

9-30-2016

## State v. O'Brien Respondent's Brief Dckt. 44033

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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                       |
|-----------------------|---|-----------------------|
| STATE OF IDAHO,       | ) |                       |
|                       | ) | NO. 44033             |
| Plaintiff-Respondent, | ) |                       |
|                       | ) | Latah County Case No. |
| v.                    | ) | CR-2015-1257          |
|                       | ) |                       |
| JAMES JOSEPH O'BRIEN, | ) |                       |
|                       | ) | RESPONDENT'S BRIEF    |
| Defendant-Appellant.  | ) |                       |
| _____                 | ) |                       |

Issue

Has O'Brien failed to establish that the district court abused its discretion by imposing an underlying unified sentence of four years, with one year fixed, upon the jury's verdict finding him guilty of possession of methamphetamine?

O'Brien Has Failed To Establish That The District Court Abused Its Sentencing Discretion

A jury found O'Brien guilty of possession of methamphetamine and the district court imposed a unified sentence of four years, with one year fixed, suspended the

sentence, and placed O'Brien on supervised probation for three years. (R., pp.130-40.) O'Brien filed a notice of appeal timely from the judgment of conviction. (R., pp.143-46.)

O'Brien asserts his underlying sentence is excessive in light of his mental health issues, family support, and prior military service. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed an underlying unified sentence of four years, with one year fixed, which falls well within the statutory guidelines. (R., pp.130-40.) At sentencing, the state addressed O'Brien's refusal to accept responsibility or be truthful with respect to the instant offense, his minimization of his illegal drug use,

his lack of amenability to treatment due to his denial, and his risk to reoffend. (2/22/16 Tr., p.367, L.21–p.376, L.15.) The district court subsequently articulated its reasons for imposing O'Brien's sentence. (2/22/16 Tr., p.377, L.22–p.379, L.21.) The state submits that O'Brien has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

### Conclusion

The state respectfully requests this Court to affirm O'Brien's conviction and sentence.

DATED this 30th day of September, 2016.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of September, 2016, served a true and correct copy of the attached RESPONDENTS BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED  
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

