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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 45366 & 45367
Plaintiff-Respondent,)	
)	Bannock County Case Nos.
v.)	CR-2016-10233 & CR-2016-12054
)	
CARTER EVANS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Evans failed to establish that the district court abused its discretion by relinquishing jurisdiction?

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

Evans pled guilty to one count of possession of heroin in case number 45366 and one count of possession of heroin in case number 45367, and the district court imposed concurrent unified sentences of seven years, with three years fixed, and retained jurisdiction. (R., pp.97-101, 202-06.) Following the period of retained jurisdiction, the district court relinquished

jurisdiction. (R., pp.102-03, 207-08.) Evans filed a notice of appeal timely from the district court's order relinquishing jurisdiction in each case. (R., pp.104-06, 209-11.) He also filed timely Rule 35 motions for reduction of sentence, which the district court granted, reducing Evans' sentences to concurrent unified sentences of seven years, with two years fixed. (R., pp.109-10, 124-26, 214-15, 229-31.)

Evans asserts that the district court abused its discretion by relinquishing jurisdiction in light of his performance during his rider. (Appellant's brief, pp.3-5.) Evans 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)).

Evans is not an appropriate candidate for probation. He has a long history of substance abuse and criminal offending, he has failed to rehabilitate or be deterred, and he has demonstrated an ongoing disregard for court orders, institutional rules, and the terms of

probation and parole. (PSI, pp.5-10, 15-16, 21.¹) Evans began using marijuana at age 13 and soon progressed to use of other illegal substances including ecstasy, cocaine, methamphetamine, and heroin. (PSI, pp.15-16.) At age 16, he was adjudicated for minor in possession of alcohol and battery and was placed on probation for two years. (PSI, pp.3, 7.) Less than one year later, he committed the new crime of DUI and was again placed on probation. (PSI, p.7.) Just over two weeks after that, he was charged with seven counts of burglary and seven counts of malicious injury to property; he was placed on probation for one count of burglary and one count of malicious injury to property (the remaining counts were dismissed), with a period of “home confinement” and a requirement that he pay restitution to eight victims. (PSI, pp.7-8.)

In 2009, Evans was convicted of disturbing the peace and was placed on probation. (PSI, p.8.) Approximately one month later, he committed (and was subsequently convicted of) two misdemeanor “fish/game” violations. (PSI, p.8.) In 2010, officers observed a marijuana plant in the window well of Evans’ residence and, upon searching his residence, found over “a quarter of a pound of marijuana” in several large containers, a marijuana pipe and a .45 caliber handgun in Evans’ nightstand, and a digital scale and a total of \$950 in cash on his desk. (PSI, p.40.) Consequently, Evans was charged with (and later convicted of) felony possession of a controlled substance; he was once again placed on probation. (PSI, pp.9-10.)

Evans subsequently “absconded and violated his probation”; as a result, he was placed in the retained jurisdiction program, after which he was reinstated on probation on January 30, 2012. (PSI, pp.10, 52.) Evans again violated his probation, and also committed (and was later

¹ PSI page numbers correspond with the page numbers of the electronic file “CONFIDENTIAL CERTIFICATE OF EXHIBITS EVANS 45366 AND 45367_.pdf.”

convicted of) the new crime of frequenting a place where controlled substances are used, in October 2012; he then completed the Bannock County SHARE Program was continued on probation. (PSI, pp.9-10.) Shortly thereafter, Evans violated his probation yet again, and his probation was finally revoked in January 2013. (PSI, p.10.)

Evans was granted parole in October 2014, but subsequently violated his parole and eventually topped out his time in May 2016. (PSI, pp.10, 52.) Despite having previously completed inpatient substance abuse treatment at the Walker Center, the retained jurisdiction program, the SHARE program, the prison's Therapeutic Community program, and community-based aftercare treatment, Evans immediately resumed his substance abuse, reporting that he used marijuana and methamphetamine in May 2016 and "was using heroin 'daily' within two months" of his release. (PSI, pp.10, 15-16, 48, 52.) He committed the first of the instant offenses in July 2016, and the second in August 2016 – while he was on pretrial release for the first. (PSI, p.5; R., p.69.) He also violated the terms of his pretrial release by failing to appear for drug testing, using heroin, and being charged with violation of a no contact order, possession of marijuana, possession of drug paraphernalia, and providing false information to an officer. (PSI, pp.5, 7, 9-10; R., p.69.)

The presentence investigator recommended imprisonment, stating:

Despite all the interventions provided to Mr. Evans over the years, he has demonstrated an overall inability to abstain from criminal activity or comply with requirements asked of him. During his release to Court Services, Mr. Evans was non-compliant, maintained contact with the co-defendant with whom he had a No Contact Order, required a second visit at the jail due to failing to fill out his PSI paperwork and was on lockdown due to a fight with another inmate. Mr. Evans does not appear to be a good candidate for community supervision, as he has demonstrated over and over he cannot or will not change his behavior.

