

12-19-2017

## State v. Peters Respondent's Brief Dckt. 45294

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45294
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2015-13950
	)	
DWIGHT G. PETERS,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Peters failed to establish the district court abused its discretion, either by relinquishing jurisdiction or by denying his Rule 35 motion for reduction of sentence?

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

Peters pled guilty to aggravated DUI, and the district court imposed a unified sentence of 15 years, with four years fixed, and retained jurisdiction. (R., pp.71-75.) After the period of retained jurisdiction the district court relinquished jurisdiction. (R., pp.99-101.) Peters filed a notice of appeal timely from the order relinquishing jurisdiction. (R., pp.102-05.) Peters also

filed a timely Rule 35 motion for reduction of his sentence, which the district court denied. (Aug., pp.1-13.)

Peters asserts the district court abused its discretion by relinquishing jurisdiction in light of his performance on his rider. (Appellant's brief, pp.6-7.) Peters has failed to establish an abuse of discretion.

Whether to place a defendant on probation or relinquish jurisdiction are both matters within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. I.C. § 19-2601(4); 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 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).

Peters' performance during the retained jurisdiction program was good, and he did not receive any disciplinary sanctions or have any incidents while on his rider. (PSI, p.809.) However, at the time of Peters' first rider review hearing, the state alleged that Peters had forged letters of support that were submitted in the pre-sentence packet. (2/27/17 Tr., p.41, L.24 – p.42, L.7.) In light of that information the district court set the matter over for a status conference. (2/27/17 Tr., p.44, L.17 – p.45, L.14.) At the status conference, Peters' counsel advised the court that Peters would be pleading guilty to a misdemeanor charge relating to the forgery allegations, and the district court extended his retained jurisdiction by 30 days. (6/13/17 Tr., p.46, L.11 – p.47, L.13; see also 7/10/17 Tr., p.48, L.25 – p.49, L.12.) At Peters' second rider review hearing, the state addressed the seriousness of the offense, the forged letters, the "serious" injury Peters

caused to his victims, and the victims' expressions that they were afraid of Peters and feared retribution. (7/10/17 Tr., p.49, L.12 – p.52, L.14 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for relinquishing jurisdiction and executing Peters' sentence. (7/10/17 Tr., p.59, L.19 – p.62, L.5 (Appendix B).) The state submits that Peters has failed to establish that the district court abused its discretion by relinquishing jurisdiction, for reasons more fully set forth in the attached excerpts of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Peters next asserts the district court abused its discretion by denying his Rule 35 motion for reduction of his sentence in light of the letters he submitted in support of the motion. (Appellant's brief, p.9-12.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this Court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Peters must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Peters has failed to satisfy his burden.

In support of his Rule 35 motion, Peters submitted letters of support from friends and his pastor, as well as a letter he wrote expressing his remorse and detailing his success while participating in the rider program. (Aug., pp.1-10.) None of this was "new" information that showed Peters was entitled to a reduction of sentence. The district court was aware, at the time sentencing, that Peters was remorseful and, at least apparently, had the support of friends. (6/20/16 Tr., p.29, L.20 – p.30, L.3.; p.32, Ls.13-15.) The district court was also aware at the time it relinquished jurisdiction that Peters had done well on his rider program. (7/10/17 Tr.,

p.56, Ls.13-20.) That Peters wishes the district court would have given more mitigating weight to the information he submitted in support of his Rule 35 motion does not show the district court abused its discretion. The court specifically considered the information Peters supplied and determined, in its discretion, that none of the information demonstrated Peters' sentence was excessive. (See Aug., pp.11-12.) Having failed to make such a showing, Peters has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm the district court's orders relinquishing jurisdiction and denying Peters' Rule 35 motion for reduction of sentence.

DATED this 19th day of December, 2017.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of December, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY  
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  
LORI A. FLEMING  
Deputy Attorney General

# Appendix A

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1 the record, my understanding is that the defendant in  
2 his new case, the new forgery case, the state agreed to  
3 reduce that charge to a misdemeanor, the defendant  
4 admitted and pled guilty to that.

