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State v. Molyneux Appellant's Brief Dckt. 45084

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 45084 & 45085
)	
v.)	ADA COUNTY NOS. CR-FE-2015-4486 &
)	CR-FE-2015-5766
)	
LANCE ALAN MOLYNEUX,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After admitting he violated his probation, again, Lance Molyneux asked the court to impose his sentences and *not* retain jurisdiction. He told the court he did not want probation again and would instead focus on his release to parole. However, when the district court revoked probation and executed Mr. Molyneux’s sentences, it retained jurisdiction, anyway.

On appeal, Mr. Molyneux challenges the district court’s decision to retain jurisdiction as an abuse of discretion.

Statement of the Facts and Course of Proceedings

In 2015, Mr. Molyneux pled guilty to charges in two separate cases,¹ one for possessing methamphetamine (R., pp.39-47), and the other, a burglary, arising from his attempts to pawn household items taken from his mother's home (R., p.219). He received concurrent, suspended sentences of five years, with two years fixed, and was placed on probation (R., pp.54, 224). Mr. Molyneux had a difficult time on probation; he was arrested and jailed multiple times for violating its terms and conditions. (R., pp.71, 79, 100-102, 107, 122, 189, 223, 260, 261, 268, 305.) The district court continued his probation, eventually adding the condition that he complete drug court. (R., pp.122, 284.) When Molyneux was discharged from drug court in March of 2017, however, the State sought revocation. (R., pp.146, 155, 323, 328.)

At his probation revocation hearing, Mr. Molyneux admitted violating his probation and he told the court he did *not* want probation reinstated. (Tr. p.5, L.5 – p.6, L.16.) Instead, he asked the court to impose his sentences, *without* retaining jurisdiction. (Tr., p.10, L.8 – p.11, L.4.) He told the court he would still take the same classes, but as a pathway to parole rather than probation. (Tr., p.10, L.8 – p.11, L.4.) He told the court he wanted to work his way to the work center to save money prior to his release, and that a rider does not offer that opportunity. (Tr., p.10, L.8 – p.11, L.4.)

The district court revoked probation and ordered the previously-suspended sentences executed; however, the court disregarded, or else overlooked, Mr. Molyneux's request for a

¹ The two cases were consolidated in the district court prior to revocation (R., pp.117, 281), and consolidated by this Court on appeal (R., p.2).

straight prison sentence, and ordered that jurisdiction be retained.² (Tr., p.12, Ls.24-25; R., pp.158, 331.)

Mr. Molyneux filed timely notices of appeal from the district court's orders revoking probation and retaining jurisdiction. (R., pp.161, 334.)

ISSUE

Did The District Court Abuse Its Discretion When, After Mr. Molyneux Informed The Court He Did Not Want Probation And Expressly Asked It Not To Retain Jurisdiction, The Court Retained Jurisdiction?

ARGUMENT

The District Court Abused Its Discretion When, After Mr. Molyneux Informed The Court He Did Not Want Probation And Expressly Asked The Court Not To Retain Jurisdiction, The Court Retained Jurisdiction

A. Introduction

Mr. Molyneux expressly informed the district court he did not want probation, and that he wanted to serve his prison sentence without retained jurisdiction. Without any explanation, or exercise of reason discernable from the record, the district court disregarded this information and decided to retain jurisdiction, anyway, representing an abuse of the court's sentencing discretion.

B. Standard Of Review

In determining whether the district court abused its discretion, this Court considers (1) whether the court understood the issue as discretionary; (2) whether the court acted within its

² Mr. Molyneux subsequently wrote to the district court asking that it amend the judgment to eliminate the Rider; he stated that he intended to "self-relinquish" once he reached the correctional facility, but that he would still take the same classes which are needed for parole. (R., pp.166, 339.) However, in accordance with the district court's order, the Department of Correction assessed Mr. Molyneux for its Rider program and has placed him in that programming. (R., pp.167, 340.)

discretionary scope and under applicable legal standards; and (3) whether the court exercised reason. *State v. Garner*, 161 Idaho 708, 710 (2017).

