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State v. Schmid Appellant's Reply Brief Dckt. 44505

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44505
)	
v.)	BONNEVILLE COUNTY NO.
)	CR 2013-17847
CHRISTOPHER LEE SCHMID,)	
)	APPELLANT'S
Defendant-Appellant.)	REPLY BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Christopher Schmid, who was on probation following a period of retained jurisdiction, contends the district court abused its discretion when it revoked that probation and executed his underlying sentence. This reply brief is necessary to address the State's argument that the district court was "without jurisdiction"¹ to order that term of probation in the first place, as it asserts the order came after the normal

¹ It appears the State is using the term "jurisdiction" to refer to the district court's authority to act, rather than to actual jurisdiction (*i.e.*, personal or subject matter jurisdiction). See *State v. Armstrong*, 146 Idaho 372, 375 (Ct. App. 2008).

365-day period for retaining jurisdiction expired and the district court did not invoke the 30-day extension authorized by statute.

First, as there is no timely notice of appeal from the order suspending Mr. Schmid's sentence, this Court does not have appellate jurisdiction to consider the State's argument. And even if this Court does consider that argument, the State's argument is mistaken on its merits. The record reveals that, prior to the expiration of the 365-day period, defense counsel requested the district court set a rider review hearing so as to avoid expiration of the period of retained jurisdiction without proper consideration by the district court, particularly given the fact that the addendum to the presentence investigation report (*hereinafter*, APSI) had not yet been received at that point. The fact that the hearing was set out beyond the 365-day period reveals the district court implicitly invoked the 30-day extension. Since that 30-day extension was properly invoked, the district court's decision to order probation within that 30-day period was within scope of its authority. As such, this Court should consider the merits of Mr. Schmid's challenge to the order revoking the ensuing term of probation.

Statement of the Facts and Course of Proceedings

The statement of facts and course of proceedings were previously articulated in Mr. Schmid's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto. References to the various PDF documents and transcript volumes provided in this case will be the same as in the Appellant's Brief. (See App. Br., pp.2 n.1, 4 n.2.)

ISSUE

Whether the district court abused its discretion when it revoked Mr. Schmid's probation and executed his underlying sentence.

ARGUMENT

A. As There Is No Notice Of Appeal Timely From The Order Placing Mr. Schmid On Probation, This Court Lacks Appellate Jurisdiction To Consider The State's Challenge To That Order

The Idaho Supreme Court has (agreeing with an argument raised by the State) has made it clear that the first question an appellate court must ask is whether it, itself, has jurisdiction over the matters argued on appeal. *State v. Wolfe*, 158 Idaho 55, 60 (2015). This question supersedes all other analyses in the case, including questions regarding whether the district court had jurisdiction to do what it did. *Id.* ("Thus, the question of this Court's jurisdiction comes before all other questions, which includes the district court's subject matter jurisdiction.") This is not a question of whether the claim has been raised previously, or whether resolution on the merits might be more desirable, as such an approach would "carr[y] the courts beyond the bound of authorized judicial action and thus offend[] fundamental principles of separation of powers."² *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998).

As the *Wolfe* Court also made clear, "[a] timely appeal is necessary to vest jurisdiction in this Court to review issues raised with respect to the district court's actions." *Wolfe*, 158 Idaho at 61. "[An] appeal timely from [a] later order [does] not confer jurisdiction on a prior appealable order from which no timely appeal was taken."

² To the extent the Court of Appeals has held contrary to this in its unpublished opinion in *State v. West-Eaton*, 2016 WL 1329541 (Ct. App. 2016), that opinion is manifestly wrong for the reasons stated herein.

Id. (explaining the holding in *Dunlap v. Cassia Mem'l Hosp. & Med. Ctr.*, 134 Idaho 233 (2000)). An order suspending sentence is appealable by the State under I.C.R. 11(c)(6). *State v. Greene*, 102 Idaho 897, 898 (1982). However, the only notice of appeal filed in this case is not timely from the order suspending Mr. Schmid's sentence. (R., p.224 (order of probation file-stamped July 1, 2016); R., p.260 (notice of appeal file-stamped September 6, 2016).)

