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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45836
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-17-3489
)	
TYLOR JOSEPH CARSON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Pursuant to a plea agreement, Carson pled guilty to possession of methamphetamine and the state agree to recommend a unified sentence of five years, with two years fixed, “with a retained jurisdiction, concurrent with Gooding County case number CR2017-78.” (R., pp.55, 57.) As part of the plea agreement, Carson waived his “right to: (1) file a Rule 35 Motion

regarding the initial Judgment (except as to an illegal sentence) and (2) appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court” unless the court exceeded the fixed portion of the state’s sentencing recommendation or the recommendation for a rider.¹ (R., pp.57, 60-61; Tr., p.4, Ls.17-20; p.11, L.23 – p.12, L.14.) At sentencing, Carson’s counsel advised, “Your Honor, we are stipulating to the terms of this plea agreement,” and requested that the court “follow the plea agreement and send Mr. Carson on a rider.” (Tr., p.19, Ls.6-10.) Consistent with the plea agreement and with Carson’s request, the district court imposed the requested unified sentence of five years, with two years fixed, ordered that the sentence run concurrently with Carson’s sentence in the Gooding County case, and retained jurisdiction. (R., pp.68-71.) Following the period of retained jurisdiction, the district court relinquished jurisdiction (without holding a rider review hearing). (R., pp.74-76.) Carson filed a notice of appeal timely from the district court’s order relinquishing jurisdiction. (R., pp.86-89.)

Mindful that “the district court is not required to hold a rider review hearing,” Carson nevertheless asserts that the district court abused its discretion by relinquishing jurisdiction “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.” (Appellant’s brief, pp.3-4.) Carson has failed to establish an abuse of discretion.

¹ On appeal, Carson contends that “the guilty plea advisory form [he] signed did not mention an appellate waiver” (Appellant’s brief, p.3); however, this assertion is incorrect, as questions 26 and 27 on Page 4 of the guilty plea advisory form – which is initialed at the bottom of each page and signed by Carson – ask whether Carson had “waived [his] right to appeal [his] judgment of conviction” or his “right to appeal [his] sentence as part of [his] plea agreement,” and Carson responded “Yes” to both questions (R., p.61). Furthermore, at the guilty plea hearing, the district court reviewed the terms of the “Plea Agreement Offer” on the record and confirmed that Carson understood he was “essentially waiving [his] right to appeal and [his] right to a Rule 35 motion assuming the Court follows this agreement.” (Tr., p.11, L.23 – p.12, L.14.)

“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)).

On appeal, Carson contends that the district court “should have conducted a hearing to allow [him] to discuss the progress he made on his rider and to challenge the rider staff’s recommendation for relinquishment” because rider staff’s report that Carson was observed – and later admitted to – engaging in sexual activity with another inmate “is clearly at odds with” Carson’s claim that he “d[id] not deserve to be relinquished just because people don’t like [him], and make things up about [him].” (Appellant’s brief, p.4 (quoting APSI, p.6).) However, a defendant is not entitled to an opportunity to respond to information in an APSI upon a review of retained jurisdiction, nor is he entitled to a hearing before the sentencing court relinquishes jurisdiction. State v. Coassolo, 136 Idaho 138, 143, 30 P.3d 293, 298 (2001); State v. Goodlett, 139 Idaho 262, 265, 77 P.3d 487, 490 (Ct. App. 2003). Nevertheless, after Carson received his recommendation for relinquishment, he “was offered an opportunity to submit a written statement to the court,” but he “declined” to do so. (APSI,

p.6.) As such, the district court did not abuse its discretion when it relinquished jurisdiction without holding a hearing to allow Carson to discuss his progress and challenge his recommendation for relinquishment.

Although Carson asserts that rider staff's report that he engaged in sexual activity with another inmate "is clearly at odds with" (Appellant's brief, p.4) his statement that he was relinquished "just because people don't like [him], and make things up about [him]" (Appellant's brief, p.4 (quoting APSI, p.6)), several separate witnesses observed Carson engaging in the sexual activity, and he later "*admitted to the behavior*" (APSI, pp.2-3 (emphasis added)). Furthermore, Carson's DOR for sexual activity was not an isolated incident of poor behavior; he incurred disciplinary actions throughout his period of retained jurisdiction, for conduct including unauthorized transfer of property, disobedience to orders, being "off the unit" and failing to have his bunk "inspection ready," interfering with count, and – on more than one occasion – being outside of authorized boundaries. (APSI, p.2.) He failed to complete an infraction sanction and, when confronted about his failure to do so, he "was argumentative and defensive." (APSI, p.3.) Carson also failed to complete any of his assigned programs, and rider staff reported that his behavior was "intermittently problematic," that he "did not get along well with other inmates," and that he demonstrated "an unwillingness to take accountability" and "a pattern of minimizing his wrong doing, and attempting to avoid the consequences of his actions." (APSI, pp.3, 5.) NICI recommended relinquishment, advising that "Carson will not be able to benefit from the skills he learned and was learning on his 'Rider,' until he is ready to view himself in an honest light and take accountability for his actions." (APSI, p.5.)

After reviewing the report from NICI, the district court reasonably concluded that Carson “is not a candidate for probation and that no further hearings are necessary.” (R., p.74.) Carson’s assertion that the district court “should have conducted a hearing to allow [him] to discuss the progress he made on his rider and to challenge the rider staff’s recommendation for relinquishment” (Appellant’s brief, p.4) does not demonstrate that the district court abused its discretion, particularly because he was not entitled to either a hearing or an opportunity to respond to NICI’s recommendation, he declined to submit a statement to the court when he was provided the opportunity to do so, and his conduct during his rider did not show that he was a viable candidate for probation, given his ongoing rule violations, unwillingness to take accountability, failure to complete any of his assigned programs, and high risk to reoffend (APSI, pp.1-3, 5-6). Coassolo, 136 Idaho at 143, 30 P.3d at 298; Goodlett, 139 Idaho at 265, 77 P.3d at 490. Given any reasonable view of the facts, Carson has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

Conclusion

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

DATED this 13th day of November, 2018.

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

VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of November, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Lori A. Fleming
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