5 THE COURT: What was the charge he pled guilty  
6 to?

7 MR. LOSCHI: It was a disturbing the peace.

8 MR. HAWS: There's not much of a reduction for  
9 that type of a --

10 THE COURT: It's a misdemeanor submitting forged  
11 documents.

12 MR. HAWS: Correct. Judge, I can tell you  
13 additionally -- and if your honor is more interested in  
14 hearing directly from them -- I can tell you and I was  
15 asked to pass on to you that Ms. Mena and Ms. Graham -- I  
16 know Ms. Graham addressed the court somewhat at the  
17 sentencing hearing -- they feel entire different, 180  
18 degrees off of what they had said at the time of  
19 sentencing. They were supportive of the defendant at  
20 sentencing, they do not feel that way today. In fact,  
21 they feel fear of the defendant. They feel that there  
22 would be retribution. I think --

23 THE COURT: Can you also when you get -- I don't  
24 mean to interrupt the order in which you want to address  
25 things -- because I never saw the evidence, right, so can

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1 you more specifically layout exactly what was forged at  
2 least to the state's consideration.

3 MR. HAWS: Well, yes and no. I was under the  
4 understanding you had, because it was part of the  
5 original pre-sentence report itself. Specifically, there  
6 were -- so there were a number of letters of support that  
7 the defendant had presented to the court, and I don't  
8 have those right now, but one of the letters was from a  
9 lady who lives back in Minnesota or Michigan area, I  
10 think it was Michigan, and the defendant presented a  
11 letter that gave a positive, glowing report of him  
12 personally. She knew nothing about that. When we talked  
13 to her, she flatly denied that and did not feel -- in  
14 fact, practically denied knowing the defendant, that they  
15 had some kind of an online friendship of sorts but had  
16 never met him and had not written a letter.

17 Another letter that was submitted, Judge,  
18 we know the date was changed. In other words, we  
19 compared the letter that was in the file that was found  
20 in the defendant's home, it was for something that he  
21 had presented it for, I think, four or five years  
22 earlier.

23 There was another letter that was written  
24 by some other people who denied writing the letters but  
25 kind of said, well, I'll adopt it for the purpose of --

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1 and so there was a wide range and it was concerning  
2 enough that it was important to deal with those and  
3 bring those to the court's attention.

4 And I recognize that the court was bound,  
5 when the defendant was denying having done that, to say  
6 we have to figure this out, and I appreciate your Honor  
7 doing that. I do recognize at the time of sentencing we  
8 recommended the imposition of the sentence.

9 I don't know if this is the case, but it  
10 struck me that the court did place some value in those  
11 letters of support the defendant had received. And I  
12 know that your Honor retained jurisdiction and told the  
13 defendant that even if he were to do well on the Rider  
14 that you're likely to order additional jail just as  
15 retribution.

16 THE COURT: I think this was what I sometimes  
17 refer to as an "evaluative" Rider.

18 MR. HAWS: Correct. I don't deny the defendant  
19 did a good Rider, we made that clear at the prior  
20 hearing. That being said, Judge, we do think this is --  
21 again, consistent from the outset -- we think this is an  
22 imposition case. The defendant did seriously hurt people  
23 here.

24 Yes, for some time the defendant supported  
25 financially the victim, Ms. Graham, at least helped with

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1 the medical bills, etcetera, and I think that frankly  
2 it's my understanding that her letter was one that she  
3 initially said, well, I'll adopt it, I didn't write  
4 that. But regardless, Judge, she and her daughter feel  
5 completely different now in reference to the defendant  
6 and want to see the sentence imposed. Again, they feel  
7 more comfortable me relaying that to the court than  
8 making that statement. They are here today, I suppose  
9 if it's necessary for your Honor to hear that, they are  
10 here. But, again, they felt more comfortable with me  
11 relaying that.

12 Again, it's not based on the defendant's  
13 Rider performance but based on the underlying nature of  
14 the crime itself. Thank you.

15 MR. LOSCHI: Judge, I'm sorry, I wanted to  
16 respond to something you said. I wanted to look  
17 something up to make sure I wasn't misrepresenting  
18 something.

