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### State v. Dacalio Appellant's Brief Dckt. 45619

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45619
Plaintiff-Respondent,	)	
	)	JEROME COUNTY NO. CR 2017-2407
v.	)	
	)	
GRANT A. U. DACALIO,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

As a result of Mr. Dacalio’s guilty plea to the crime of eluding a peace officer, the district court sentenced Mr. Dacalio to a five-year term, with four years fixed, and retained jurisdiction. Prior to completion of his rider, the Idaho Department of Corrections (“IDOC”) recommended the court relinquish jurisdiction. The district court, absent a hearing, abided the IDOC recommendation and imposed Mr. Dacalio’s sentence. Mr. Dacalio contends on appeal that the district court’s relinquishment of jurisdiction prior to program completion, and without a hearing, was unreasonable.

## Statement of the Facts & Course of Proceedings

Jerome County Sheriff's Office was contacted with a call for assistance related to a law enforcement vehicle pursuit of Mr. Dacalio in the early morning hours of April 14, 2017. Mr. Dacalio had reportedly harassed his ex-girlfriend in Buhl, and then fled in his Hyundai vehicle before the officer completed her investigation. (R., pp.9-10.) Mr. Dacalio eluded police for several miles as he traveled across county lines. After police deployed spikes and effectuated a "pit" stop, Mr. Dacalio's vehicle came to rest and he was detained by a Jerome County Sergeant, who turned Mr. Dacalio over to the Twin Falls Police. (R., p.10.)

Mr. Dacalio was charged with eluding a peace officer and malicious injury to property. (R., pp.49-50.) He was charged similarly in Twin Falls County for conduct related to this same incident. (Confidential Exhibits, Addendum to Presentence Investigation ("APSI"), p.3.)<sup>1</sup> Mr. Dacalio entered a guilty plea to eluding a peace officer in exchange for the State's dismissal of the remaining charges and recommendation of a five-year sentence, with four years fixed, with retained jurisdiction, to be served concurrently with his Twin Falls County case. (R., p.51.) Preparation of a Presentence investigation ("PSI") report was waived. (R., p.51.) The district court sentenced Mr. Dacalio to a five-year sentence, with four years fixed, and retained jurisdiction, to run concurrently with Twin Falls Case No. CR42-17-3600. (R., p.54.) Mr. Dacalio was thereafter sent to the North Idaho Correctional Institution ("NICI") for a rider. (R., p.56; ASPI, p.2.) Prior to completion of his rider, the NICI staff recommended the district court relinquish jurisdiction. The court declined to set the matter for hearing, and relinquished

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<sup>1</sup> The record in this case contains Confidential Exhibits consisting of 15 pages which is comprised of letters from IDOC to courts in both Jerome and Twin Falls Counties, as well as one APSI.

jurisdiction based solely on the APSI. (R., pp.59-60.) Mr. Dacalio thereafter filed a timely appeal, challenging the district court's relinquishment of jurisdiction. (R., pp.62-65.)

### ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction over Mr. Dacalio?

### ARGUMENT

#### The District Court Abused Its Discretion When It Relinquished Jurisdiction Over Mr. Dacalio

Before the district court relinquishes jurisdiction over a defendant, it must evaluate whether probation would be appropriate under I.C. § 19-2521. *State v. Statton*, 136 Idaho 135, 137 (2001). “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. Schultz*, 149 Idaho 285, 288-289 (Ct. App. 2010). Upon review of a sentence following a period of retained jurisdiction, this Court reviews the entire record, encompassing events both before and after the original judgment. *Id.* at 289. Mr. Dacalio asserts the district court abused its discretion in relinquishing jurisdiction, absent a hearing, in light of his acceptance of responsibility, limited success during his rider and low risk to reoffend, and his support system.

To begin with, Mr. Dacalio resolved his cases very early and accepted responsibility in lieu of going to trial. He pled guilty and was sentenced approximately five weeks after the crime occurred. (R., p.51.) Early acceptance of responsibility is mitigating. *See State v. Shideler*, 103 Idaho 593, 594 (1982). Mr. Dacalio apologized to the court and expressed remorse, which bodes well for rehabilitation. (Tr., p.22, Ls.6-10.) In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed “[i]n light of Alberts’ expression of

remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character.” *Id.* 121 Idaho at 204. When Mr. Dacalio was exposed to treatment and rehabilitation, he participated and was amenable to change.

Mr. Dacalio arrived at NICI on August 10, 2017, and was assessed by the Receiving and Diagnostic Unit in approximately August 22, 2017. (APSI, p.3.) Mr. Dacalio’s risk of re-offending, as interpreted by an LSI score, was only 12, in the low range. (APSI, p.4.) Based upon his assessment, he was only in need of two rehabilitation programs - Thinking for a Change (T4C) and Pre-Release. (APSI, p.4.) Although Mr. Dacalio’s performance in the first few months was not stellar, he believed he made strides and he did demonstrate progress. Admittedly, he did have several transgressions, but his behavior was not criminal, nor was it severe.

