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

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45268
Plaintiff-Respondent,	)	
	)	Shoshone County Case No.
v.	)	CR-2014-15
	)	
SHAWN BEARE,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Beare failed to establish that the district court abused its discretion by relinquishing jurisdiction and executing the unified sentence of six years, with three years fixed, imposed upon his guilty plea to possession of methamphetamine?

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

Beare pled guilty to possession of methamphetamine and the district court imposed a unified sentence of six years, with three years fixed, and retained jurisdiction. (R., pp.27-28, 93-98.) Following the period of retained jurisdiction, in April 2015, the district court suspended the balance of Beare's sentence and placed him on probation for two years. (R., pp.102-11.) In

September 2016, Beare's probation officer filed a report of probation violation alleging that Beare violated his probation by committing new crimes, changing residences without permission, and failing to pay the cost of supervision. (R., pp.112-14.) Following an evidentiary hearing, the district court found Beare in violation of his probation and it revoked Beare's probation and retained jurisdiction a second time. (R., pp.135-42.) After a period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.149-54.) Beare filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.155-58.)

Beare asserts the district court abused its discretion by relinquishing jurisdiction in light of his progress on his rider. (Appellant's brief, pp.3-5.) Beare has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant 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. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013) (citing 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. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013); Hansen, 154 Idaho at 889, 303 P.3d at 248 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)). "While a recommendation from corrections officials who supervised the defendant [during the period of retained jurisdiction] may influence a court's decision, it is purely advisory and is in no way binding upon the court." State v. Hurst, 151 Idaho 430, 438, 258 P.3d 950, 958

(Ct. App. 2011) (citing State v. Merwin, 131 Idaho 642, 648, 962 P.2d 1026, 1032 (1998); State v. Landreth, 118 Idaho 613, 615, 798 P.2d 458, 460 (Ct. App. 1990)). Likewise, an offender’s “[g]ood performance while on retained jurisdiction, though commendable, does not alone establish an abuse of discretion in the district judge's decision not to grant probation.” Hurst, 151 Idaho at 438, 258 P.3d at 958 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

Beare has failed to show that he is an appropriate candidate for community supervision, particularly in light of his poor performance on his retained jurisdiction program and his extensive criminal history. Beare has a lengthy criminal record that includes 23 misdemeanor convictions and three felony convictions. (PSI, pp.4-16.) He has served prison time, has had the benefit of two periods of retained jurisdiction in this case alone, and has been afforded multiple opportunities on probation. (PSI, pp.4-16.) While serving a five-year prison sentence for burglary and possession of a controlled substance, Beare spent 18 months in administrative segregation for possession of a weapon. (PSI, pp.6, 16.) Following his release from prison there was not a single year in which Bear was not charged with and/or convicted of a new criminal offense, and he was on misdemeanor probation when he committed the controlled substance charge to which he pled guilty in this case. (PSI, pp.6-16.) Although Beare claims otherwise, it is clear that neither programming nor probation has deterred his criminal thinking.

On appeal, Beare claims that he made progress while in the retained jurisdiction program. (Appellant’s brief, pp.3-5.) To the contrary, rider staff reported that Beare “performed poorly during his time at NICI” and opined he would not “be a good candidate for probation at this time.” (6/12/17 APSI, p.6.) While on his rider, Beare received a Class B DOR after he prevented staff from seeing an altercation between two other offenders, and also did not allow

others in the room to leave. (6/12/17 APSI, pp.6, 9.) The other offenders stated that Beare stood at the door and made comments like, “Sit down, stay put” and “You seen nothing here, nobody say anything.” (6/12/17 APSI, pp.6, 9.) Beare also received one verbal warning for unauthorized communication with other offenders from different units and nine written warnings for, *inter alia*, lying down during program hours, sharing commissary, failing to follow staff directives, lying down during deep clean, being out of area, and having unauthorized communication with offenders from other units. (6/12/17 APSI, p.3.) Staff reported that Beare attended class and came prepared, but struggled to demonstrate through his actions that he was internalizing what he was learning. (6/12/17 APSI, p.4.) Staff also noted that Beare seemed to “care[] more about looking like a good criminal to his peers than he does doing the right things and working his program” and stated, “He appears to be a smart individual who knows the difference between right and wrong. However, he continues to make a conscious decision to not follow the rules.” (6/12/17 APSI, pp.4-5.)

The district court considered all of the relevant information and appropriately relinquished jurisdiction. Beare has not shown that he was a viable candidate for community supervision, particularly in light of his poor performance on his rider, his failure to rehabilitate despite treatment opportunities and prior legal sanctions, and his disregard for law, the terms of community supervision, and institutional rules. Given any reasonable view of the facts, Beare has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

Conclusion

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

DATED this 20th day of March, 2018.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of March, 2018, 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](mailto:briefs@sapd.state.id.us).

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