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State v. Clyne Appellant's Brief Dckt. 44953

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44953
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-MD-2016-4995
v.)	
)	
HEATH THOMAS CLYNE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Heath Clyne contends the district court abused its discretion by not retaining jurisdiction when it imposed his sentence. Specifically, he asserts that the district court failed to appreciate the full scope of its discretion when it recognized Mr. Clyne's potential to be successful on probation if proper treatment were provided to help him avoid a relapse to drug use, but then refused to retain jurisdiction, which would have provided that sort of treatment, based on its mistaken belief that the rider program only serves to identify a person's issues. Because the district court refused to retain jurisdiction without an accurate understanding of what the rider program actually offers, it abused its discretion. Therefore, this Court should vacate that decision and remand this case for a new sentencing hearing.

Statement of the Facts & Course of Proceedings

Pursuant to a plea agreement, Mr. Clyne pled guilty to driving under the influence. (Tr., Vol.1, p.37, Ls.14-24.)¹ At the initial sentencing hearing, defense counsel noted that Mr. Clyne's issues in this case were mostly related to his mental health issues, which were exacerbated by his relapse to drug use. (Tr., Vol.1, p.65, Ls.23-25.) The district court acknowledged that, when Mr. Clyne was able to stay on his medications, he has done well in conforming his behavior to expectations. (Tr., Vol.1, p.69, L.25 - p.70, L.2.)

Specifically, Mr. Clyne's mental health issues included schizoaffective disorder (bipolar type), an "other specified personality disorder with borderline and antisocial features," and a rule-out diagnosis for post-traumatic stress disorder, along with alcohol use disorder, an amphetamine use disorder in remission, and a rule-out cannabis use disorder. (Presentence Investigation Report (*hereinafter*, PSI), p.36.) As a result of this new dual diagnosis, the psychological evaluation recommended long term treatment and behavior therapy. (PSI, p.37.)

In light of those issues, the district court decided to continue the sentencing hearing so Mr. Clyne could be screened for mental health court. (Tr., Vol.1, p.70, Ls.11-14.) However, the mental health court personnel ultimately decided not to screen Mr. Clyne because he had been involved in a physical altercation with another mental health court participant while in jail and because he had sued one of their probation officers. (Tr., Vol.2, p.6, L.24 - p.7, L.2; *see also* Tr., Vol.1, p.74, Ls.4-6 (the district court indicating it had discussed the matter with the mental health court judge and the decision to not screen Mr. Clyne would stand).) Despite that, defense

¹ The transcripts in this case are provided in two independently bound and paginated volumes. To avoid confusion, "Vol.1" will refer to the volume containing, among others, the entry of plea hearing held on July 19, 2016, and the continued sentencing hearing held on March 14, 2017. "Vol.2" will refer to the volume containing the continued sentencing hearings held on February 14, 2017, and March 7, 2017.

counsel pointed out that Mr. Clyne was still capable of rehabilitation. (Tr., Vol.1, p.76, L.10 - p.77, L.8.) The GAIN-I evaluation had, for example, recommended outpatient treatment. (PSI, p.46.) Mr. Clyne also had earned his GED and has employable skills. (PSI, pp.17, 26.) Accordingly, defense counsel recommended the district court retain jurisdiction, or alternatively, impose a sentence with a short fixed term, so as to make Mr. Clyne eligible for parole more quickly, so as to timely effectuate that rehabilitation process. (Tr., Vol.1, p.77, Ls.9-12.)

The district court again acknowledged Mr. Clyne's ability to be successful on probation, as "for some period of time while you were on parole, you were doing okay. You were working, apparently paying your bills." (Tr., Vol.1, p.79, L.22 - p.80, L.2.) However, it was concerned about the fact that Mr. Clyne kept relapsing back to alcohol and drug use: "And then you went to drinking again. And that's the issue with you, Mr. Clyne, is you get off the wagon, then you quit taking your meds, and then you get delusional, and then you get in trouble. That's kind of a recurring pattern. And I'm not sure how to break it." (Tr., Vol.1, p.80, Ls.3-8.) Despite its uncertainty as to how to break that cycle and make Mr. Clyne more able to succeed on probation, the district court refused to retain jurisdiction to allow Mr. Clyne to participate in a rider program because "we know what your issues are," and so "I don't believe that a rider is going to accomplish more for you." (Tr., Vol.1, p.80, Ls.22-24.) Instead, it imposed a unified sentence of ten years, with one and one-half years fixed. (Tr., Vol.1, p.81, L.23 - p.82, L.1.)