**STATE OF IDAHO v. JAMES JOSEPH O'BRIEN**  
**February 22, 2016**

|   |            |
|---|------------|
| <p>1 served in the U.S. Navy for a little over 4 years, from<br/>2 December of 1993 to February of 1998, when he was<br/>3 honorably discharged.<br/>4 Um, following the service, um, I think maybe<br/>5 two or three years after he got out, he, um, was<br/>6 arrested for his first DUI. I believe he has three DUI<br/>7 arrests over about a five-year, um, period. Um, he has<br/>8 not had any, um, felony convictions. He's not had any<br/>9 arrests for drug charges.<br/>10 Um, he did admit during his PSI that he has<br/>11 had a history of drug use, including use of<br/>12 methamphetamines, but said that he hasn't used any for<br/>13 the past three-and-a-half years.<br/>14 Um, he's been living with his mother and<br/>15 stepfather and helping, um, his mother take care of his<br/>16 elderly grandparents. Um, he won't be able to reside<br/>17 there following his conviction, because, um, they have<br/>18 weapons there so.<br/>19 Um, he has worked various jobs over the last<br/>20 few years, primarily construction jobs. Um, he has<br/>21 done some, um, work, but he hasn't been employed<br/>22 regularly since these charges because of the pending<br/>23 charges and also now just not knowing what the sentence<br/>24 is going to be.<br/>25 Um, his primary goal end has been working</p>                                       | <p>364</p> |
| <p>1 with friends and trying to get them off drugs. He has<br/>2 seen, you know, how it's destroyed, um, quite a few of<br/>3 his friends. And that's been one of his goals.<br/>4 Um, we would ask that you follow the<br/>5 recommendations of the PSI and -- and place him on<br/>6 probation.<br/>7 THE COURT: So, um, Ms. Mabbutt, I got the<br/>8 distinct impression that Ms. Behrens didn't believe<br/>9 Mr. O'Brien.<br/>10 MS. MABBUTT: About his drug use?<br/>11 THE COURT: Yes.<br/>12 MS. MABBUTT: Yeah. I kind of got that<br/>13 impression, as well, but.<br/>14 THE COURT: I have to say I share some of<br/>15 those concerns. Um, I'm having a difficult time<br/>16 understanding Mr. O'Brien's denials. Any explanation<br/>17 for that?<br/>18 MS. MABBUTT: Um, no. His -- his -- what he<br/>19 wrote in his PSI was consistent with what he's told me<br/>20 as far as the events of this charge, that he had, um,<br/>21 been at a friend's house, trying to talk her out of<br/>22 using some drugs.<br/>23 And, um, she, I think, was kind of sick from<br/>24 something that she had purchased, which she didn't<br/>25 think to be what she had purchased. And so, um, he had</p>  | <p>365</p> |
