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## State v. Hassett Respondent's Brief Dckt. 44255

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44255
Plaintiff-Respondent,	)	
	)	Nez Perce County Case No.
v.	)	CR-2013-9366
	)	
TIMOTHY L. HASSETT,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

Hassett pled guilty to delivery of methamphetamine and the district court imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. (R., pp.38-39, 41, 61, 64-66.) Following the period of retained jurisdiction, the district

court suspended Hassett's sentence and placed him on supervised probation for five years. (R., pp.77-81.)

Less than two months later, Hassett violated his probation by failing to report for supervision, using methamphetamine, and being terminated from treatment for failing to attend. (R., pp.85-86, 96.) The district court revoked Hassett's probation, ordered the underlying sentence executed, and retained jurisdiction a second time. (R., pp.99-101.) Following the second period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.104-06.) Hassett filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.111-14.)

Hassett asserts that the district court abused its discretion by relinquishing jurisdiction in light of his age (22 years old), substance abuse problems, and "potential to overcome his low self-esteem." (Appellant's brief, pp.3-4; PSI, p.2.<sup>1</sup>) Hassett 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

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "SC# 44255 Timothy L. Hassett-Confidential Exhibits.pdf."

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).

Hassett is clearly not an appropriate candidate for community supervision. Less than one month after he was placed on probation (following the completion of his first rider), Hassett resumed his use of methamphetamine. (R., p.86.) He failed to report for supervision altogether – two months after his release on probation, his probation officer reported that Hassett had never reported to the probation office. (R., p.85.) Hassett also failed to attend treatment and was terminated from treatment for failure to attend. (R., p.86.) A warrant was issued for Hassett’s arrest on August 12, 2015, and Hassett was not located and arrested until October 5, 2015 – nearly two months later. (R., p.92.)

Despite Hassett’s abysmal performance on probation, during which Hassett essentially refused to be supervised, the district court granted him a second opportunity to complete the retained jurisdiction program. (R., pp.99-101.) While on his second rider, Hassett consistently disobeyed the rules, racking up 11 informal disciplinary sanctions and three formal disciplinary sanctions, including two “Class B” DOR’s for battery. (PSI, pp.64-65.) NICI staff noted that several of Hassett’s informal disciplinary sanctions were “borderline battery” and that Hassett “thrives on criminal excitement.” (PSI, p.65.) Hassett also failed to complete his Cognitive Self-Change program and the Relapse Prevention Group, and NICI staff advised that Hassett’s participation in programs was poor and that he did not internalize or practice the skills he had been taught. (PSI, pp.63-64, 66.)

NICI staff ultimately recommended that the district court relinquish jurisdiction, reporting:

Mr. Hassett has received two Class B DORs for Battery, one of which he earned early in his "Rider." It was hoped that with treatment he would learn to change his thinking and his behavior; however, in spite of repeating CSC 1 and completing Anger Management, Mr. Hassett continued with his negative and aggressive behavior toward other offenders. His previous failure to follow the rules of probation, his continued violation of rules at NICI, and his high risk to reoffend with any criminal behavior makes him a poor candidate for probation at this time.

(PSI, p.68.) In its order relinquishing jurisdiction, the district court stated that it had reviewed the APSI (from NICI) "in its entirety and is of the opinion that relinquishment is appropriate." (R., p.105.) The court specifically determined that Hassett's "performance during the 'rider' program demonstrates that he is not a suitable candidate for probation at this time." (R., pp.104-05.)

The district court considered all of the relevant information and reasonably concluded that Hassett was no longer a viable candidate for community supervision. The court's decision to relinquish jurisdiction was appropriate in light of Hassett's refusal to abide by the conditions of probation or institutional rules, his abysmal performance throughout his second rider, his failure to demonstrate any rehabilitative progress, and his high risk to reoffend. Given any reasonable view of the facts, Hassett 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 17th day of January, 2017.

/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 January, 2017, 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  
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Deputy Attorney General