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### State v. Rhea Appellant's Brief Dckt. 45775

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45775
	)	
v.	)	KOOTENAI COUNTY
	)	NO. CR 2016-19454, CR 2016-21681,
	)	CR 2016-6224 & CR2017-12316
	)	
DALE LEE RHEA, III,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Dale Lee Rhea, III, pled guilty in four cases to one count of aggravated assault, one count of injury to jail, one count of battery on a healthcare worker, and one additional count of aggravated assault. He received an aggregate unified sentence of eighteen years, with sixteen years fixed, and the court retained jurisdiction. Thereafter, the district court relinquished jurisdiction. Upon relinquishment, the district court reduced the fixed portion of two of the sentences so that Mr. Rhea then had an aggregate unified sentence of eighteen years, with six years fixed. On appeal, Mr. Rhea contends that the district court abused

its discretion by retaining jurisdiction instead of placing him on probation. Mr. Rhea further contends that the district court abused its discretion by relinquishing its jurisdiction, and that the court should have more greatly reduced his sentences.

#### Statement of the Facts & Course of Proceedings

In the first aggravated assault case, Dale Rhea was high on methamphetamine when he and another man got into a verbal disagreement. (Presentence Investigation Report (*hereinafter*, PSI),<sup>1</sup> p.15; R.19454, <sup>2</sup> p.78.) The reporting party claimed that when Mr. Rhea tried to stab him with a screwdriver while they were sitting in a van together, the reporting party put a cigarette out on Mr. Rhea's head and then wrested the screwdriver away from him. (R.19454, p.78.) After exiting the van, Mr. Rhea threw a sledgehammer in his direction. (PSI, p.15; R.19454, p.78.) Based on these facts, Mr. Rhea was charged by Information with aggravated assault. (R.19454, pp.62-63.)

In the injuring jails case, after court one day, Mr. Rhea was frustrated and kicked a door in the jail, separating the door from the locking mechanism. (PSI, p.16; R.21681, p.77.) Mr. Rhea was charged with felony injury to a jail and misdemeanor malicious injury to property. (PSI, p.16; R.21681, pp.48-49.)

In the battery on a healthcare worker case, Mr. Rhea spit on a healthcare worker who was trying to restrain him while he was on an involuntary mental hold.<sup>3</sup> (PSI, p.16; R.6224, pp.80-81.) Mr. Rhea also kicked a door in the hospital. (PSI, p.16; R.6224, pp.80-81.) The employee

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<sup>1</sup> Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, including the original PSI and the evaluations.

<sup>2</sup> The Clerk's Record is a separate electronic file for each of the four district court cases. Herein, Mr. Rhea will refer to each record in conjunction with the last five digits of each district court case number.

chose to pursue charges against Mr. Rhea and he was charged by information with battery on a healthcare worker and malicious injury to property. (R.6224, pp.50-51, 57-58, 80-81; PSI, p.16.)

As part of a plea agreement to resolve all three cases, Mr. Rhea agreed to plead guilty to aggravated assault, injury to jails, and battery on a healthcare worker. (2/21/17 Tr., p.4, Ls.12-25.) The State agreed to dismiss the misdemeanor charges and the sentencing enhancements, to recommend that the sentences run concurrently, not to file additional charges, and to recommend local jail time and mental health court. (2/21/17 Tr., p.4, Ls.12-25.) However, if Mr. Rhea was not accepted into mental health court, the State would recommend a maximum sentence of retained jurisdiction. (2/21/17 Tr., p.4, Ls.12-25; p.6, Ls.17-20.)

At sentencing, the State recommended a five-year sentence, with three years fixed, on the aggravated assault, and asked that the sentences for battery on a healthcare worker and injury to jails be served consecutively to the aggravated assault, making those sentences the tail.<sup>4</sup> (7/26/17 Tr., p.22, Ls.17-24.) The defense asked the district court to sentence Mr. Rhea to probation, for him to participate in the Union Gospel Mission program, and if not, then to a retained jurisdiction. (7/26/17 Tr., p.28, Ls.6-18.) Mr. Rhea's counsel also asked that the sentences be served concurrently. (7/26/17 Tr., p.30, Ls.2-8.) On the first aggravated assault, the district court sentenced Mr. Rhea five years, with three years fixed, consecutive to the three other cases. (R.19454, pp.28-30.) On the battery to a healthcare worker, Mr. Rhea was sentenced to three fixed years. (R.6224, pp.31-33.) On the injury to jails conviction, Mr. Rhea was sentenced to

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<sup>3</sup> Mr. Rhea denied spitting in the healthcare worker's face but reported he was agitated because they were giving him shots of medication he was allergic to. (PSI, p.17.)