Since there is no timely appeal from the order suspending Mr. Schmid's sentence, this Court lacks appellate jurisdiction to consider the State's challenge to the district court's jurisdiction in making that order. See *Wolfe*, 158 Idaho at 60. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause," in this case, the State's challenge to the order suspending Mr. Schmid's sentence. *Id.* (quoting *Steel Co.*, 523 U.S. at 94). Therefore, this Court should dismiss the State's argument as to the order suspending Mr. Schmid's sentence and proceed to the issue on which it does have appellate jurisdiction – whether the district court abused its discretion when it revoked Mr. Schmid's probation (see Section C, *infra*).

B. The District Court Was Acting Within Its Statutory Authority When It Ordered The Relevant Term Of Probation

Should this Court determine that it has appellate jurisdiction to consider the State's challenge to the district court's jurisdiction, it should still reject the State's argument because the district court was acting within its statutory authority when it ordered the relevant term of probation. Idaho Code § 19-2601(4) authorizes the district

court to retain jurisdiction over a case following execution of the judgment. Normally, the period of retained jurisdiction expires after 365 days. I.C. §19-2601(4). However, in situations where the district court needs more time to obtain and evaluate relevant information, or it is unable to schedule a necessary review hearing within that 365-day period, “the court may decide whether to place the defendant on probation or release jurisdiction within a reasonable time, not to exceed thirty (30) days, after the period of retained jurisdiction has expired.” *Id.* The 30-day extension needs to be invoked before the 365-day period expires. *State v. Petersen*, 149 Idaho 808, 812 (Ct. App. 2010).

The State asserts that the district court did not properly invoke the extension provision prior to the expiration of the 365-day period, and so, the order for probation was beyond the scope of the district court’s authority.³ (R., pp.7-8.) As a result, the State contends the term of probation is void, and so, this Court should not consider Mr. Schmid’s challenge to the order ultimately revoking that probation. (R., p.8.) However, the record reveals that argument is meritless.

Pursuant to the prosecutor’s request, the district court held a hearing on February 17, 2016 (about three months before the expiration of the 365-day period of retained jurisdiction). (See R., pp.205, 210.) At that hearing, the district court ordered a medical override so that Mr. Schmid could be stabilized on his psychotropic medications, and thus, have a meaningful opportunity to complete the rider program.

³ The State relies primarily on *State v. Taylor*, 142 Idaho 30 (2005), and *State v. Diggie*, 140 Idaho 238 (Ct. App. 2004), in making this claim. (See Resp. Br., pp.7-8.) However, the *Taylor* decision is expressly based on the fact that there was no provision authorizing such extensions in the version of the I.C. §19-2601(4) applicable to that case. *Id.* at 31. *Diggie* was evaluating the same version of the statute as *Taylor*. *Diggie*, 140 Idaho at 240. Since I.C. § 19-2601(4) has since been amended to authorize such an extension, see *Taylor*, 142 Idaho at 31, the applicability of *Taylor* and *Diggie* to this case is minimal.

(See R., p.210.) Then, on May 17, 2016, with two weeks still remaining before the expiration of the 365-day period on June 2, 2016, defense counsel filed a Notice of Hearing which requested a rider review hearing be scheduled for June 8, 2016. (R., p.214.) The register of actions indicates that, on May 16, 2016, a hearing was, in fact, scheduled for June 8, 2016. (R., p.14.) As such, the district court necessarily, implicitly invoked the 30-day extension authorized by I.C. § 19-2601(4) by scheduling that hearing on June 8, 2016. As that hearing was scheduled prior to the expiration of the 365-day period, that implicit invocation of the 30-day extension was proper. See *State v. Averill*, 116 Idaho 181 (Ct. App. 1989).

In *Averill*, the Court of Appeals inferred the invocation of a similar extension to the period of retained jurisdiction in a similar factual scenario. Toward the end of a period of retained jurisdiction, the district court in *Averill* received an evaluation of the defendant from the jurisdictional review committee which included the committee's recommendation regarding probation. *Id.* at 182. After the district court received that report, the defendant requested the district court allow a 60-day extension to the period of retained jurisdiction.⁴ *Id.* The Court of Appeals explained: "Although an order to this effect was not entered, the court did in fact allow extra time before deciding whether to relinquish jurisdiction." *Id.* The district court proceeded to review all the relevant materials it had received before ultimately relinquishing jurisdiction. *Id.* The Court of Appeals reviewed the merits of the defendant's challenge to that decision on appeal. *Id.*

⁴ Unlike the version of the statute at issue in *Taylor*, the version of I.C. § 19-2601(4) applicable in *Averill* authorized such extensions of the period of retained jurisdiction. See 1994 Idaho Sess. Laws Ch.33 (removing that provision of the statute in 1994).