19 So, Judge, my understanding in the new  
20 case, from reading the preliminary hearing transcript  
21 and the reports, are that people agreed they authored  
22 letters but didn't know to what purpose the letter would  
23 be put. Pastor Trent wrote two letters that Dwight met  
24 when he was in prison on his earlier conviction, who  
25 wrote two letters for him. One was a general -- one was

## Appendix B

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1 remain there, and that wouldn't be a great place for  
2 him, but that's what he's going to do.

3 He was in the middle of a divorce when he  
4 got sentenced, so he's not sure exactly the outcome of  
5 various things that he's got going on financially.  
6 He'll get work through Labor Ready and get back on his  
7 feet.

8 I think he can be successful on probation.  
9 I think he will be successful on probation. It's a  
10 curious situation because I don't know that these  
11 reference letters made a difference one way or the other  
12 to what the court did, but then obviously the court is  
13 concerned if someone is trying to commit a fraud upon  
14 the court, and I don't think that that was really  
15 Dwight's intent at all.

16 Like I said, the nearest thing I can sort  
17 of liken it to here is sort of a crossroads, does the  
18 court feel like I'm going to impose now, he's got all  
19 this front-end treatment and he's going to sit probably  
20 for three more years before he's able to parole out, or  
21 let's go ahead and place him on probation.

22 And Mr. Haws made reference to it,  
23 obviously you can punish him for what he's done by  
24 placing him on probation but making him do additional  
25 jail time as punishment for that, and I would ask you to

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1 consider that as the appropriate outcome here.

2 I would argue that if the court just feels  
3 like it's an imposition status, that the court consider  
4 shaving a considerable amount of fixed time off there.  
5 I don't think that is a reward to Dwight, but I think  
6 that the court had more envisioned him doing four-years  
7 fixed for coming back with drinking and repeated crimes  
8 and things of that nature. At this point having done  
9 all this treatment, again, he will just sit for three  
10 years out there.

11 They gave him a limit amount of treatment  
12 on the Rider, so I don't think he is going to score very  
13 high LSI-wise. He's been appropriate with me and I  
14 think he's got the keys to be successful, and he just  
15 needs to not drink, and he knows that.

16 I would ask you to consider placing him on  
17 probation with some additional penalty time if you think  
18 that's appropriate, Judge.

19 THE COURT: Thank you.

20 Mr. Peters, do you wish to address the  
21 court?

22 THE DEFENDANT: Yes, sir.

23 Thank you, your Honor, for your  
24 opportunity you gave me in going on a Rider, not only  
25 for the substance abuse program but also for the grief

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1 and loss, freedom through recovery, the mindfulness and  
2 emotional regulation programs that were offered there.  
3 These programs are not possible without the staff there,  
4 and I'd also like to thank the NICI staff, particularly  
5 Clinician Tackett, Corporal Dill, CO Chillers and the  
6 numerous chapel volunteers who gave of their time  
7 selflessly and all their energy and encouraged me and  
8 challenging my thoughts, beliefs and my commitment to  
9 change, as well as relationship with my Lord Jesus  
10 Christ.

11 I'm confident I now have the tools to  
12 cope, not only to survive but also to thrive, to be  
13 there for my loved ones and also my daughter, to give  
14 back to the community and to maintain my sobriety. I  
15 have no place for alcohol in my life any longer in any  
16 way, shape or form. I need to do the next right thing.

17 Thank you, your Honor, for your time.

18 THE COURT: Thank you.

19 All right. I've reviewed the materials,  
20 I've re-reviewed the PSI materials, I've considered the  
21 APSI, the information provided by the state, all the  
22 aggravation and mitigation.

23 This was a case that was a very close call  
24 on a Rider. The plea agreement, in fact, was for an  
25 imposed prison sentence, and I understand why that was

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1 the recommendation of the state. This was a very  
2 serious DUI, somebody was seriously hurt. It was not  
3 only the defendant yet again drinking and doing  
4 something irresponsible and driving, but doing so in a  
5 very dangerous way by I think the term was trying to  
6 show the "insane" mode of his Tesla, which is like zero  
7 to 60 in nothing flat kind of thing, and as a result  
8 somebody almost died.