Mr. Dacalio received many verbal warnings – eight – but these were for minor incidents such as being outside of boundaries and disobedience to orders. (APSI, p.5.) For example, he was verbally corrected after using a picnic table for stretching when he was not scheduled for stretching. (APSI, p.13.) Mr. Dacalio also engaged in conduct that appeared to warrant written write-up, such as not being ready for count, walking down the tier without a shirt on when he had “been there long enough to know he needs to have some kind of shirt on,” and receipt of coffee from another offender, for which he was punished with six days loss of privileges. (APSI, p.13.) Apparently, IDOC reached their limit when Mr. Dacalio was exercising when he was not scheduled to do so, and upon being confronted, Mr. Dacalio tried to make an entry in his program book to cover it up and initially denied it. (APSI, p.10.) While this behavior was concerning, it was not serious enough to warrant expulsion from the program, or summarily

relinquish jurisdiction without a hearing, particularly where the same program documented progress.

It is significant that “the majority of Mr. Dacalio’s corrective actions were centered on his desire to work out” rather than misconduct directed at another. (APSI, p.5.) It is also significant that rehabilitation was working, albeit with some setbacks. There were several positive comments throughout the IDOC paperwork. Staff noted that Mr. Dacalio volunteered to clean the unit office, and did a very good and detailed job. His locker was also very organized and neat during nighttime inspection. (APSI, p.11.) On one occasion, he was “caught working on and practicing his skills cards on the tier with another offender.” (APSI, p.11.) He completed his pre-release program, consisting of goal setting, resume and cover letter writing, budgeting, completing an application, interviewing, and building a resource plan for probation, and was prepared for pre-entry planning by October 23, 2017. (APSI, p.12.) When Mr. Dacalio received a pointed extra assignment in response to some of the corrective actions, he completed the same and was “mostly on target. . . overall the work is a go.” (APSI, p.11.) He also got his assignments in on time for the F.A.T.H.E.R.S. class and developed an awareness of the importance of positive role modeling. (APSI, p.11.)

During T4C, his behavior had also slightly improved; he struggled to identify risky thoughts; his replacement thoughts were okay; he was doing okay with his role plays and he always volunteered to go first. (APSI, p.12.) Clearly, Mr. Dacalio had a ways to go, but the foregoing are concrete examples that rehabilitation had been working to an extent. Despite this, in the APSI recommendations, his case manager wrote there was no discernable difference between his behaviors from when he arrived, that he demonstrated a lack of progression, and that the case manager had “absolutely no confidence in Mr. Dacalio’s ability to abide by the terms of

probation.” (APSI, p.7.) Such comments completely disregarded Mr. Dacalio’s progress, and consisted of uninformed judgments and speculation as to Mr. Dacalio’s intent.

Interestingly absent from the record is any mention of Mr. Dacalio’s history or special needs as they relate to rehabilitation and probation. The fact that no PSI was prepared prevented the court, just as it prevented IDOC, from understanding much about Mr. Dacalio. Staff apparently construed Mr. Dacalio’s willingness to go first during role plays and his need for attention as burdensome and negative. (APSI, pp.11-12.) (“It is important to him that I think he is doing well however he likes to have the attention on him.”) Another counselor in another setting could interpret this conduct as a demonstration of willingness and eagerness to work on one’s problems. Instead of focusing on the positive, the case manager simply ignored or dismissed the mitigating factors, instead of considering why Mr. Dacalio sought attention, or had an eagerness to please.

In addition to Mr. Dacalio’s progress on the rider and assessed low risk to reoffend, Mr. Dacalio demonstrated he had community support to assist him while on probation. Mr. Dacalio had completed his Pre-Release class and had a home and family to return to. (APSI, p.13.) These facts bolstered his chances at probation, and community support can be considered by a sentencing court. *Shideler*, 103 Idaho at 594 (determining that family and friends were factors that should be considered in the Court’s decision when fashioning an appropriate sentence.) Moreover, the State presented no aggravating evidence and there was no evidence of prior criminal history, except that this court was aware of Mr. Dacalio’s prosecution and sentence in Twin Falls County. (Tr., p.20, Ls.13-19, p.22, Ls.20-25.) Overall, the unique circumstances of Mr. Dacalio’s case indicate that probation would have been sufficient to meet

the goals of sentencing, whereas imposition of the prison sentence was unduly harsh, particularly where the court was aware that Mr. Dacalio had already been punished in Twin Falls County.

The district court erred by summarily concluding that Mr. Dacalio's rider should be terminated early, and that he was not a viable probation candidate. The court's total reliance upon the APSI, instead of providing Mr. Dacalio a forum to more fully explain his actions and elaborate on the *documented* progress and changes he had already made, was unreasonable. As such, the district court abused its discretion in relinquishing jurisdiction.

### CONCLUSION

Mr. Dacalio respectfully requests that this Court vacate the order relinquishing jurisdiction and remand this case to the district court to place Mr. Dacalio on probation, or alternatively, order a new disposition hearing.

DATED this 17<sup>th</sup> day of May, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
LARA E. ANDERSON  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17<sup>th</sup> day of May, 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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DISTRICT COURT JUDGE  
E-MAILED BRIEF

C BRADLEY CALBO  
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E-MAILED BRIEF

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

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

LEA/eas