<sup>4</sup> The State contended that Mr. Rhea had violated the plea agreement by, inter alia, committing a new crime and thus it was no longer bound to recommend concurrent sentences. (7/26/17 Tr., p.20, L.21 – p.21, L.5.)

five fixed years. (R.21681, pp.26-28.) All of the sentences were ordered to be served consecutively. (R.19454, pp.28-30; R.6224, pp.31-33; R.21681, pp.26-28.)

While Mr. Rhea was out pending sentencing, he got into another altercation with a man who owed him money. (R.12316, p.44.) In the new aggravated assault charge, Mr. Rhea struck the man on the head with a metal pipe Mr. Rhea had been using as a cane. (7/26/17 Tr., p.23, L.21 – p.25, L.17; R.12316, p.44.) Based on these facts, Mr. Rhea was charged by Amended Information with one count of aggravated assault. (R.12316, pp.24-25, 28-30.) Mr. Rhea pled guilty to aggravated assault pursuant to a plea agreement in which the State agreed to dismiss enhancements for use of a deadly weapon and habitual offender, not to file any further charges from discovered reports, and to recommend a retained jurisdiction and that the sentence be concurrent to his other sentences. (8/16/17 Tr., p.4, L.17 – p.5, L.3; p.7, Ls.5-9.) At sentencing, the State recommended a sentence of five fixed years, concurrent with his other sentences. (8/16/17 Tr., p.13, Ls.5-7.) Mr. Rhea's counsel recommended any time in custody be concurrent with the other sentences and asked the court to retain jurisdiction. (8/16/17 Tr., p.14, Ls.7-15.) Mr. Rhea was sentenced to five years, with three years fixed, consecutive to his other sentences, and the court retained jurisdiction. (8/16/17 Tr., p.15, Ls.19-22.) By sentencing him to consecutive sentences, Mr. Rhea's total unified sentence was for eighteen years, with sixteen years fixed.<sup>5</sup> (7/26/17 Tr., p.33, L.23 – p.37, L.17; R.19454, pp.28-30; R.21681, pp.26-28; R.6224, pp.31-33; R.12316, pp.22-23.)

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<sup>5</sup> On the first aggravated assault, the district court sentenced Mr. Rhea five years, with three years fixed, consecutive to the three other cases. (R.19454, pp.28-30.) On the battery to a healthcare worker, Mr. Rhea was sentenced to three fixed years. (R.6224, pp.31-33.) On the injury to jails conviction, Mr. Rhea was sentenced to five fixed years. (R.21681, pp.26-28.)

At the rider review hearing, defense counsel asked the court to place Mr. Rhea on another rider or a period of local jail followed by mental health court. (12/21/17 Tr., p.50, L.16 - p.51, L.19.) In the alternative, counsel asked the court to modify the sentences so that he would be eligible for programming sooner. (12/21/17 Tr., p.51, Ls.15-24.) Nonetheless, the district court relinquished jurisdiction in all four cases. (12/21/17 Tr., p.55, L.1 – p.56, L.3.) When it relinquished jurisdiction, the district court reduced some of Mr. Rhea’s fixed time on two of his sentences. (12/21/17 Tr., p.55, Ls.3-16; R.19454, pp.23-24; R.21681, pp.21-23; R.6224, pp.22-24; R.12316, pp.17-19.) Mr. Rhea’s aggregate unified sentence remained eighteen years, but with six years fixed (instead of sixteen years fixed). (12/21/17 Tr., p.57, L.1; R.19454, pp.23-24; R.21681, pp.21-23; R.6224, pp.22-24; R.12316, pp.17-19.) Mr. Rhea filed a timely Notice of Appeal. (R.19454, pp.19-22; R.21681, pp.17-20; R.6224, pp.18-21; R.12316, pp.13-16.)