9 The defendant has a prior felony for a sex  
10 offense for enticing a child over the internet. Part of  
11 the reason the court considered the retained  
12 jurisdiction, which was primarily evaluative, was to see  
13 if the person that was portrayed in these letters was  
14 who Mr. Peters was and whether he truly was committed to  
15 a life of sobriety and something different.

16 The reality, as evidenced by his criminal  
17 record, is that Mr. Peters has lived a life that has  
18 been in his mind -- he's lived a life that is  
19 effectively writing the rules the way he wants to write  
20 the rules. He can do what he wants to do, whether that  
21 is trying to engage minors for sexual conduct,  
22 notwithstanding societal rules; whether that is drinking  
23 and driving, notwithstanding societal rules; and in this  
24 case submitting documents that were misleading to the  
25 court in an effort to get a lighter sentence.

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1 I don't think it's akin, as Mr. Loschi  
2 suggests, to some other prior crime that occurred that  
3 has come to light after somebody has been sentenced.  
4 This was effectively a crime that was committed during  
5 the sentencing process itself in order to receive a  
6 lighter sentence. I think that is significantly  
7 different. In fact, I think it's worlds apart  
8 different.

9 I think it shows an absolute contempt for  
10 the rules of society, for this court and for the legal  
11 process that we have and the rule of law. We depend in  
12 large measure on the honesty of people submitting  
13 information to the court, that that is sacrosanct. We  
14 swear an oath for it when we testify, and we expect that  
15 when people submit letters in support or a victim's  
16 letter in opposition to or against somebody, effectively  
17 if you will, that they are being honest. When someone  
18 games the system to submit forged or false letters, it's  
19 one thing to submit one that was prepared for some other  
20 purpose earlier if that is at least conveyed to the  
21 court, but when you hide that from the court, that is  
22 the same as lying to the court.

23 I think that all that combined -- I was  
24 frankly on the edge about whether or not to grant even a  
25 Rider and I did so for evaluative purposes -- in light

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1 of this information, I am going to relinquish  
2 jurisdiction and the underlying sentence of 15 years,  
3 with four fixed and 11 indeterminate will be imposed.  
4 The defendant is committed to the Department of  
5 Correction for the imposition of that sentence.

6 You have the right to appeal. If you  
7 cannot afford an attorney, you can request to have one  
8 appointed at public expense. Any appeal must be filed  
9 within 42 days the date of this order or the entry of  
10 written order revoking jurisdiction record or  
11 relinquishing jurisdiction.

12 MR. LOSCHI: Judge, I think there's a no-contact  
13 order in the case. Can he write or maybe we can go  
14 through the prosecutor to find out where his things are.

15 THE COURT: Can he not do that through counsel?

16 MR. LOSCHI: That's fine.

17 THE COURT: Work through counsel. If that  
18 doesn't get the situation resolved you can come back to  
19 me.

20 MR. HAWS: Can I clarify the no-contact order.  
21 In the state's view that should remain through the  
22 entirety of the sentence, please.

23 THE COURT: I think that's what it was written  
24 for. I'm going to keep the no-contact order in place.  
25 You can work through counsel, and if it doesn't resolve

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1 the issue, then bring it back to me and we'll talk about  
2 it.

3 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

1 STATE OF IDAHO )  
2 COUNTY OF ADA )

3  
4  
5 I, CHRISTIE VALCICH, Certified Court  
6 Reporter of the County of Ada, State of Idaho, hereby  
7 certify:

8 That I am the reporter who transcribed the  
9 proceedings had in the above-entitled action in machine  
10 shorthand and thereafter the same was reduced into  
11 typewriting under my direct supervision; and that the  
12 foregoing transcript contains a full, true, and accurate  
13 record of the proceedings had in the above and foregoing  
14 cause, which was heard at Boise, Idaho.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand this 13th day of September, 2017.

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CHRISTIE VALCICH, CSR-RPR  
Ada County Courthouse  
200 West Front Street  
Boise, Idaho