

8-17-2016

## State v. Maxim Respondent's Brief Dckt. 43887

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43887
Plaintiff-Respondent,	)	
	)	Jerome County Case No.
v.	)	CR-2010-6887
	)	
PATTY ANN MAXIM,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

Maxim pled guilty to possession of methamphetamine and the district court imposed a unified sentence of five years, with one year fixed, suspended the sentence, and placed Maxim on supervised probation for five years with the requirement that she participate in mental health court. (R., pp.10, 158, 198.) The district court later entered

an order amending the terms of Maxim's probation, removing the requirement that Maxim participate in mental health court. (R., pp.10-11.)

In October 2014, Maxim's probation officer filed a report of violation alleging that Maxim had violated the conditions of her probation by being arrested for trespassing, being discharged from treatment at Lifestyle Changes Counseling, violating her curfew, consuming alcohol on approximately six separate occasions, using marijuana on at least three separate occasions, and using methamphetamine "by I.V. 45 days out of 90." (R., pp.17-20, 23, 25-26, 40.) At the evidentiary hearing held on November 26, 2014, Maxim admitted that she had violated the conditions of her probation by using marijuana and methamphetamine, and the district court granted Maxim release on her own recognizance "subject to the terms and conditions of probation," ordered that she participate in intensive outpatient treatment and take her medications as prescribed, and delayed the disposition hearing until February 23, 2015, to allow Maxim the opportunity "to demonstrate to the court why she should remain in the community." (R., pp.51-52.)

On December 15, 2014, Maxim participated in a substance abuse evaluation, during which she told the evaluator that she was *not* taking her prescribed anti-depressant medications, although she did take the prescribed narcotic (Klonopin) "faithfully." (R., pp.73, 79.) On February 20, 2015, Maxim's probation officer submitted a progress report advising the court that Maxim missed her appointment at "TARC," had not yet begun treatment, provided a diluted sample for an alcohol test in January 2015, and tested presumptive positive for methamphetamine on February 17, 2015. (R., pp.70-71.) Approximately two weeks later, Maxim's probation officer filed a report of

violation alleging that Maxim had violated the conditions of her probation by providing the above-mentioned diluted sample for the alcohol test in January 2015, testing positive for methamphetamine on February 17, 2015, and testing positive for methamphetamine a second time on February 24, 2015. (R., pp.97-99.)

The district court subsequently revoked Maxim's probation (based on Maxim's November 2014 admissions to violating the conditions of her probation (see Tr., p.23, Ls.10-18)), ordered her underlying sentence executed, and retained jurisdiction (R., pp.157-62). Following the period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.198-202.) Maxim filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.203-07.)

Maxim asserts that the district court abused its discretion by relinquishing jurisdiction in light of her substance abuse, mental health issues, performance on her rider, and "the relatively minor nature of her original crime." (Appellant's brief, pp.3-4.) Maxim 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).

In its order relinquishing jurisdiction, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for relinquishing jurisdiction. (R., pp.198-201.) The state submits that Maxim has failed to establish an abuse of discretion, for reasons more fully set forth in the district court's Order Relinquishing Jurisdiction without a Hearing, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order relinquishing jurisdiction.

DATED this 17th day of August, 2016.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of August, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JASON C. PINTLER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

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

# APPENDIX A

2016 JAN 7 8 47  
 Michelle Emerson

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

State of Idaho, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. CR-2010-6887  
 )  
 Patty Ann Maxim )  
 SS# [REDACTED] )  
 D.O [REDACTED] )  
 )  
 Defendant. )

ORDER RELINQUISHING JURISDICTION WITHOUT A HEARING

I. BRIEF PROCEDURAL BACKGROUND

1. In Case No. CR-2010-6887 an Information was filed against the defendant on March 4, 2011, charging Possession of a Controlled Substance
2. On June 6, 2011, pursuant to a plea agreement, the defendant entered a Alford guilty plea to the charge of Possession of a Controlled Substance (Methamphetamine).
3. On August 24, 2011, a *Judgment of Conviction* was entered in the case against the defendant. The sentence imposed in case no. CR-2011-6887 consisted of a 5 year unified sentence, comprised of a 1 year determinate period of confinement, followed by a 4 year indeterminate period of confinement. Defendant to receive credit for time previously served in the County Jail. Originally, the Court placed the defendant on a period of supervised probation for 5 years. On August 10, 2015, after a probation violation, the Court retained jurisdiction in this case for a period of three hundred and sixty-five (365) days. I.C. § 19-2601(4).
4. Thereafter, the Court received and lodged an Addendum to the Presentence Investigation,

ORDER RELINQUISHING JURISDICTION WITHOUT A HEARING



dated January 5, 2016 (hereinafter called "PSI Addendum"), from the Department of Corrections, Pocatello Women's Correctional Center ("PWCC"), a copy of which is in the Court file and is by this reference incorporated herein.

5. According to the PSI Addendum, Patty Ann Maxim the Defendant arrived at the Pocatello Women's Correctional Center ("SBWCC"), facility on September 3, 2015.<sup>1</sup>
6. The PSI Addendum recommends the sentencing court consider granting the defendant probation. The Court however has serious concerns regarding the defendant's overall performance and her ability or willingness to comply with the rules of community supervision. For the reasons set forth below the Court intends to Relinquish Jurisdiction.