### ISSUES

- I. Did the district court abuse its discretion when it retained jurisdiction over Mr. Rhea instead of placing him on probation?
- II. Did the district court abuse its discretion when it relinquished jurisdiction over Mr. Rhea and by only reducing his sentence to eighteen years, with six years fixed?

### ARGUMENT

#### I.

#### The District Court Abused Its Discretion When It Retained Jurisdiction Instead Of Placing Mr. Rhea On Probation

Mr. Rhea asserts that, given any view of the facts, the district court erred in failing to place him on probation. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record

giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). On appeal, the focus is upon the nature of the offense and the character of the offender. *State v. Bayles*, 131 Idaho 624, 627 (Ct. App. 1998). Mr. Rhea does not allege that his sentence exceeds the statutory maximum. As the sentence is not illegal, Mr. Rhea must show that the sentence is unreasonably harsh in light of the primary objective of protecting society and the related goals of deterrence, rehabilitation, and retribution. *Id.* Idaho Code Section 19-2521 provides the criteria a court should accord weight to in determining whether to place a defendant on probation or impose imprisonment.

The district court should have placed Mr. Rhea on probation. Mr. Rhea demonstrated that he was proactive in making the changes necessary to be successful on probation by recognizing the importance of taking his mental health medications. (PSI, p.25.)

Mr. Rhea had a difficult childhood. He was placed in foster care from age 12 to age 14 where he was abused. (PSI, pp.21, 42.) He was enrolled in special education classes throughout his schooling. (PSI, p.23.) Mr. Rhea was on social security disability for a period of time, but ceased getting the checks when he was homeless. (PSI, pp.23, 41.) Mr. Rhea suffers from bipolar disorder, ADHD, schizophrenia, and multiple personality disorder. (PSI, p.24.) Mr. Rhea has twice been involuntarily committed for his mental health. (PSI, p.25.) Mr. Rhea’s mother, father, and grandfather also suffer from serious mental health conditions. (PSI, p.25.) Mr. Rhea has delusions, and is concerned he will be in prison or on probation his whole life.

(PSI, p.36.) In the past, Mr. Rhea has struggled with not wanting to take his medications, but he now realizes that in order to accomplish his goal of not being incarcerated, he needs to “stay medicated.” (PSI, p.26.) Mr. Rhea could have been successfully rehabilitated in the community—he was taking medications to manage his mental health, and he had arranged to receive treatment while residing in the community. (7/26/17 Tr., p.11, L.11 – p.15, L.4; p.28, L.6 – p.30, L.8.)

Mr. Rhea had made arrangements to receive treatment at the Men’s Union Gospel Mission (UGM), and he submitted paperwork to the court with additional information. (7/26/17 Tr., p.10, Ls.17-22; Augmentation, pp.1-6.) Mr. Rhea had a plan in place to receive treatment at the UGM while living with his sister in Spokane, Washington. (7/26/17 Tr., p.28, L.6 – p.29, L.24.) His mother had even offered to pay for the treatment. (7/26/17 Tr., p.28, L.6 – p.29, L.24.) Mr. Rhea’s sister and mother were both present at his sentencing hearing. (7/26/17 Tr., p.28, L.6 – p.29, L.24.) (7/26/17 Tr., p.17, L.2 – p.19, L.22.) Mr. Rhea’s mother spoke to the district court on his behalf, and asked the court to allow him to do the UGM program, because it had helped her to manage her mental illness and become a productive member of society. (7/26/17 Tr., p.16, L.4 – p.19, L.22.) Mr. Rhea’s mother told the court that he was different but that “he’s a good, good boy and he has a big heart.” (7/26/17 Tr., p.19, Ls.17-18.)

Mr. Rhea also wants to stop using controlled substances. (PSI, pp.26, 40.) He first used methamphetamine when he was 13 years old. (PSI, pp.25-26, 33.) The Idaho Supreme Court has held that substance abuse should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982); *State v. Osborn*, 102 Idaho 405, 414 (1981).

The court sentenced Mr. Rhea without sufficiently considering all of the mitigating factors present in this case. Because the district court failed to consider all of these factors, it abused its discretion by failing to suspend the sentence and place Mr. Rhea on probation.