Mr. Clyne filed a notice of appeal timely from the resulting judgment of conviction. (R., pp.112, 117.)

ISSUE

Whether the district court abused its discretion when it refused to retain jurisdiction over Mr. Clyne's case.

ARGUMENT

The District Court Abused Its Discretion When It Refused To Retain Jurisdiction Over Mr. Clyne's Case

The decision to not retain jurisdiction is reviewed for an abuse of discretion. *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982). In order to properly exercise its discretion, the district court must recognize the issue as one of discretion, act within the outer boundaries of that discretion and consistent with applicable legal standards, and reach its decision in an exercise of reason. *See State v. Hedger*, 115 Idaho 598, 600 (1989). When the district court acts without appreciating the full scope of its discretion, it abuses of its discretion. *See, e.g., State v. Villavicencio*, 159 Idaho 430, 437-38 (Ct. App. 2015).

Here, the district court failed to appreciate the full scope of its discretion in retaining jurisdiction because it did not recognize the full scope of what the period of jurisdiction would entail. The district court refused to retain jurisdiction because “we know what your issues are.” (Tr., Vol.1, p.80, Ls.22-24.) That is an erroneously-narrow understanding of what the rider program offers. Rather, “[t]he primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant’s *rehabilitative potential and suitability for probation*.” *State v. Lutes*, 141 Idaho 911, 915 (Ct. App. 2005) (emphasis added). Accordingly, the rider program provides more than just an evaluation of the defendant’s issues; it provides “rehabilitative treatment and education with the goal of enabling the offender to become successful on probation.” *Idaho Dept. of Health and Welfare v. Doe*, 149 Idaho 59, 61 n.1 (Ct. App. 2010); *see* I.C. § 19-2601(4). Therefore, the rider program would have

provided Mr. Clyne with additional treatment and education designed to help him become more able to be successful on probation, such as helping him learn new or additional skills which he could use to prevent a similar relapse from occurring this time around.

Basically, the rider program would have addressed the very point the district court remained uncertain about in this case:

[F]or some period of time while you were on parole, you were doing okay. You were working, apparently paying your bills.

And then you went to drinking again. And that's the issue with you, Mr. Clyne, is you get off the wagon, then you quit taking your meds, and then you get delusional, and then you get in trouble. That's kind of a recurring pattern. *And I'm not sure how to break it.*

(Tr., Vol.1, p.79, L.24 - p.80, L.8 (emphasis added).) Thus, the district court's decision to forego a treatment option based on its misunderstanding of what that treatment option actually provided demonstrates that it acted without understanding the full scope of its discretion.

That abuse of discretion is particularly troubling given the district court's recognition that, with appropriate treatment, Mr. Clyne could likely be successful on probation. (*See, e.g.,* Tr., Vol.1, p.79, L.22 - p.80, L.2 (noting Mr. Clyne's success on parole prior to relapsing).) Essentially, as a result of its failure to appreciate the full scope of its discretion, the district court's sentencing decision fails to serve the goals of rehabilitation and protection of society. *See State v. Charboneau*, 124 Idaho 497, 500 (1993) (reiterating that these are two of the goals of sentencing and that protection of society is the primary of those goals); *State v. McCoy*, 94 Idaho 236, 240 (1971) (indicating that rehabilitation should be the first means the district court considers to achieve the goals of sentencing), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

Since the district court acted without appreciating the full scope of what its discretion entailed, of what options were available to it, it abused its discretion by refusing to retain jurisdiction over Mr. Clyne.

CONCLUSION

Mr. Clyne respectfully requests that this Court vacate his judgment of conviction and remand this case for a new sentencing hearing.

DATED this 24th day of October, 2017.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of October, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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RICHARD D. GREENWOOD
DISTRICT COURT JUDGE
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas