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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45648
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-2017-3600
)	
GRANT ABEL ULUKOA DACALIO,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Dacalio met a woman on a dating website, drove to her home and spent the night. (R., p.20.) He left the next morning and was supposed to come back later that day; however, Dacalio’s wife contacted the woman and told her that Decalio was married and was “strung out on Meth.” (R., p.20.) The woman tried to contact Dacalio to tell him not to come, but he did not

answer his phone. (R., p.20.) At three o'clock in the morning, the woman woke up to someone knocking on her door, but she did not answer because she was afraid and she called the police. (R., p.20.) While talking to the responding officer, the woman got a call from her sister who said that Dacalio was at her house and appeared to be high. (R., pp.17, 20.) The officer responded to the sister's house and made contact with Dacalio. (R., p.17.) During the investigation, against the officer's commands, Dacalio started his vehicle, put it in reverse—almost hitting the officer with his car as he backed up—and fled the scene. (R., pp.18-19.) The officer began to pursue Dacalio, but he eluded the officer and, after entering another county, was pursued by other units. (R., p.19.) Dacalio was eventually stopped by police, who turned him over to the original responding officer, and he was then transported to the Twin Falls County Jail. (R., p.19.)

The state charged Dacalio with felony eluding a peace officer and aggravated assault on certain law enforcement personnel. (R., pp.14-16, 52-54.) Pursuant to a plea agreement, Dacalio pled guilty to felony eluding a peace officer, the state dismissed the aggravated assault charge, and the parties stipulated to the imposition of a unified sentence of five years, with three years fixed, with a period of retained jurisdiction. (R., p.60.) The district court followed the plea agreement and imposed a unified sentence of five years, with three years fixed, and retained jurisdiction. (R., pp.71-76.) Following the period of retained jurisdiction, the district relinquished jurisdiction. (R., pp.89-92.) Dacalio filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.100-04.)

Dacalio asserts that the district court abused its discretion by relinquishing jurisdiction in light of his acceptance of responsibility, low risk to reoffend, support system, and his "limited success during his rider." (Appellant's brief, pp.3-7.) Dacalio 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)).

Dacalio has not shown that he was an appropriate candidate for probation, particularly in light of his refusal to abide by the terms of institutional rules and failure to demonstrate adequate rehabilitative progress while on his rider. While on his retained jurisdiction program, Dacalio incurred two class C DOR's, one infraction, two written warnings, and eight verbal warnings. (APSI, p.5. ¹) Dacalio's case manager stated:

Mr. Dacalio arrived on 08/14/17, and within 24 hours of setting foot on compound, he acquired his first corrective action. Two weeks later, I was appointed as his case manager. My first interaction with Mr. Dacalio was on 08/29/17. It involved addressing him about being out of area, after spending 10 minutes trying to locate him; this incident almost put the institution into a total recall. I had my initial meeting with Mr. Dacalio the next day and discussed the expectations while at NICI, emphasizing the importance of knowing the NICI Living Guide and obeying the rules of the institution. Mr. Dacalio stated that he understood the rules and would follow them. However, every meeting I had with him following this initial discussion was simply a repeat of reminding him to

¹ APSI page numbers correspond with the page numbers of the electronic file “Supreme Court 45648 Grant Dacalio – Confidential Exhibits.pdf.”

follow the rules, and Mr. Dacalio apologizing for his actions, agreeing to change his negative behavior. This agreement to abide by rules never materialized.

(APSI, p.5.) Dacalio's last DOR occurred when the lieutenant observed him working out on day that had not been scheduled. (APSI, p.5.) Dacalio claimed that he had scheduled that time to work out in his planner, and offered to get his planner to show the lieutenant. (APSI, p.5.) The lieutenant watched Dacalio retrieve his planner and a writing utensil, and then confronted him before he could write in his planner. (APSI, p.5.) Dacalio then admitted that he had not scheduled the time to work out. (APSI, pp.5-6.) Reflecting on this incident, Dacalio's case manager stated:

This last violation best demonstrates what I believe is Mr. Dacalio's attitude toward following the institution's living guide and IDOC policy; he knew the rules and simply ignored them. If he thought he could get away with using deceit, going out of area, using furniture as exercise equipment, or breaking other rules to do what he wanted when he wanted to do it, Mr. Dacalio simply acted. His behavior did not change at all while at NICI. I would argue that if Mr. Dacalio had put as much effort into his program material as he did his exercise regimen, he may have resisted his urge to break facility rules in order to meet his desire to work out in areas or during times constituting his corrective actions.

(APSI, p.6.)

That Dacalio did not put sufficient "effort into his program material," as eluded to by Dacalio's case manager, is evident from the record, which shows Dacalio failed to show any rehabilitative progress in his programming classes. Staff reported that, in his Thinking for a Change class, Dacalio was disruptive and liked attention, that he struggled to identify how core concepts applied to him and did not have patience to wait for details or instruction that would help him understand the material, and that he showed no improvement of his "risky thinking" over the course of the program. (APSI, p.6.) The group facilitator for the FATHERS class made similar observations and stated, "Mr. Dacalio was often distracting in class. Comments appeared 'off the cuff' rather than thought through." (APSI, p.6.) Ultimately, Dacalio's case

manager concluded, “At this time, I have absolutely no confidence in Mr. Dacalio’s ability to abide by the terms of probation.” (APSI, pp.7-8.)

In its order relinquishing jurisdiction, the district court stated that, not only was it not a constitutional requirement to have a hearing prior to relinquishing jurisdiction, but “Given the defendant’s behavior during the programming, it is apparent to the Court that the defendant is not adequately prepared to be successful on probation.” (R., pp.89-90.) The district court also noted that it was concerned that Dacalio made several statements regarding how much he had learned, but still received 13 disciplinary actions during his time at NICI. (R., pp.90-91.) The district court’s decision to relinquish jurisdiction was appropriate in light of the seriousness of the offense, Dacalio’s refusal to comply with institutional rules, and his failure to demonstrate sufficient rehabilitative progress while on his rider. Given any reasonable view of the facts, Dacalio has failed to establish an abuse of discretion.

Conclusion

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

DATED this 14th day of June, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of June, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

LARA E. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

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