| <p>1 talked her into going back to her family.<br/>2 Um, there -- I -- he picked up what he kind<br/>3 of thought was an empty package. And, um, the place<br/>4 where she was staying -- or where she had used this<br/>5 drug, the toilet wasn't working, so she couldn't flush<br/>6 it, so he offered to take that and throw it away.<br/>7 He stopped at this, um, gas station and<br/>8 forgot that he had it in his pocket. So he dropped<br/>9 what he thought was an empty package. He didn't really<br/>10 know what was in it. But he's -- that is what he's<br/>11 consistently told me. Um, he's not shared with me that<br/>12 he's -- I mean.<br/>13 THE COURT: Of course, this is at variance<br/>14 from what he told the police officer when he was<br/>15 interviewed --<br/>16 MS. MABBUTT: Right.<br/>17 THE COURT: -- the first time?<br/>18 MS. MABBUTT: Yes.<br/>19 THE COURT: So.<br/>20 MS. MABBUTT: I understand that.<br/>21 THE COURT: All right.<br/>22 MS. MABBUTT: So.<br/>23 THE COURT: Thank you. Mr. O'Brien, you now<br/>24 have an opportunity to make a statement, you're under<br/>25 no obligation to make a statement, but I'm happy to</p>  | <p>366</p> |
| <p>1 hear from you if you'd like to make a statement.<br/>2 THE DEFENDANT: Thank you, Your Honor. Um,<br/>3 you're correct, that it is different from what I had<br/>4 told Officer Dahlinger. And the truth was, Your Honor,<br/>5 it was such a small thing, I didn't even remember it.<br/>6 I didn't know what he was talking about until like 20<br/>7 minutes after he left. And then it was kind of a --<br/>8 oh, poo, you know. I know exactly what he was talking<br/>9 about now. I was asked to get rid of that and, you<br/>10 know, it was gone. I -- I didn't even think about it,<br/>11 you know. And he kind of showed up about three weeks<br/>12 later. I would say, you know.<br/>13 I was speaking with my mom afterwards, and<br/>14 sitting there kind of watching TV, and I was like, oh,<br/>15 no. I knew what he was talking about, but he had<br/>16 already gone.<br/>17 THE COURT: Anything else you'd like to say?<br/>18 THE DEFENDANT: No, sir.<br/>19 THE COURT: Mr. Cavanagh, the State's<br/>20 argument with regard to sentencing?<br/>21 MR. CAVANAGH: Thanks, Judge. As the Court<br/>22 is well aware, you are tasked today with fashioning a<br/>23 reasonable sentence. And that is based off the goals<br/>24 of sentencing, which are the good order and protection<br/>25 of society, as well as rehabilitation, and deterrence</p> | <p>367</p> |