(PSI, p.21.) At sentencing, the district court concluded, "[I]f I was just strictly to put you on probation at this point in time, I think you would be too high a risk to just go out and commit

another crime.” (Tr., p.14, L.23 – p.15, L.1.) The court also noted its concern with respect to Evans’ disregard for court orders and the terms of supervised release, advising, “I’m worried that you’re just not willing to follow the rules at this point yet.” (Tr., p.15, Ls.2-7.)

The court granted Evans the opportunity to participate in another rider program, and rather than taking advantage of the opportunity, Evans continued his rule-breaking behavior. (PSI, pp.74-76.) During his time at NICI, Evans incurred at least 16 disciplinary sanctions. (PSI, pp.74-75, 84-89.) He received a formal disciplinary sanction/infracton for possessing property he had not purchased and lying to staff about it, as well as informal disciplinary sanctions for possessing contraband on at least two separate occasions, deliberately disobeying orders by attempting to cheat “to minimize the amount of work he had to complete” after being warned against doing so, disobeying a direct order by intentionally ignoring a verbal directive, disobeying orders by disregarding a verbal warning, disregarding a staff directive by using the phone after he was told he may not use it, being “deliberately deceptive” with staff, “being very loud” and then denying it, repeatedly lying down/sleeping during programming time after being told not to, not being inspection ready on multiple occasions, and taking “his shirt off” during count. (PSI, pp.74-75, 84-89.) Furthermore, Evans’ case manager advised that “Evans presents as a fun-loving, likable, young man. It appears that he uses this façade to manipulate staff into giving him lesser consequences,” noting several instances in which Evans’ behavior could have – or “most of the time” would have – resulted in “some form of corrective action” or a more severe sanction “to include a DOR.” (PSI, p.75.) Evans’ case manager also noted that the majority of Evans’ disciplinary sanctions occurred “in the final months of his programming,” that Evans “tends to blame staff for not following the rules,” and that, when Evans’ failure to follow the rules was addressed, he responded by stating that he “did not believe that he should experience

consequences for choosing to violate what he considered ‘little’ rules.” (PSI, pp.75, 79.) At the conclusion of Evans’ rider, NICI staff determined:

At this time, it does not appear that Mr. Evans can be considered an acceptable candidate for community-based supervision because he does not appear to have reduced his risk with violating the rules of the NICI Living Guide. This observation can be considered a strong indicator that he will be equally willing to avoid the terms of his supervision as well.

(PSI, p.76.)

With respect to his rider programming, Evans completed only one of his three assigned programs – Thinking for a Change (“T4C”). (PSI, p.73.) However, NICI staff noted that “it does not appear that he has been sincere in this program,” as “[t]he majority of his corrective actions occurred either toward the end or after completing this program,” and “Evans’ behavior on the unit attested to the likelihood that he was not internalizing what he was learning in his T4C or CBI-SA ‘Rider’ programming.” (PSI, pp.77, 79.) In Evans’ Cognitive-Behavioral Interventions for Substance Abuse (“CBI-SA”) program, he completed only two of the six “modules” before he became “disruptive” and “his facilitator was no longer satisfied that [he] was continuing to make adequate progress.” (PSI, p.76.) The program facilitator reported that Evans’ behavior subsequently “continued to deteriorate” and he “tended to lead a few [of his peers] down the wrong path during the group.” (PSI, p.76.) The facilitator concluded that Evans “does not appear interested in integrating what he is learning into his daily life,” noting that Evans even “attempted to cheat on his Success Plan to minimize the amount of work he had to complete.” (PSI, p.76.)

Evans failed to complete his substance abuse programming and also failed to complete his “Pre-release” programming (apparently due to procrastinating in doing his work). (PSI, p.73.) NICI staff concluded, “At this time it does not appear that Mr. Evans is willing to accept

and abide by the recommendations of treatment in a correctional environment – much less treatment in a community-based environment.” (PSI, p.77.) NICI recommended that the district court relinquish jurisdiction, advising:

Mr. Evans does not appear to have addressed his high-risk need areas and currently remains at the same [high] risk to re-offend in the community. Mr. Evans’ overall risk to the community is too great and [he] cannot be considered a reasonable candidate for probation at this time.

(PSI, pp.73, 79.)

The district court considered all of the relevant information and appropriately relinquished jurisdiction. Evans has not shown that he was a viable candidate for community supervision, particularly in light of his abysmal performance on his rider, his high risk to reoffend, his failure to rehabilitate or be deterred despite his numerous treatment opportunities and prior legal sanctions, and his ongoing disregard for the law, the terms of community supervision, and institutional rules. Given any reasonable view of the facts, Evans 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 orders relinquishing jurisdiction.

DATED this 6th day of March, 2018.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th 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.

/s/
LORI A. FLEMING
Deputy Attorney General