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State v. Marquez Appellant's Brief Dckt. 44254

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44254
Plaintiff-Respondent,)	
)	MINIDOKA COUNTY NO. CR 2015-648
v.)	
)	
MIGUEL MARQUEZ,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Miguel Marquez contends the district court abused its discretion when it relinquished jurisdiction in his case. He asserts a sufficient consideration all the mitigating factors in the record reveals a period of probation would better serve all the goals of sentencing. As such, this Court should reverse the order relinquishing jurisdiction and remand this case so that Mr. Marquez can be placed on probation.

Statement of Facts and Course of Proceedings

Pursuant to a plea agreement, Mr. Marquez pled guilty to possession of methamphetamine, and the State originally agreed to recommend a unified sentence of

five years, with two years fixed, which would be suspended for a period of probation while Mr. Marquez participated in the drug court program. (Tr., p.5, L.19 - p.6, L.2; R., pp.39-41.) Alternatively, if drug court were not an option, the State agreed to recommend a period of retained jurisdiction. (Tr., p.6, Ls.2-4.) Mr. Marquez was not accepted into drug court because he had another pending case in Lincoln County. (R., p.59.) He subsequently applied for mental health court, but that application was denied after Mr. Marquez missed his assessment interview. (R., pp.66-68, 78.)

Around that same time, Mr. Marquez had a confrontation with officers, in which it appeared he was attempting “suicide by police officer.”¹ (Tr., p.13, Ls.11-20; p.28, Ls.22-24.) As a result, defense counsel requested the district court order a psychological evaluation in anticipation of sentencing, which the district court did. (Tr., p.13, L.18 - p.14, L.10; R., pp.89-90.) That evaluation determined “substance use is Mr. Marquez’s primary problem with respect to his adaptive functioning across multiple domains.” (Presentence Investigation Report (*hereinafter*, PSI), p.125.) However, it also diagnosed Mr. Marquez with major depressive disorder, and gave a rule-out diagnosis for antisocial personality disorder. (PSI, p.124.)

At sentencing, the district court clarified that Mr. Marquez had been acquitted in the Lincoln County case. (Tr., p.23, Ls.7-12.) That meant, as defense counsel pointed out, the instant offense was Mr. Marquez’s first felony conviction. (Tr., p.28, L.8.) Nevertheless, defense counsel acknowledged probation was not appropriate at that

¹ According to defense counsel, that incident resulted in a separate case in which Mr. Marquez was charged with several misdemeanors, and that Mr. Marquez anticipated resolving that case with sentences ordered to be served concurrent with his sentence in this case. (See Tr., p.29, Ls.2-4.) That other case is not included in this appeal. (See, e.g., R., pp.123-24.)

particular point in time and recommended the district court retain jurisdiction instead. (Tr., p.10, Ls.10-20, p.29, Ls.14-23.) The State also, and without objection, departed from the plea agreement, recommending the district court impose and execute a unified sentence of seven years, with two years fixed. (Tr., p.21, L.22 - p.22, L.13.) The district court acknowledged Mr. Marquez's young age (25 years old (PSI, p.1)), and his rehabilitative potential. (Tr., p.32, Ls.1-25.) However, it concluded there were too many coinciding issues to justify probation at that time. (Tr., p.31, Ls.17-23.) As such, it imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (Tr., p.35, Ls.9-13; R., pp.96-99.)

According to the program staff, Mr. Marquez struggled to engage fully in the classes during his period of retained jurisdiction. (PSI, p.116.) He also received two formal disciplinary reports and two other informal sanctions. (PSI, pp.112-13.) The district court ultimately relinquished jurisdiction without a hearing. (R., pp.111-13.) Thereafter, Mr. Marquez filed a motion requesting the district court reconsider its decision to relinquish jurisdiction, and he requested a hearing so that he could explain what happened during his rider program. (R., p.115.) A letter he wrote to defense counsel was attached to that motion, and in that letter, Mr. Marquez pointed out that he had taken responsibility for the conduct which led to his disciplinary sanctions, and he explained that he had been learning pro-social skills while in the rider program and he had been applying them in his daily life. (R., pp.117-18.) Still, the district court denied that motion to reconsider without a hearing. (R., pp.120-21.) Mr. Marquez then filed a notice of appeal which was timely from the order relinquishing jurisdiction. (R., pp.111, 123.)

ISSUE

Whether the district court abused its discretion by relinquishing jurisdiction over Mr. Marquez.