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| <p>1 and retribution. And based on that, as well as in 368<br/>2 consideration of the factors that the Legislature has<br/>3 set forth in Idaho Code 19-2521, our position is that<br/>4 you should impose a Judgment of Conviction, you should<br/>5 sentence Mr. O'Brien to four years imprisonment with<br/>6 one year being determinant and three years<br/>7 indeterminate, and that you should retain jurisdiction.<br/>8 We also ask that you order restitution as previously<br/>9 discussed, and we are not seeking any fine.<br/>10 Judge, I guess the two main reasons for our<br/>11 recommendation are one, which is simply what he did,<br/>12 that he possessed methamphetamine, which is a serious<br/>13 charge, but it's also a charge where sometimes people<br/>14 go on probation and sometimes they go on a rider. And<br/>15 it appears, based off of what Mr. O'Brien said in the<br/>16 PSI, that a rider is appropriate.<br/>17 And I want to preface my remarks by being a<br/>18 little bit on the careful side. I did review, uh, the<br/>19 standards to be considered, and a defendant's<br/>20 continuing, essentially, at least in this case, partial<br/>21 denial of guilt, and the fact that he went to trial and<br/>22 the fact that he might appeal, we are not asking you to<br/>23 consider those factors in the sentence. Um, we're not<br/>24 asking, that would be considered a vindictive sentence,<br/>25 which is not appropriate, and we are not asking for him</p> | <p>1 Um, I will note that the PSI is almost 370<br/>2 entirely self-reporting. Even the issue, for example,<br/>3 that he was in the Navy and honorably discharged. That<br/>4 may be true. Unfortunately there's no DD 214 form, or<br/>5 some other documentation from the military showing<br/>6 that. Um, and -- and even if that aside, that is just<br/>7 one example, as I look through almost paragraph after<br/>8 paragraph after paragraph: According to Mr. O'Brien,<br/>9 comma; according to Mr. O'Brien, comma; according to<br/>10 Mr. O'Brien; according to Mr. O'Brien, et cetera; It's<br/>11 replete with just his version of his life, his version<br/>12 of these events.<br/>13 And so when you look at something like the<br/>14 LSI score that says he's moderate, well, that based on<br/>15 his own representations of his drug use, directly<br/>16 contradicted by the evidence in trial, which I'm going<br/>17 to discuss. I'll just do it right now.<br/>18 Um, in the PSI he says was residual dust<br/>19 that he received. But then he saw what was presented<br/>20 in court, and that doesn't even look like the right<br/>21 bag. Um, he says, perhaps most importantly on page 9,<br/>22 the second-to-last paragraph, that he reported last<br/>23 using, um, with respect to methamphetamine,<br/>24 approximately three-and-a-half years ago, and that he<br/>25 had tried heroin on one occasion three years ago.</p>       |
| <p>1 to be somehow coerced into admitting something and 369<br/>2 giving up any chance of appeal.<br/>3 But, um, when we consider whether he should<br/>4 be on probation, the purpose of probation is to give<br/>5 him the opportunity to be rehabilitated under proper<br/>6 control and supervision, and according to the, um,<br/>7 Court of Appeals in <i>State versus Kellis</i>, which is 148<br/>8 Idaho 812, and it's a 2010 case that came through this<br/>9 court, the Court of Appeals stated: That the court is<br/>10 not entirely prohibited in considering continued<br/>11 assertions of Innocence as a factor in this sentencing<br/>12 decision. Rather a Court may properly consider a<br/>13 defendant's refusal to acknowledge guilt when<br/>14 evaluating the defendant's rehabilitation potential,<br/>15 because acknowledgment of guilt is a critical first<br/>16 step toward rehabilitation.<br/>17 And in our position, not only did<br/>18 Mr. O'Brien fail to take responsibility in the PSI, it<br/>19 really appears that what he said in the PSI is not<br/>20 true. And so even at this stage of the proceedings,<br/>21 he's telling the potential probation officer, certainly<br/>22 a representative from the Department of Correction,<br/>23 telling her information that's to be provided for this<br/>24 court at sentencing, that does not appear credible,<br/>25 based on the evidence at trial.</p>   | <p>1 Well, when he was interviewed by the police 371<br/>2 officer, which was on videotape, it was put into<br/>3 evidence, to my knowledge there's been nothing to<br/>4 indicate that there's any issue with that interview or<br/>5 statements, um, he said, first of all, I'm not sure<br/>6 what was in that baggy, which implies that he might<br/>7 know which baggy the officer was talking about. But<br/>8 again in the PSI, he says he completely forgot he had a<br/>9 baggy.<br/>10 And then shortly thereafter, when the<br/>11 officer talks about having video, he says, I don't even<br/>12 remember having it, meaning the baggy. And then this<br/>13 is important. He said, "I mean, it's not a secret that<br/>14 I do screw around with that stuff. But I -- I don't<br/>15 remember having it at that time." When he's asked --<br/>16 and I realize it's a little vague, because they talk<br/>17 about stuff -- there is a mention of meth later in the<br/>18 conversation, although I think any reasonable person<br/>19 reviewing the video would understand that they both<br/>20 knew they were talking about, at least, drugs, whether<br/>21 it was meth or heroin, which were the two drugs,<br/>22 ultimately that they discuss explicitly, he says -- Mr.<br/>23 O'Brien says at one point, "I mean, it's not a secret<br/>24 that I do screw around with that stuff, but I -- I<br/>25 don't remember having it at that time."</p> |



