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State v. Molyneux Respondent's Brief Dckt. 45084

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 45084 & 45085
Plaintiff-Respondent,)	
)	Ada County Case Nos.
v.)	CR-2015-4486 & 2015-5766
)	
LANCE ALAN MOLYNEUX,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Molyneux failed to establish that the district court abused its discretion by retaining jurisdiction instead of simply executing his sentence without giving Molineux the opportunity to participate in the rehabilitative programming afforded during a period of retained jurisdiction?

Molyneux Has Failed To Establish The District Court Abused Its Sentencing Discretion

After Molyneux pled guilty to possession of methamphetamine in Docket No. 45084 and to burglary in Docket No. 45085, the district court imposed concurrent, unified sentences of seven years, with two years fixed, suspended both sentences, and placed him on probation for seven years. (R., pp.33-35, 54-59, 223-28.) Molyneux subsequently admitted to violating his

probation and the district court revoked his probation, executed his underlying sentence and, over Molineux's objection, retained jurisdiction. (R., pp.156, 158-60, 326, 331-33; see also Tr., p10, L.8 – p.11, L.9 (Molyneux's request that district court impose sentence rather than place him on a "rider").) Molyneux filed a timely notice of appeal in each case. (R., pp.161-63, 334-36.)

Molyneux asserts the district court abused its discretion when, upon revoking his probation, it retained jurisdiction despite the fact that Molyneux had "expressly informed the district court he did not want probation, and that he wanted to serve his prison sentence without retained jurisdiction." (Appellant's brief, pp.3-6.) Molyneux has failed to establish an abuse of discretion.

When the district court imposes a prison sentence, it has the discretion to retain jurisdiction for up to the first 365 days of that sentence. See I.C. § 19-2601(4). The decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990).

In this case, the district court rejected Molyneux's request "to reject the State's recommendation for a rider" (Tr., p.10, Ls.8-10), concluding, at least implicitly, that Molineux would benefit from the rehabilitative programming and structure afforded during a period of retained jurisdiction. The court was apparently concerned that, without such structured programming, Molyneux would be setting himself up for failure, reasoning:

If your level of commitment is I am just going to get out and start using again as soon as I can, then guess what, you're going to be arrested over and over again and spend more and more of your life in prison because that's real life. And what's going to happen is the judge is going to look at what was done before and say, well, that must not have been enough. And all you're going to do is run the risk of spending more and more time away.

(Tr., p.11, L.25 – p.12, L.9.) While Molyneux’s purported desire to work while incarcerated is admirable (see Tr., p.10, L.19 – p.11, L.9), the district court was not required to elevate Molyneux’s views of what would be in his “best interest for [his] future” above the court’s own concern that, without the programming required during a period of retained jurisdiction, Molyneux’s rehabilitative prospects would be dim, particularly given Molyneux’s demonstrated history of failures to conform his behavior to the law despite multiple rehabilitative opportunities and legal sanctions (see PSI, pp.3-7, 12-18).

After the district court declined his request to execute his sentence without retaining jurisdiction, Molyneux sent the court letter in which Molyneux stated he planned to self-relinquish when he arrived at the rider facility. It appears, however, that Molyneux did not self-relinquish and, as of the filing of this brief, is still in the CAPP program. (R., pp.166, 339; see https://www.idoc.idaho.gov/content/prisons/offender_search/detail/115866.) This Court has 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). If, after the period of retained jurisdiction, the district court elects to place Molyneux on probation, Molyneux may certainly decline that opportunity and serve the remainder of his sentence if he so desires.

The state submits Molyneux has failed to establish an abuse of discretion, for the foregoing reasons and for the reasons more fully set forth in the attached excerpt of the disposition hearing transcript, which the state adopts as its argument on appeal. (Tr., p.11, L.14 – p.13, L.4 (Appendix A).)