Many of the same factors which the *Averill* Court noted as underlying the extension in that case are also present in Mr. Schmid's case. As defense counsel explained, "The reason I had the -- asked the Court to set this [June 8, 2016,] status conference is because I had noticed that Mr. Schmid's -- the end of his retained jurisdiction was quickly approaching, and I hadn't received the addendum to the PSI." (Tr., Vol.1, p.4, Ls.6-10.) Therefore, "we wanted to make sure he didn't fall through the cracks and that his case was given the attention regarding whether he should be placed on probation or whether the Court's jurisdiction should be relinquished." (Tr., Vol.1, p.4, Ls.10-14.) As such, defense counsel's request for the hearing to be set on June 8, 2016, specifically contemplated the district court would be invoking the 30-day extension, so as to give the district court and the parties time to receive and evaluate the APSI.

The APSI, like the report in *Averill*, contained the rider staff's report of Mr. Schmid's performance in the rider program as well as an update on his performance following the medical override, and so, contained relevant information to the district court's decision of whether or not to relinquish jurisdiction. (See PSI, pp.6-11.) However, the APSI was not prepared for mailing until May 31, 2016, just three days prior to the expiration of the 365-day period. (See PSI, p.6.) As a result, the APSI was not actually received by the district court until after the 365-day period had expired. (*Compare* R., p.14 (the register of actions noting the APSI was received on June 6, 2016), *with* PSI, p.6 (bearing the district court's file stamp of June 8, 2016).) Given those reasons, the fact that, prior to the expiration of the 365-day period, the review hearing had been set beyond the expiration of the 365-day period, the district court

obviously invoked the 30-day-extension provision prior to the expiration of the 365-day period so as to receive and evaluate relevant information even though no explicit order to that fact had been entered. That is enough to properly invoke such an extension. See *Averill*, 116 Idaho at 182.

Furthermore, the record reveals that, during that around the time the 365-day period would expire, the district court judge was also working to resolve an issue in regard to Mr. Schmid's acceptance into the Wood Court program. (See Tr., Vol.2, p.11, Ls.16-25.) Resolution of that issue was, according to the judge, of critical importance in terms of deciding whether probation was a viable option for Mr. Schmid: "I went to the top of the tree and shook it to get you the help you needed." (Tr., Vol.2, p.11, Ls.24-25.) As such, the information in regard to Mr. Schmid's potential acceptance into the Wood Court program was additional information the district court needed to receive and evaluate before it could make its decision of whether or not to relinquish jurisdiction. Mr. Schmid's was not formally accepted into the Wood Court program until June 29, 2016. (Tracking Logs, p.4.) Thus, that also demonstrates why the district court necessarily, though implicitly, invoked the 30-day-extension provision to make its decision following Mr. Schmid's period of retained jurisdiction.

As such, the State's argument – that the district court's most recent order placing Mr. Schmid on probation was made beyond the scope of its authority – is meritless. The record demonstrates that the district court necessarily, though implicitly, invoked the 30-day extension authorized by I.C. § 19-2601(4) to allow it to receive and evaluate necessary information and to hold a hearing on the matter, and that it did so prior to the expiration of the original 365-day period. Since the order for probation was entered

within that additional 30-day period (see R., p.224 (order on retained jurisdiction file-stamped July 1, 2016)), that order was within the scope of the district court's authority under I.C. §19-2601(4). Therefore, this Court should, as the Court of Appeals did in *Averill*, review the merits of Mr. Schmid's challenge to the district court's subsequent decision to revoke the ensuing period of probation.

C. The District Court Abused Its Discretion When It Revoked Mr. Schmid's Probation And Executed His Underlying Sentence

The State's responses in regard to the propriety of the district court's decision to revoke Mr. Schmid's probation and execute his underlying sentence are not remarkable. As such, no further reply is necessary in regard to those issues. Accordingly, Mr. Schmid simply refers the Court back to pages 5-7 of his Appellant's Brief.

CONCLUSION

Mr. Schmid respectfully requests that this Court vacate the order revoking probation and remand this case for an order returning him to probation.

DATED this 30th day of March, 2017.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of March, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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