

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

2-6-2018

### State v. Evans Appellant's Brief Dckt. 45366

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Evans Appellant's Brief Dckt. 45366" (2018). *Not Reported*. 4454.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/4454](https://digitalcommons.law.uidaho.edu/not_reported/4454)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

KIMBERLY A. COSTER  
Deputy State Appellate Public Defender  
I.S.B. #4115  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: [documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45366 & NO. 45367
	)	
v.	)	BANNOCK COUNTY NO. CR 2016-10233
	)	& NO. CR. 2016-12054
CARTER EVANS,	)	
	)	APPELLANT’S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Carter Evans pled guilty to two counts of possession of heroin, one in each of these two consolidated cases. The district court imposed concurrent prison terms of seven years, with three years fixed, and retained jurisdiction. The district court subsequently relinquished jurisdiction based upon the recommendation of the Idaho Department of Correction. The district court later granted Mr. Evans’ Rule 35 motion, reducing the fixed portion of his sentences from three years, to two years. However, the district court left Mr. Evans to serve out his sentences in prison.

On appeal, Mr. Evans claims that the district court’s decision to relinquish jurisdiction represents an abuse of its discretion.

## Statement of the Facts and Course of Proceedings

Mr. Evans is a thirty-year old heroin addict, with drug problems dating back to his early teens. (PSI, pp.13-14, 44.)<sup>1</sup> He has been incarcerated on previous drug charges, and has undergone various treatment programs. (PSI, p.14.) Although he has enjoyed periods of sobriety, recovery for Mr. Evans has remained elusive. (PSI, pp.14, 18.)

In the spring of 2016, shortly after being discharged from parole, Mr. Evans relapsed in to drug use. (PSI, p.16.) He was arrested and charged for possessing heroin twice that summer, first in July (CR-2016-10233), and then in August (CR-2016-12054). (R., pp.13, 51, 130, 170.) The State also filed a sentencing enhancement. (R., p.152.)

Pursuant to an agreement, Mr. Evans pled guilty to two counts of possessing a controlled substance – one in each case – and the State agreed to dismiss the enhancement. (R., p.80; Tr., p.10, Ls.15-17; p.11, Ls.4-7.) At sentencing, Mr. Evans asked the district court to order treatment, or alternatively, to retain jurisdiction and grant him an opportunity for a “rider.” (Tr., p.11, L.19 – p.12, L.24.) The district court sentenced him to concurrent terms of seven years, with three years fixed, but retained jurisdiction with the express hope that Mr. Evans would obtain the treatment he needed to overcome his addiction. (Tr., p.16, L.17 – p.17, L.12; R., pp.97, 202.)

Mr. Evans was placed in the Department of Correction’s 180-day Cognitive Behavioral Interventions for Substance Abuse course, and also its 120-day Thinking for a Change course, at North Idaho Correctional Institution (“NICI”) in Cottonwood. (PSI, p.90.) Mr. Evans’ participation in the Thinking for a Change course earned him high praise from the facilitator,

---

<sup>1</sup> Citations to the Presentence Investigation Report and attached materials will use the designation “PSI” and will include the page numbers associated with the 90-page electronic file containing those documents.

who concluded he had obtained the tools he needed to succeed on probation. (PSI, p.85.) But he also received a number of warnings for not complying with relatively minor “house rules,” and then a formal disciplinary violation when he was found with an unauthorized bottle of shampoo. (PSI, p.88.) Mr. Evans had nearly completed his classes when the Department pulled him from the program and submitted a recommendation to the district court that jurisdiction be relinquished. (PSI, pp.72-90.)

Upon receipt of the recommendation, the district court relinquished jurisdiction, leaving Mr. Evans to serve out his sentences in prison. (R., pp.102, 207.) Mr. Evans filed Rule 35 motions in each of his cases, asking that his sentences be modified, from seven years with three years fixed, to seven years, with two years fixed. (R., pp.109, 214.) The district court granted his requests. (R., pp.124, 229.) Mr. Evans filed notices of appeal in each of his cases that were timely from the orders relinquishing jurisdiction. (R., pp.140, 222.) His appeals were consolidated by this Court. (*See* Order Consolidating Appeals, dated Sept. 19, 2017.)

### ISSUE

In light of the progress Mr. Evans made during his rider, did the district court abuse its discretion when it relinquished jurisdiction?

### ARGUMENT

#### In Light Of The Progress Mr. Evans Made During His Rider, The District Court Abused Its Discretion By Relinquishing 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. Evans' performance during the rider, while imperfect, supported his request for probation and did not warrant relinquishment of jurisdiction. During his rider, Mr. Evans successfully completed the 120-day Thinking for Change curriculum. (PSI, p.85.) His instructor described Mr. Evans' performance as follows:

He came to group every day on time, prepared and with a positive attitude. He has been an active participant in group and his assignments are always done well. He is a likable young man who is very easy to speak with and was always respectful towards his peers and myself. Mr. Evans was always willing to help a peer who was struggling with their work. He did a good job recognizing his risky thoughts and replacing negative thoughts with more positive and pro-social ones. He also does a good job of identifying what beliefs can cause him problems in his day to day interaction with peers. Mr. Evans presented a couple of homework assignments where he had to deal with some of his peers who were causing problems in the unit. He appeared to handle these conflict situations in a healthy manner and did not allow his emotions to take over. . . .

(PSI, p.85.)

The facilitator went on to conclude, "Mr. Evans has the tools necessary to be successful upon his release and he knows what he will have to do to successfully complete probation."

(PSI, p.85.)

Mr. Evans was also an active participant in his Cognitive Behavioral Interventions for Substance Abuse course. He had completed the first several modules of this course without incident, and he impressed the course facilitator with his desire to succeed on probation. (PSI, p.76.) And his living area was reported as having "one of the cleanest and most kept up lockers in the unit." (PSI, p.85.)

Mr. Evans' rider performance, however, was not perfect. In subsequent class modules, his facilitator felt Mr. Evans had become too confident, and was often "at the heart of too much

joking around and not taking things seriously.” (PSI, p.87.) The facilitator also reported Mr. Evans had attempted to cheat on his “plan for success” by minimizing the work that had to be done. (PSI, p.76.)

Mr. Evans also received a number of verbal and written warnings for minor “house” violations, ranging from “being very loud” while in the bathroom (PSI, p.88), to having his shirt off, untucked, or rolled up (PSI, pp.85, 86, 88), to talking in the chow line (PSI, pp.86, 88). He also received one formal disciplinary violation, late in the program, for having an unauthorized bottle of Irish Spring shampoo and refusing to disclose where he got it. (PSI, p.74.) The IDOC heavily emphasized this violation in its decision to remove Mr. Evans from the rider program. (PSI, pp.82-83.) While noteworthy, these violations were neither severe nor criminal in nature, and did not warrant relinquishing jurisdiction. Mr. Evans had nearly completed the rider program when the IDOC decided to recommend relinquishment. (PSI, pp.78-83.) He had been diligent in his coursework and proved to be an eager, productive participant in his group. (PSI, p.85.) He worked hard and made significant strides toward understanding his addiction, and obtained new tools that would help him succeed on probation. (PSI, p.85.)

In light of Mr. Evan’s progress on the rider, and notwithstanding the relatively minor glitches, the district court abused its discretion when it decided to relinquish jurisdiction and refused to consider him for probation.

CONCLUSION

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

DATED this 6<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 6<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:

CARTER EVANS  
INMATE #99225  
SICI  
PO BOX 8509  
BOISE ID 83737

ROBERT C NAFTZ  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

CRAIG W PARRISH  
ATTORNEY AT LAW  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

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

KAC/eas