ARGUMENT

The District Court Abused Its Discretion By Relinquishing Jurisdiction Over Mr. Marquez

The district court's decision to relinquish jurisdiction is reviewed under an abuse of discretion standard. *State v. Statton*, 136 Idaho 135, 137 (2001); *State v. Hurst*, 151 Idaho 430, 438 (Ct. App. 2011). Such a decision will not be considered an abuse of discretion "if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate." *State v. Merwin*, 131 Idaho 642, 648 (1998). "The purpose of retaining jurisdiction after imposing a sentence is to afford the trial court additional time for evaluation of the defendant's rehabilitation potential and suitability for probation." *State v. Lee*, 117 Idaho 203, 205 (Ct. App. 1990). In making that determination, the district court "considers all of the circumstances to assess the defendant's ability to succeed in a less structured environment and to determine the course of action that will further the purposes of rehabilitation, protection of society, deterrence, and retribution." *Statton*, 136 Idaho at 137. In this regard, the need to protect society is the primary objective the court should consider. See, e.g., *State v. Charboneau*, 124 Idaho 497, 500 (1993). However, the Idaho Supreme Court has also held that rehabilitation "should usually be the initial consideration in the imposition of the criminal sanction." *State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

In this case, it is important to remember that the parties initially agreed that a period of probation was an appropriate sentence for this case. (Tr., p.5, L.19 - p.6, L.2;

R., pp.39-41.) The reason for that was the parties agreed the drug court would provide the best treatment for Mr. Marquez (*i.e.*, it would provide the best opportunity for rehabilitation and long-term protection of society). (See Tr., p.5, L.19 - p.6, L.2.) That was an appropriate conclusion because, as the psychological evaluation would later make clear, it is Mr. Marquez's substance abuse issues that are the primary issue which needs to be addressed in this rehabilitative efforts. (PSI, p.125.) It is also important to recognize that the reason he was denied the opportunity to participate in that program is that he was dealing with another pending case, and he was ultimately acquitted in that other case. (R., p.59; Tr., p.23, Ls.7-12.) Thus, in looking at Mr. Marquez's actions and his immediate needs surrounding them, probation was the appropriate sentence. See, *e.g.*, *State v. Findeisen*, 133 Idaho 228, 229-30 (Ct. App. 1999) (explaining that, while the district court can consider a wide range of information in sentencing, its focus should be on addressing the acts in the case before it).

With that starting point, Mr. Marquez acknowledges there were other factors which were properly considered at the initial sentencing hearing and which indicated that probation was not appropriate at that time. (See Tr., p.10, Ls.10-20, p.29, Ls.14-23.) It is also true that he struggled at times during his period of retained jurisdiction. (PSI, pp.112-13, 116.) However, as the letter attached to Mr. Marquez's motion to reconsider relinquishing jurisdiction reveals, he was trying to make progress in learning pro-social lessons during the rider program. (R., p.117.) Since rehabilitation is a process, while he may not have always been successful in his efforts toward that goal, the fact that he was making those efforts merits consideration.

For example, he accepted responsibility for his inappropriate behaviors in the rider program. (R., p.117; see PSI, pp.112-13.) Acceptance of responsibility is a critical first step toward rehabilitation. See *State v. Kellis*, 148 Idaho 812, 815 (Ct. App. 2010). That he has taken those first steps is important because he is still young (PSI, p.25), and this is also his first felony conviction (Tr., p.28, L.8), both of which indicate leniency in sentencing is appropriate as both highlight his potential to successfully rehabilitate. See, e.g., *State v. Shideler*, 103 Idaho 593, 595 (1982). Mr. Marquez also has the support of his family. (PSI, p.10.) For example, his father offered Mr. Marquez a place to stay on probation, as well as assistance in getting to drug court classes or Narcotics Anonymous meetings. (PSI, p.10.) Family constitutes an important part of a support network, which also makes successful rehabilitation more likely. See *Kellis*, 148 Idaho at 817. Successful rehabilitation is important since, by addressing the underlying issues, society is better protected in the long term.

Therefore, an adequate consideration of all the mitigating factors in this record, particularly in light of the initial recommendations in this case, reveals that, despite his struggles in the rider program, probation was still the sentencing option which best served *all* the goals of sentencing in Mr. Marquez's case. As such, the district court abused its discretion by relinquishing jurisdiction over Mr. Marquez.

