performance while on the rider reflects that the district court abused its discretion when it relinquished jurisdiction. The district court should have instead placed him on probation.

CONCLUSION

For the above reasons, Mr. Bullard respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his cases be remanded to the district court for a rider review hearing.

DATED this 31st day of March, 2016.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of March, 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:

CHRISTOPHER DANIEL BULLARD
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PO BOX 70010
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CHRISTOPHER S NYE
DISTRICT COURT JUDGE
E-MAILED BRIEF

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BANNOCK COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas