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### State v. Beare Appellant's Brief Dckt. 45268

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45268
	)	
v.	)	SHOSHONE COUNTY NO. CR 2014-15
	)	
SHAWN BEARE,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Mr. Beare appeals from the district court's order relinquishing jurisdiction, requiring that he serve out his prison sentence of six years, with three years fixed, for possession of methamphetamine. Mr. Beare claims the district court abused its discretion when it decided to relinquish jurisdiction instead of placing him on probation.

Statement of the Facts and Course of Proceedings

In 2014, Mr. Beare pled guilty to possession of a controlled substance after police found methamphetamine residue on a scale that he had been carrying. (R., pp.12, 15, 27.) The district

court sentenced him to six years, with three years fixed, and retained jurisdiction. (R., p.94.) In April of 2014, after Mr. Beare completed a “rider,” the district court suspended his sentence, and placed him on two years’ probation. (R., pp.102, 105.)

Near the very end of that two-year probation term, Mr. Beare violated probation by driving with a suspended license, and by changing residence without notifying his probation officer. (R., pp.112, 138.) During his time on probation, Mr. Beare had no new drug-related offenses, and had not ever tested positive for drug use. (R., pp.162-63.) At his probation violation disposition hearing, in January of 2017, the district court revoked Mr. Beare’s probation and executed his previously-suspended sentences; but the court retained jurisdiction so that Mr. Beare could participate in a second rider. (R., pp.138, 140.)

Mr. Beare arrived at North Idaho Correctional Institution (“NICI”) in early March of 2017, and he began his Pre-release class right away. (APSI, p.1, 2.)<sup>1</sup> However, the main program class – the Thinking for a Change – did not start until several weeks later. (APSI, p.1.)

On May 28, barely three months into his rider, Mr. Beare found himself in the facility’s dayroom, when two inmates got into a fight. (ASPI, p.5.) Out of concern that the men would get in trouble if they were caught, Mr. Beare stood by the door, to prevent the staff from seeing the commotion, and told the others in the room to sit down and be quiet. (APSI, pp.3-5, 9.) Mr. Beare received a formal disciplinary sanction for his conduct and was immediately removed from the rider program. (APSI, pp.3.)

The deputy warden at NICI sent the district court an amended presentence report recommending that jurisdiction be relinquished. (APSI, p.1.) Following a jurisdictional review hearing, the district court ordered jurisdiction be relinquished and that Mr. Beare serve out his

sentence in prison. (R., p.139.) Mr. Beare filed a Notice of Appeal that is timely from that order. (R., p.155.)

### ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction?

### ARGUMENT

#### In Light Of The Progress Mr. Beare Was Making On His Rider, The District Court Abused Its Discretion When It Relinquished Jurisdiction

This Court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). A trial court's decision to relinquish jurisdiction, rather than place the defendant on probation, 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 pursuant to I.C. § 19-2521. *State v. Chapel*, 107 Idaho 193, 194 (Ct. App. 1984).

Mr. Beare was almost forty-two at the time of his review hearing. (R., p.165.) His performance during his rider, while imperfect, did not warrant relinquishment. And, given that he had done well while on his previous probation, especially by remaining drug free for two years, Mr. Beare's rider performance, while short lived, supported his request for another chance on probation.

During his rider, Mr. Beare received praise from the NICI staff for his positive attitude and participation. (APSI, pp.9-11.) Beginning the day he arrived, Mr. Beare volunteered to help

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<sup>1</sup>Citations to the Amended Presentence Investigation Report and will use the designation "APSI."

staff with extra housekeeping chores, such as laundry, cleaning, re-filling supplies, and lending a hand with a project. (APSI, pp.9-12; C-Notes 3/2/17, 3/12/17, 5/25/17, 5/26/17.)

Mr. Beare had also made strides in his classes. He completed the first three “pre-treatment” sessions of his Pre-release class, and earned compliments from the instructor for being helpful to others, participating, and completing classwork on time. (APSI, p.11.) He also earned his food handler’s certification, so he could work in service jobs on the compound. (APSI, p.11.) While waiting for his Thinking for a Change to begin, Mr. Beare busied himself reading books, and he took part in a bible study correspondence course. (R., p.164.) He enrolled himself in mental health workgroups also, learning about himself and about others who share his struggle. (R., p.164.)

Although he had limited time in the Thinking for a Change class, Mr. Beare spent that time well: he came to class on time and prepared, and he embraced the feedback offered by the group. (ASPI, p.10.) He completed the first three sessions of that class without incident, and to the satisfaction of his course instructor. (APSI, p.10.)

Mr. Beare’s rider performance was not perfect. He received a number of verbal and written warnings for minor violations, including lying down on his bed during program hours, sharing commissary, not following staff directives, and talking with inmates from other units. (APSI, p.3.) He also received one formal disciplinary violation – the one that ended his rider – for trying to stop the commotion when a fight broke out. (APSI, p.4.) He was not involved in the altercation, but had reacted out of concern for the men who were going to get themselves in trouble. (APSI, p.3.) While noteworthy, these violations were neither severe nor criminal in nature, and did not warrant relinquishing jurisdiction. Instead of basing its decision on these violations, the district court should have given greater weight to the positive aspects of

Mr. Beare's rider performance: he had been diligent in his coursework, positive and helpful with his classmates, and useful to staff on the tier. (APSI, p.9.)

In light of Mr. Beare's progress during his limited rider, and notwithstanding his minor violations, the district court abused its discretion when it decided to relinquish jurisdiction and refused to consider him for probation.

CONCLUSION

Mr. Beare respectfully requests that this Court vacate the order relinquishing jurisdiction, and remand his case to the district court with instructions to place him on probation.

DATED this 20<sup>th</sup> day of February, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20<sup>th</sup> day of February, 2018, 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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ISCI  
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SCOTT WAYMAN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

KAC/eas