When the district court imposes a prison sentence, it has the discretion to retain jurisdiction. *See* I.C. § 19–2601(4). The primary purpose of retaining jurisdiction is to afford the trial court additional time for evaluation of the defendant’s suitability for probation. *State v. Jones*, 141 Idaho 673, 677 (Ct. App. 2005). This court has held that a sentencing court’s refusal to retain jurisdiction is not an abuse of discretion if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *Id.*

Mr. Molyneux contends that the corollary to this holding should also be true: when a defendant has expressly informed the district court he does *not* want probation and asks the court to *not* retain jurisdiction, and when there exist no discernable reasons for disregarding the request, the district court acts unreasonably, representing an abuse of discretion, when it chooses to retain jurisdiction, anyway.

As recognized by Idaho’s courts, the primary purpose of retaining jurisdiction is to afford the trial court additional time to evaluate a defendant’s rehabilitation potential and suitability for probation. *Jones*, 141 Idaho at 677. “Probation is the ultimate objective sought by a defendant who asks a court to retain jurisdiction.” *State v. Chapel*, 687 P.2d 583 (Idaho Ct. App. 1984). Thus, a sentencing recommendation for retained jurisdiction necessarily contemplates the possibility of probation. *Jones*, at 677.

This Court has also held that “[a] defendant has the right to decline probation when he or she deems its conditions too onerous and may, instead, serve the suspended portion of the sentence.” *State v. McCool*, 139 Idaho 804, 807, 87 P.3d 291, 294 (2004).

Here, and after a number of unsuccessful periods on probation, and after being subjected to a variety of conditions and terms, Mr. Molyneux has decided to serve his sentence instead. He is not attempting to avoid the consequences of his conviction, and he is not trying to evade the IDOC's programming that is necessary for him to successfully reenter the community. To the contrary, he wants to be responsible. As his counsel explained to the court at the revocation hearing:

[Mr. Molyneux] is asking the court to *reject the State's recommendation for a rider and [instead] impose sentence*. ... The programming is going to be substantively the same.

...

He wants to participate in the programming. He will have to do a program to get released by the parole commission. ... He also wants to see if he can work his way to the work center. Put him in a better position. The rider doesn't give him an opportunity to work and save up some money prior to his release. He has put significant thought and time into what he wants to do and his request going forward. And his request is to ask the Court to impose sentence at this time.

(Tr., p.10, L.8 – p.11, L.4.) (Emphasis added.)

The district court did not address Mr. Molyneux's request to *not* retain jurisdiction. (*See generally* Tr., p.11, L.14 – p.13, L.4.) The court highlighted Mr. Molyneux's missed opportunities and failures, and his apparent lack of effort on probation, and his seeming unworthiness of another chance at probation. (*See* Tr., p.11, L.14 – p.13, L.4.) While these comments provide insight to the court's decision to revoke probation, they do not suggest any reason for retaining jurisdiction in the face of Mr. Molyneux's explicit request not to. The court gave *no reason* for its decision to retain jurisdiction, and Mr. Molyneux can discern no after-the-fact rationale for it.

On the contrary, Mr. Molyneux presented valid reasons for *not* retaining jurisdiction: in addition to his express statement that he does not want to be considered for probation, he told the court of his plan to work his way to the work center, so that he could work and save up before his

release to parole³ – an opportunity not provided by the retained jurisdiction and rider program.
(Tr., p.10, L.14 – p.11, L.4.)

Given the reasonableness of Mr. Molyneux’s request for a prison sentence *without* retained jurisdiction, and the lack of any discernable rationale for denying it, the district court’s decision to retain jurisdiction represents a failure to exercise reason and constitutes an abuse of discretion. The district court erred in this regard and its decision should be reversed.

CONCLUSION

Based on the foregoing, Mr. Molyneux asks that this Court vacate the district court’s orders revoking probation in his two cases, and remand these cases to the district court with instructions that the orders be modified so that jurisdiction is not retained.

DATED this 3rd day of October, 2017.

_____/s/_____
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

³ Given his time served between arrests and arraignments, and Mr. Molyneux already has completed a significant portion of the fixed terms of his concurrent sentences.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd 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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INMATE #115866
CAPP
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

KAC/eas