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| <p>1 When asked where he's getting his stuff, he 372<br/>2 says, "Um, come on, man," indicating he doesn't want to<br/>3 say who is giving him the drugs. When he's asked how<br/>4 much he's paying for it, he says, "Not very much.<br/>5 Well, too much." Um, when asked whether he's injected<br/>6 it, he says, "I don't inject drugs." When he's asked<br/>7 if he's been smoking it, he says, on occasion.<br/>8 Then he says, he doesn't remember having it<br/>9 that night, and he's very clear that he's trying to say<br/>10 that he does remember having drugs at that moment in<br/>11 time. He's not saying, I haven't used meth in three<br/>12 years. There is no way I had that. This is crazy.<br/>13 Um, and then he says, "I really don't do<br/>14 that stuff as much as you guys think I do."<br/>15 He later says -- uh, and this is an<br/>16 interesting, uh, portion, too, where he says, "Well,<br/>17 it's that -- it's more that I hang out with the kinds<br/>18 of people I want to help, you see. And it's kind of<br/>19 hard to help people while you're wagging your finger."<br/>20 And then he later says he hasn't been hooked on<br/>21 anything, when asked about that and so forth.<br/>22 So, our position is that you have a<br/>23 defendant who is sitting before you, and even his most<br/>24 recent representations just now, just don't jibe with<br/>25 the evidence.</p>                                      | <p>1 and -- I put that in quotes, trying, although it's not 374<br/>2 in quotes, but that's how I understand that word to be<br/>3 used -- trying he helpful but then ends up being<br/>4 caught -- and then ends up being caught up in a bad<br/>5 situation.<br/>6 Um, and then he kind of continues with<br/>7 Mr. O'Brien, even in court to this day where this<br/>8 narrative of, just trying to help people, which<br/>9 obviously has been, I don't know what frankly is going<br/>10 on with that issue. But, um, instead of focusing on<br/>11 that, the focus needs to be on the fact that<br/>12 Mr. O'Brien possessed drugs, and he continues to not<br/>13 see that he has an issue with drugs. He continues to,<br/>14 uh, based on what's been presented, the evidence at<br/>15 trial versus what's in the PSI, our position is the<br/>16 most logical and reasonable inference is that he has<br/>17 essentially impeached his own self, and what he said in<br/>18 the PSI is not true.<br/>19 So, those are really disturbing<br/>20 considerations for the Court, and to the extent things<br/>21 like in the PSI say that he might -- that he's a<br/>22 candidate for probation and his LSI score is moderate,<br/>23 there again, that is based on his own self-reporting<br/>24 primarily, and not on any type of determination of what<br/>25 is really happening in his life.</p>                                  |
| <p>1 Um, it's -- and the evidence also showed in 373<br/>2 court, uh, photographs of the drugs. And we had the --<br/>3 the package themselves, that it was clear that it was<br/>4 more than just dust. It was obviously drugs inside.<br/>5 And yet he's trying to distance himself from that. And<br/>6 so really when you look at this PSI, there's just<br/>7 really no weight to put on it.<br/>8 And I understand the Department of<br/>9 Correction, they -- they can only do so much collateral<br/>10 research. They can only place so much weight on, um,<br/>11 the fact that it appears that he might not be telling<br/>12 the truth. And I do think that the PSI author made<br/>13 that very clear that, um, there's a real question as to<br/>14 that issue.<br/>15 Um, and she says directly that, um -- um,<br/>16 under investigator's comments on page 14, when<br/>17 Mr. O'Brien said he hadn't used drugs in years, but he<br/>18 took the baggy to help a friend, saying he thought it<br/>19 was just trash, the PSI author says, this is difficult<br/>20 to believe, considering he further explained the reason<br/>21 the female gave him the baggy was because she was going<br/>22 to see her daughter and didn't want it on her person.<br/>23 If it was just trash the female subject could have just<br/>24 taken care of it herself. This marks one of the<br/>25 numerous instances where Mr. O'Brien seems to be trying</p> | <p>1 Um, I will note another issue, him moving on 375<br/>2 to a more minor issue, but this issue with his<br/>3 residence, uh, I'm -- I'm unclear where he's going to<br/>4 be living tonight. For all -- all of this time we've<br/>5 had, it just seems clear that -- that his current<br/>6 arrangements are not appropriate, and that he should be<br/>7 living there were he placed on probation. So that's<br/>8 another concern, that he's not -- in that position,<br/>9 it's concerning that this work issue where he's been<br/>10 working on and off under the table, hasn't been while<br/>11 this case has been pending. Well, this case has been<br/>12 pending, for -- certainly since May. He was arraigned<br/>13 in this court in August, um, and so forth. He's been<br/>14 out of custody. He was summonsed in on this case. So<br/>15 there's no reason why any period of time here he could<br/>16 have been working 40 plus hours a week in a job. But<br/>17 that's just another example of an excuse.<br/>18 He makes other excuses in the PSI. Points<br/>19 fingers at the jury, which were just an empty<br/>20 accusation that had no basis for it. There's no<br/>21 explanation of what was inferred with the jury.<br/>22 There's no explanation of how that would have<br/>23 prejudiced his case. Likewise he makes a baseless,<br/>24 empty, and meritless accusation against his own<br/>25 attorney.</p> |

