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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45648
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY NO. CR42-17-3600
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 three 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

Mr. Dacalio met a young woman on the internet and drove to her home on April 14, 2017. He spent time with her, was introduced to her sister, and stayed the night. (R., pp.9, 12.) He had plans to return to see her the next day, but Mr. Dacalio was still married and his wife apparently contacted the woman. The young woman then tried to contact Mr. Dacalio to refuse future visits. (R., p.12.) She did not reach him direct and left a voice mail. He returned to her house in the early morning and banged on her door, but she was scared to let him in. (R., p.11.) Mr. Dacalio then went to talk to her sister. (R., pp.9-10.) The ladies contacted the police and a Twin Falls County officer responded to investigate. After the officer made contact with Mr. Dacalio outside the sister's residence, and was continuing to investigate the incident, Mr. Dacalio, against her order to remain on scene, drove off in his Hyundai vehicle. The officer believed Mr. Dacalio almost struck her as he departed. (R., pp.10-11.) The officer gave chase, and Mr. Dacalio eluded police for several miles as he traveled across county lines. Eventually Mr. Dacalio was stopped by police in another jurisdiction, and then turned over to the original officer for transport to Twin Falls. (R., p.11.)

Mr. Dacalio was charged with eluding a peace officer and aggravated assault on certain personnel in Twin Falls County. (R., pp.52-53.) He was charged similarly in Jerome County for conduct related to this same incident. (Addendum to Presentence Investigation ("APSI"), p.2.) 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 three years fixed, with retained jurisdiction. (R., p.59.) Preparation of a Presentence investigation ("PSI") report was waived. (R., p.59.) The district court sentenced Mr. Dacalio to a five-year sentence, with three years fixed, and retained jurisdiction. (R., p.73.) Several months later, Mr. Dacalio was

sent to the North Idaho Correctional Institution (“NICI”) for a rider. (R., p.71; ASPI, p.3.) 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 jurisdiction based solely on the APSI. (R., p.89.) Mr. Dacalio filed an Idaho Criminal Rule 35 motion for reconsideration (“ICR 35” or “Rule 35”), which was denied. (R., pp.97-98.) Mr. Dacalio thereafter filed a timely appeal, challenging the district court’s relinquishment of jurisdiction. (R., pp.100-103.)¹

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. Hansen

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.

¹ Mr. Dacalio did not submit additional information in support of his Rule 35 motion. Mindful of *State v. Huffman*, 144 Idaho 201 (2007), he does not challenge the district court’s denial of his

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., pp.8, 71.) 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. 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.2.)² 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

Rule 35 on appeal.

² 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 an APSI.

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 Mr. Dacalio’s profession is mixed martial arts, and that “the majority of Mr. Dacalio’s corrective actions were centered on his desire to work out.” (APSI, p.5; R., p.10.) 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 and 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 important 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. (Tr., p.20, Ls.5-14.) 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.

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 to place Mr. Dacalio on probation, or alternatively, order a new disposition hearing.

DATED this 16th day of May, 2018.

_____/s/_____
LARA E. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th 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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RANDY J STOKER
DISTRICT COURT JUDGE
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_____/s/_____
EVAN A. SMITH
Administrative Assistant

LEA/eas