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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45836
)	
v.)	TWIN FALLS COUNTY
)	NO. CR42-17-3489
TYLOR CARSON,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Tylor Carson appeals from the district court's order relinquishing jurisdiction over him and executing his unified sentence of five years, with two years fixed, for possession of a controlled substance. He contends the district court abused its discretion when it relinquished jurisdiction over him and executed his underlying sentence without giving him an opportunity to discuss the progress he made on his rider and to challenge the rider staff's recommendation for relinquishment.

Statement of Facts and Course of Proceedings

Mr. Carson was charged by Information with one count of possession of a controlled substance (methamphetamine). (R., pp.51-53.) He entered into a plea agreement with the State and, at his arraignment, pled guilty and proceeded directly to sentencing. (Tr., p.4, Ls.17-20, p.18, Ls.11-21; R., pp.55-67.) The district court accepted Mr. Carson's guilty plea and sentenced him to a unified term of five years, with two years fixed, retaining jurisdiction. (Tr., p.18, Ls.3-6, p.20, Ls.12-17; R., p.56.) The district court ordered that the sentence be served concurrently with a sentence imposed on Mr. Carson in a case out of Gooding County, CR-2017-78. (Tr., p.20, Ls.14-17) The judgment of conviction and order retaining jurisdiction was entered on May 15, 2017. (R., pp.68-71.)

On January 24, 2018, the deputy warden of the North Idaho Correctional Institution wrote a letter to the district court recommending it relinquish jurisdiction over Mr. Carson. (Conf. Exs., pp.1-15.) On February 2, 2018, the district court issued an order relinquishing jurisdiction over Mr. Carson and executing his underlying sentence, without holding a rider review hearing. (R., pp.74-76.) Mr. Carson filed a motion pursuant to Idaho Criminal Rule 35 for reconsideration of sentence, stating he felt he made good progress on his rider and wanted to explain to the district court what led to the recommendation for relinquishment. (R., pp.77-79.) The district court issued an order on February 12, 2018, denying Mr. Carson's motion without a hearing. (R., pp.82-85.) Mr. Carson filed a timely notice of appeal on February 22, 2018. (R., pp.86-89.)

ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction over Mr. Carson and executed his unified sentence of five years, with two years fixed, for possession of a controlled substance?

ARGUMENT

This Court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *See State v. Latneau*, 154 Idaho 165, 166 (2013); *see also* I.C. § 19-2601(4).

A court properly exercises its discretion when it (1) correctly perceives the issue to be one of discretion, (2) acts within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it, and (3) reaches its decision by an exercise of reason.

Latneau, 154 Idaho at 166 (citation omitted). The district court abused its discretion when it relinquished jurisdiction over Mr. Carson because it did not reach its decision by an exercise of reason.

As an initial matter, Mr. Carson notes he can raise this issue on appeal notwithstanding the appellate waiver contained in the State's plea offer because that plea offer, by its terms, expired before it was signed by Mr. Carson, and the guilty plea advisory form Mr. Carson signed did not mention an appellate waiver. (R., pp.57-67.) Moreover, the district court said, after it orally pronounced sentence, that Mr. Carson had 42 days in which to appeal, and the judgment of conviction reflects that the district court "advised the defendant of the Defendant's right to appeal the judgment" (Tr., p.21, Ls.4-7; R., p.69.)

Turning to the merits, Mr. Carson contends the district court did not reach its decision to relinquish jurisdiction over him by an exercise of reason because it did not allow him to discuss the progress he made on his rider and to challenge the rider staff's recommendation for relinquishment. While the district court is not required to hold a rider review hearing, such a

hearing would have been beneficial here because of the discrepancy between the rider staff's description of Mr. Carson's behavior and Mr. Carson's own description. According to the rider staff, Mr. Carson was making good progress on his rider until he engaged in sexual activity with another inmate, which is considered a "Cardinal Rule Violation" and grounds for relinquishment. (Conf. Exs., pp.4-5.) The APSI states Mr. Carson was an active participant in each of his assigned programs, and demonstrated the ability to learn and understand the material being taught. (Conf. Exs., p.7.) When asked by the rider staff about his experience on his rider, Mr. Carson stated, "I have done everything I have been asked to do. I am doing well in my classes. I do not deserve to be relinquished just because people don't like me, and make things up about me." (Conf. Exs., p.8.) Mr. Carson's explanation is clearly at odds with the rider staff's explanation, and the district court should have conducted a hearing to allow Mr. Carson to discuss the progress he made on his rider and to challenge the rider staff's recommendation for relinquishment.

CONCLUSION

Mr. Carson respectfully requests that this Court vacate the district court's order relinquishing jurisdiction over him and remand this case to the district court with instructions to hold a rider review hearing and consider placing him on probation.

DATED this 18th day of September, 2018.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of September, 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

AWR/eas