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| <p>1 This is a case where he was literally caught<br/>2 on video with drugs in his hand, and we have still<br/>3 shots of it and videoed of it, where you see the drugs<br/>4 in his hand, dropping to the floor and hitting the<br/>5 ground, that had just been swept and mopped. And he<br/>6 tells the officer things like well, it's, you know --<br/>7 um, you know, people know I do that stuff. I don't do<br/>8 as much as they think and so forth, of course, it's<br/>9 reasonable for the jury to come back with a guilty<br/>10 verdict. In fact, our position is, any rational jury<br/>11 would have come back with that verdict. It's not some<br/>12 kind of statement about the jury or his attorney that<br/>13 it's a guilty verdict, it's because he's guilty. He<br/>14 did it. He possessed meth. And he doesn't get it at<br/>15 all, and he should go on a rider.<br/>16 THE COURT: Thank you, Mr. Cavanagh.<br/>17 Ms. Mabbutt, anything in response?<br/>18 MS. MABBUTT: Uh, yes, Your Honor. Well,<br/>19 Mr. Cavanagh talks about the PSI being Mr. O'Brien's<br/>20 version of events, and, um, that's pretty standard.<br/>21 Um, particularly having helped somebody fill out the 20<br/>22 plus pages of that, that's exactly what they're asking<br/>23 for is the defendant's version. And the LSI is<br/>24 comprised of more than just the contents of<br/>25 Mr. O'Brien's completion. It also include his criminal</p> | <p>376<br/>1 responsibility. At the same time, the <i>Kellis</i> case was 378<br/>2 a sex offense case, and this is a possession of<br/>3 methamphetamine case, in a jeweler's bag, that is, I<br/>4 think quantity that I think is of a nature that it<br/>5 would be individual consumption.<br/>6 It's not as if it's for sale. It's not as<br/>7 if it's, um, found with scales. And it's not as if<br/>8 it's an egregious offense, frankly. Um, I tell people<br/>9 that I don't hold it against them, and can't hold it<br/>10 against them, that they have chosen to go to trial. I<br/>11 don't think I can do that.<br/>12 I can say that on certain occasions I've<br/>13 seen trials and learned more about the offense than I<br/>14 knew before having gone to trial and thought there was<br/>15 a reason to deviate upwards, having seen the evidence<br/>16 presented. I think those are two different issues.<br/>17 And certainly facts can look much more egregious at a<br/>18 trial than are presented for purposes of a guilty plea<br/>19 pretrial.<br/>20 I've had counsel come to me and said that<br/>21 they had worked out an agreement to have Mr. O'Brien<br/>22 plead guilty to this offense and have him serve 30 days<br/>23 in the county jail and be on probation for three years.<br/>24 I don't have any doubt, based on my viewing the<br/>25 presentence, that I would have accepted that plea at</p> |
| <p>1 history, which is the DUIs and DWPs, his financial 377<br/>2 resources and his jobs and skills. Um, and as far as<br/>3 his military background, um, Mr. O'Brien has that he<br/>4 wasn't asked to produce anything. He has the<br/>5 paperwork. It doesn't sound like that was an issue<br/>6 from Ms. Behrens. And she, Ms. Behrens, said, based on<br/>7 the level of assessed risk and need and other<br/>8 protective factors, as discussed about James O'Brien,<br/>9 appears to be an appropriate candidate for an order of<br/>10 probation.<br/>11 So we would ask that you follow that. That<br/>12 would include drug testing, and he would follow<br/>13 recommended treatment. Um, she recommends individual<br/>14 and/or group therapy and some vocational, um,<br/>15 rehabilitation resources. So we ask that you, um,<br/>16 place him on probation.<br/>17 THE COURT: Thank you, Ms. Mabbutt. Does<br/>18 the defendant have any lawful cause to show why<br/>19 judgment should not be pronounced against him at this<br/>20 time?<br/>21 MS. MABBUTT: No, Your Honor.<br/>22 THE COURT: Well, having presided over the<br/>23 <i>Kellis</i> case, I'm more than familiar with that case and<br/>24 the ruling that would enable me to gravitate upwards<br/>25 for Mr. O'Brien's failure or refusal to take</p>   | <p>379<br/>1 the time.<br/>2 I think I would be skeptical about<br/>3 Mr. O'Brien's success on probation given his lack of<br/>4 acceptance of responsibility, but I think that's a<br/>5 different issue.<br/>6 And so having sat through the trial and<br/>7 observed the evidence, I don't think I would find a<br/>8 reason to deviate in an upwards fashion, even though,<br/>9 Mr. O'Brien, you appear to be truth challenged.<br/>10 I don't believe your story. I don't believe<br/>11 what you're saying. Um, I think you knew what it was.<br/>12 I think you are concocting a story to make it look less<br/>13 like that was your personal possession. But I'm not<br/>14 going to pound you for that. I'm not going to send you<br/>15 on a rider for that.<br/>16 Uh, but I think you need to come to grips<br/>17 with your substance use and to deal with it. If you<br/>18 can, I think you can stay outside of the confines the<br/>19 penitentiary. If you can't, I think we'll have to<br/>20 increase the sanctions and increase the ways in which<br/>21 we deal with your substance use.<br/>22 So, Ms. Mabbutt, my intention if it's<br/>23 acceptable to Mr. O'Brien, is to place him on three<br/>24 years of probation. I intend to withhold judgment<br/>25 under my standard terms and conditions. My intention</p>  |