## II. APPLICABLE LAW

1. Idaho Code § 19-2601(4) permits a sentencing court to suspend the execution of a sentence and retain jurisdiction over the defendant for three hundred and sixty-five (365) days.
2. Idaho Appellate Courts have held that a defendant is not entitled to a court hearing when the district court relinquishes jurisdiction after a period of retained jurisdiction. State v. Hall, 112 Idaho 925 (Ct. App. 1987); State v Ditmars, 98 Idaho 472, cert. denied, 434 U.S. 1088 (1978); State v. White, 107 Idaho 941 (1985).
3. In order for the system to work, it is important for the district judge to have a report from the NICI on their assessment of the defendant's conduct while participating in the rider program. In the interest of fair judicial process, the district judge should also receive in writing any response the defendant may choose to make to the NICI recommendation. The district judge may then, if the judge feels necessary, hold a hearing, but it is not constitutionally necessary. State v. Coassolo, 136 Idaho 138(2001).
4. Idaho Code § 19-2601(4) states: "In no case shall the board of correction or its agent, the department of correction, be required to hold a hearing of any kind with respect to a recommendation to the court for the grant or denial of probation."
5. While the reasons for a judge's decision are not required to be stated, the practice is encouraged. State v. Williams, 112 Idaho 459 (Ct. App. 1987).

## III. ORDER RELINQUISHING JURISDICTION

The Court, having received a PSI Addendum and recommendations from the Board of Corrections, and having heard recommendations of counsel, and having reviewed the files and records in the above entitled matter, and being fully advised in the premises, now enters the following order:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT; this judge, as the**

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<sup>1</sup> The defendant also spent some time at the South Boise Women's Correctional Center.  
ORDER RELINQUISHING JURISDICTION WITHOUT A HEARING

sentencing court, relinquishes jurisdiction of this defendant to the Idaho State Board of Corrections for the following reasons:

1. The purpose of a retained jurisdiction is to determine whether probation would be appropriate.
2. The retention of jurisdiction and/or the granting of a probation is discretionary with the sentencing court. State v. Yarbrough, 106 Idaho 545 (Ct. App. 1984).
3. Refusal to retain jurisdiction under I. C. § 19-2601(4) and/or refusal to place a defendant on probation at the end of a retained jurisdiction will not be deemed a "clear 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. Chappel, 107 Idaho 193 (Ct. App. 1984).
4. The purpose of the retained jurisdiction statute, I.C. § 19-2601(4), is to allow the trial court additional time to evaluate the defendant's rehabilitation potential and suitability for probation. Probation is the ultimate objective sought by a defendant who asks a court to retain jurisdiction. State v. Toohill, 103 Idaho 565, 567, 650 P.2d 707 (Ct. App. 1982).
5. Because of the background and character of the defendant, including but not limited to her mental health, substance abuse and criminal history, and based upon the PSI Addendum, it appears that probation is not a viable option at this point in time, and jurisdiction is relinquished. Throughout the history of this case including her supervision in the community and her subsequent participation in the rider program the defendant has taken a victim stance and has failed to take responsibility for her actions and instead minimizes her behavior or blames others for her problems. The defendant has a significant drug abuse as well as a significant history of mental health concerns and yet is not compliant with her mental health or treatment requirements. She does not follow through on her treatment protocols. The defendant does not have a stable living environment. The defendant did not perform well on probation and the defendant was placed in the Rider Program for purposes of rehabilitation and to further assess whether she has the ability or willingness to comply with supervision rules. The "C" notes indicate that much of her time was focused on issues unrelated to her programming and that her focus was on "grievances" she purportedly had and that she was unwilling or unable to follow or comply with the directions of staff.

Most concerning is that while in the program the defendant as concerns her mental health "did not engage in her treatment plan while at PWCC". It was the position of the defendant that the treatment programs would not be beneficial. This is evidence that the defendant would not follow through with treatment requirements in the community. The defendant in the community has a history of not being compliant with her medications and not engaging in treatment. Yet she has a long history of willing abusing controlled substances in the community. While in this program in a structured environment the defendant did not comply with some of the rules and directives of the staff which is suggestive of the defendant's inability or unwillingness to comply with the rules of probation while being supervised in the community. The Court retained jurisdiction to determine if the defendant could be compliant with directives in a structured environment and to further assess the prospects for successful community supervision. The defendant's behavior as documented would suggest to this

ORDER RELINQUISHING JURISDICTION WITHOUT A HEARING

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200 of 224

Court that her behavior has not and will not change until the defendant is willing to be accountable and responsible for her own actions, which is not the present situation. The Court hereby directs that the Department provide Mental Health Treatment to the defendant in compliance with I.C. § 19-2523.

**IV. ORDER REGARDING RESTITUTION**

**Restitution:** The defendant is hereby ordered to pay such restitution as was entered in the original Judgment on August 24, 2011.

**V. RIGHT TO APPEAL/LEAVE TO APPEAL INFORMA PAUPERIS**

**The Right:** The Court advised the defendant, Patty Ann Maxim, of the Defendant's right to appeal this order within forty two (42) days of the date it is file stamped by the clerk of the court. I.A.R. 14 (a).

**In forma Pauperis:** The Court further advised the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3). I.C. § 19-852(a)(1).

**VI. ORDER ON PRESENTENCE INVESTIGATION REPORTS**

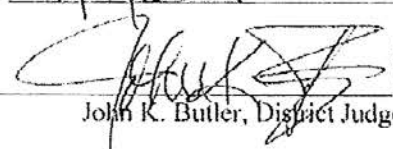
The parties are hereby ordered to return their respective copies of the PSI Addendum to the deputy clerk of the court. Use of said report shall thereafter be governed by I.C.R. 32(h)(1), (2), and (3).

**VII. ORDER OF COMMITMENT**

It is ADJUDGED and ORDERED that the defendant be committed to the custody of the Sheriff of Jerome County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Corrections at the Idaho State Penitentiary, or other facility within the State designated by the State Board of Corrections.

IT IS SO ORDERED.

Dated: 1/7/2016

Signed:   
John K. Butler, District Judge



ORDER RELINQUISHING JURISDICTION WITHOUT A HEARING