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State v. Marquez Respondent'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 Case No.
v.)	CR-2015-648
)	
MIGUEL MARQUEZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Marquez pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.96-100.) Following the period of retained jurisdiction, the district

court relinquished jurisdiction. (R., pp.111-14.) Marquez filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.123-25.)

Marquez asserts that the district court abused its discretion by relinquishing jurisdiction in light of his support from his father and because, although Marquez acknowledges that "probation was not appropriate" at the time of sentencing, he claims that he was "trying to make progress" in the retained jurisdiction program by, for example, occasionally accepting responsibility for his "inappropriate behaviors in the rider program." (Appellant's brief, pp.4-6; APSI, pp.2-3.) Marquez 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).

Marquez acknowledges, on appeal that he was not an appropriate candidate for probation at the time of sentencing (Appellant's brief, p.5), and his behavior while in the rider program did not demonstrate otherwise. During the short, approximately two-month period of time that Marquez was at NICI, he incurred multiple disciplinary sanctions, including informal sanctions for possessing contraband and intentionally

being late for “pill call,” as well as formal disciplinary sanctions for wrestling with another inmate and then lying about it and engaging in a fight, in which he was “the aggressor” and “punched” another inmate “multiple times” “over a gambling debt.” (APSI, pp.1-3.) Marquez failed to complete any of his assigned programming, did not show a desire to engage in programming or complete the assignments, failed to follow the instructor’s directives, was disrespectful, and made comments that he “was unsure if he wanted to complete the program.” (APSI, pp.1-5.) NICI staff recommended relinquishment, stating:

Mr. Marquez was not engaged in his groups and was not able or willing to put effort forth required to successfully complete the programs. He continued to operate under his belief that "Authority is out to get him" and found it difficult to follow staff directives. During the two months Mr. Marquez was at NICI, he had several disciplinary actions which demonstrate his refusal or inability to move toward change. Mr. Marquez was removed from NICI for assault on another offender. Until Mr. Marquez shows the desire and motivation to internalize the information needed for change, his self-defeating cycle will stay intact, and he will continue with his negative behavior. He has been given many opportunities, assignments to address his lack of effort and to identify goals, and being exposed to cognitive and relapse prevention groups. He has chosen to ignore the interventions that would have allowed him to begin the change process.

(APSI, p.6.)

The district court considered the relevant information and concluded, “Based on the Defendant’s APSI, it is evident that the Defendant has not made a serious effort to correct his pattern of criminal thinking and thus remains a moderate to high risk for re-offense and a danger to others in the community.” (R., p.112.) The court’s decision to relinquish jurisdiction was appropriate in light of Marquez’s abysmal performance and violent conduct in the rider program, unwillingness to engage in rider programming and failure to demonstrate any rehabilitative progress while in the program, and the

continued danger he presents to society. Given any reasonable view of the facts, Marquez has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

Conclusion

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

DATED this 22nd day of November, 2016.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of November, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
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Deputy Attorney General