## II.

### The District Court Abused Its Discretion By Relinquishing Jurisdiction Over Mr. Rhea And By Only Reducing His Sentence To Eighteen Years, With Six Years Fixed

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. Although a recommendation from corrections officials who supervised the defendant while on the retained jurisdiction may influence a court’s decision, the recommendation is purely advisory and is in no way binding upon the court. *State v. Merwin*, 131 Idaho 642, 648 (1998); *State v. Hurst*, 151 Idaho 430, 438 (Ct. App. 2011)). “Good performance while on retained jurisdiction, though commendable, does not alone establish an abuse of discretion in the district judge's decision not to grant probation.” *Id.*

Mr. Rhea contends the district court abused its discretion in relinquishing jurisdiction and by failing to further reduce his sentence in light of his successes during his period of retained jurisdiction, his recognition of a problem, and his desire to make the changes necessary so that the type of incidents do not happen again.

Mr. Rhea was motivated to participate in his programming and to learn how to control his anger. (PSI, p.3.) Although, while on his rider, Mr. Rhea did receive disciplinary sanctions,<sup>6</sup> he also volunteered in class and was usually the first person to share life stories. (PSI, pp.7-8.) While on the rider, he recognized that his drug use had damaged the important values in his life. (PSI, p.7.) He was actively participating in his substance abuse programming with a positive attitude. (PSI, p.9.) Mr. Rhea gained skills during his time on the rider. (PSI, p.12.) “He learned the importance of creating short term goals”; identified his potential barriers; and determined that he would like to work towards developing skills for managing high-risk situations. (PSI, p.7.) While on the rider, Mr. Rhea recognized his need to get his anger issues under control. (PSI, pp.8, 12.) The clinician who completed Mr. Rhea’s Mental Health Discharge Summary for Retained Jurisdiction Offenders noticed Mr. Rhea exercised restraint (something he would not have done in the past) and took his frustrations out on a door. (PSI, p.12.) Mr. Rhea utilized feedback and implemented coping skills to manage his mental health symptoms. (PSI, p.12.)

As Mr. Rhea told the district court:

. . . I’m here today not only to speak my peace but to also apologize to the Court. I was sent on this rider and ordered to be in a structured environment and get help that I really do need, but I failed. I can’t tell you exactly what’s wrong, but every time I try I fall short. I’m not a bad guy even though my paperwork and C Notes say different. The way I am and my size<sup>7</sup> make it hard to make friends or be very approachable to get some help. I’ve always been told I’m intimidating to people, and it’s an everyday problem to prove that I’m not, but I get tired of trying sometimes. I really just need a help -- a hand up, not a handout.

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<sup>6</sup> Mr. Rhea became agitated and kicked a shower door, damaging the latching mechanism while on the rider; this behavior resulted in a formal Disciplinary Offense Report (DOR). (PSI, p.3.) Mr. Rhea also received an informal disciplinary sanction for taking coffee from another inmate. (PSI, p.3.)

<sup>7</sup> Mr. Rhea is 6’5” tall and weighs 256 pounds. (PSI, p.13.)

I'm really asking for mental health drug court to help me, followed up with the UGM to help me with teaching me how to live. I only know what it's like to be ignored, but I am asking for help. I know I owe the community and the Court, but please meet me half-way with the treatment that focuses on mental health.

That's all I have to say, Your Honor.

(12/21/17 Tr., p.52, L.21 – p.53, L.15.) The court then relinquished its jurisdiction over Mr. Rhea, but reduced the fixed portion of two of his sentences to make him parole eligible in five years. (12/21/17 Tr., p.55, L.1 – p.56, L.3.)

In light of all of the mitigating evidence that was presented to the district court that demonstrates Mr. Rhea's significant rehabilitative potential, the district court abused its discretion when it relinquished its jurisdiction over Mr. Rhea and by not more greatly reducing his sentences.

#### CONCLUSION

Mr. Rhea respectfully requests that this Court place him on probation or further reduce the fixed portions of his sentences.

DATED this 30<sup>th</sup> day of October, 2018.

/s/ Sally J. Cooley  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of October, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

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

SJC/eas