Conclusion

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

DATED this 2nd day of November, 2017.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of November, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

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

APPENDIX A

9	11
<p>1 privileges crime, failing to report for all of his 2 UAs, terminating his employment without prior 3 permission, failing to complete a Gain assessment, 4 and using methamphetamine on multiple occasions. 5 Based on that probation violation, the 6 Court did revoke Mr. Molyneux's probation in May 7 of 2016, but did reinstate him with the condition 8 that he complete the Ada County drug court 9 program. 10 Mr. Molyneux began that program on June 11 7th of 2016. And I will note that over the next 12 six months, again Mr. Molyneux did very little to 13 engage in treatment. Instead, he accumulated 14 violations of drug court terms, including missing 15 UAs, missing treatment classes, and failing to 16 appear for court. 17 Most concerning, Mr. Molyneux abscond 18 from drug court on three occasions in July of 19 2016, in August of 2016 and finally in December 20 2016 when he was brought back before the Court in 21 custody. He did admit to continuing to use 22 substances. Based on that history, Mr. Molyneux 23 was discharged from drug court. 24 It is the State's position, Your Honor, 25 again that since June of 2015 Mr. Molyneux has</p>	<p>1 to his release. He has put significant thought 2 and time into what he wants to do and his request 3 going forward. And his request is to ask the 4 Court to impose sentence at this time. 5 THE COURT: Mr. Molyneux, your comments. 6 THE DEFENDANT: Your Honor, I don't really 7 know much else to say really. I think imposing my 8 time would be my best interest for my future. 9 That's all I really have, Your Honor. 10 THE COURT: Is there a legal cause why we 11 should not proceed? 12 MR. ROSCHECK: No, Your Honor. 13 MR. MARX: No, Your Honor. 14 THE COURT: Well, Mr. Molyneux, I don't see 15 that you tried very hard. It seems to me 16 primarily -- you had a big opportunity to 17 participate in a gold standard program. That if 18 you tried at it you would have had a chance to put 19 your life in order. You would have had a job. 20 You would have had money to do what you wanted and 21 you would have been moving forward to claim a 22 life. 23 I don't see that happening. It raises 24 questions in my mind about what your level of 25 commitment is. If your level of commitment is I</p>
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<p>1 done very little with the time he has been granted 2 in the community. If he is amenable to treatment, 3 I think the retained jurisdiction program will 4 provide him with at least a forced period of 5 sobriety and a secure environment in which to 6 attend classes. Thank you, Your Honor. 7 THE COURT: Counsel. 8 MR. MARX: Your Honor, Lance is asking the 9 Court to reject the State's recommendation for a 10 rider and rather impose sentence. He and I have 11 had several discussions about his request and how 12 he wants to proceed on his case. His opinion is 13 that imposition would set him up more favorably 14 for where he is at. The programming is going to 15 be substantively the same. He again falls in that 16 category -- 17 THE COURT: Assuming he has attended 18 programming. 19 MR. MARX: He wants to participate in the 20 programming. He will have to do a program to get 21 released by the parole commission. It is not 22 going to be an option. He also wants to see if he 23 can work his way to the work center. Put him in a 24 better position. The rider doesn't give him an 25 opportunity to work and save up some money prior</p>	<p>1 am just going to get out and start using again as 2 soon as I can, then guess what, you're going to be 3 arrested over and over again and spend more and 4 more of your life in prison because that's real 5 life. And what's going to happen is the judge is 6 going to look at what was done before and say, 7 well, that must not have been enough. And all 8 you're going to do is run a risk of spending more 9 and more time away. 10 That's not much of a life. And I think 11 there comes a point in every person's life where 12 they have to ask themselves what is it they want. 13 I don't know if you've reached that point. It 14 doesn't seem so. 15 But you had multiple chances to 16 participate in programming and didn't. You failed 17 to show up for UA. Even if UA test is going to 18 test positive in drug court, that's not the 19 conduct that carries a heavy sanction. In drug 20 court, what carries a sanction is people don't 21 show up. The basics of drug court is show up. 22 You try and you're honest. Unfortunately, I don't 23 see that that happened in your situation. 24 I am going to impose sentence and 25 retain jurisdiction. I think you need to be</p>

Nicole Julson, Freelance Court Reporter, Ada County, Idaho

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1 looking at building a life for yourself that
2 doesn't consist of continuing to do the same
3 thing you have always done. You do have 42 days
4 in which to appeal.

5 (Proceedings concluded 3:30 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 STATE OF IDAHO)

4) ss.

5 COUNTY OF ADA)

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7 I, NICOLE JULSON, Certified Court
Reporter of the County of Ada, hereby certify:

8

9 That I attended the hearing in the
above-entitled matter and reported in stenograph
the proceedings had thereat; That I thereafter,
from the shorthand record made by me at said
10 proceedings; that the foregoing 13 pages
constitutes said transcript and that said
11 transcript contains a full, true, complete and
correct transcript of said proceedings.

12

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand this 17th day of July, 2017.

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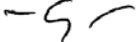
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CSR No. 699

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