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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46411-2018
Plaintiff-Respondent,)	
)	ADA COUNTY
v.)	NO. CR01-17-1995
)	
GARO SHAHE ASIAN,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE THOMAS F NEVILLE
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Garo Shahe Asian appeals from the district court's order relinquishing jurisdiction over him and imposing his (albeit, reduced) sentence for felony possession of a controlled substance of ten years, with two years fixed. Mr. Asian contends the district abused its discretion because he earned a chance at probation, and the district court relinquished jurisdiction over him for reasons beyond his control. Mr. Asian successfully completed the Correctional Alternative Placement Program (CAPP) rider, and the Idaho Department of Correction (IDOC) recommended probation. The district court relinquished jurisdiction over Mr. Asian because it believed the CAPP rider was not the right program for Mr. Asian, and further believed the IDOC did not adequately report on Mr. Asian's performance on the CAPP rider. The district court abused its discretion.

Statement of Facts and Course of Proceedings

On January 19, 2017, the police arrested Michael Sanders at a gas station in Boise, and left Mr. Sanders' car at the scene. (Presentence Investigation Report ("PSI"), p.3.) The next day, the police saw Mr. Asian and two other people in Mr. Sanders' vehicle. (PSI, p.3.) The police arrested Mr. Asian on an outstanding misdemeanor warrant, and found a rag in his pocket containing a glass pipe with white residue, a hypodermic needle, and a plastic tube, all of which he had taken from Mr. Sanders' car. (PSI, p.3.) Mr. Asian was charged by Information with possession of a controlled substance (methamphetamine) and possession of drug paraphernalia. (R., pp.41-42, 76-77.) The State later filed an Information Part II alleging Mr. Asian was subject to a persistent violator enhancement pursuant to Idaho Code § 19-2514. (R., pp.57-58.)

The case proceeded to trial, and the jury found Mr. Asian guilty on both counts. (R., pp.163-64.) The district court then found Mr. Asian guilty of being a persistent violator. (R., p.205.) The district court sentenced Mr. Asian for the felony to a unified term of ten years, with three and one-half years fixed, and retained jurisdiction. (R., p.205.) For the misdemeanor, the court sentenced Mr. Asian to 180 days in Ada County Jail, to be served concurrently. (R., p.206.) At sentencing, the district court said, “I’ll also recommend that—or require that the defendant be required to complete the most intensive, long-term rider program available for cognitive self-change, that’s thinking errors, and for substance abuse challenges.” (1/17/18 Tr., p.61, L.24 – p.62, L.3.)

At its discretion, the IDOC placed Mr. Asian in the CAPP rider program. (R., p.209; PSI, p.366.) Mr. Asian successfully completed the CAPP rider, and the IDOC recommended the district court place him on probation in this case, and two other cases. (PSI, p.367.) Following a rider review hearing, Judge Neville relinquished jurisdiction over Mr. Asian in this case. (R., pp.213-16.) Reviewing Mr. Asian’s performance in the same CAPP rider, Judge Greenwood commuted Mr. Asian’s sentence for the crime of possession of a controlled substance in CR01-17-45965.¹ (Motion to Augment, Exs. A, B.) Judge Barton placed Mr. Asian on probation for the crime of grand theft in CR01-17-42322. (Motion to Augment, Exs. C, D.) Mr. Asian filed a timely notice of appeal in this case on October 5, 2018. (R., pp.217-19.)

¹ The Clerk’s Record does not contain any information regarding Mr. Asian’s cases before Judge Greenwood and Judge Barton. Simultaneously with the filing of this brief, Mr. Asian is filing a Motion to Augment to include copies of the court minutes of the rider review hearing and the Order of Commutation After Retained Jurisdiction in CR01-17-45965, and the court minutes of the rider review hearing and the Order Suspending Sentence After Retained Jurisdiction and Order of Probation in CR01-17-42322.

ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction over Mr. Asian?

ARGUMENT

The District Court Abused Its Discretion When It Relinquished Jurisdiction Over Mr. Asian

A. Introduction

The district court relinquished jurisdiction over Mr. Asian because it believed the IDOC placed Mr. Asian in the wrong rider program, and further believed the IDOC did not adequately report on Mr. Asian's performance on his rider. Two other district court judges, considering Mr. Asian's performance in the very same rider, followed the recommendation of the IDOC. The district court abused its discretion, as Mr. Asian earned a chance at probation, and the district court relinquished jurisdiction over Mr. Asian for reasons beyond his control.

B. Standard Of Review

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).

C. The District Court Did Not Reach Its Decision To Relinquish Jurisdiction Over Mr. Asian By An Exercise Of Reason And Did Not Act Consistently With The Legal Standards That Govern Rider Program Placement And Programming

At sentencing, the district court told Mr. Asian that probation was "in your future by good behavior, working hard and a good attitude." (1/17/18 Tr., p.61, Ls.15-17.) Mr. Asian told the district court, "You know, you won't be disappointed in the rider review. I can guarantee that." (1/17/18 Tr., p.64, Ls.21-22.) Mr. Asian did very well on the CAPP rider and earned a

recommendation for probation. (PSI, p.372.) Mr. Asian did not receive any disciplinary sanctions, did well in his programming, and developed a plan for probation. (PSI, pp.369-71.)

The IDOC explained its recommendation for probation as follows:

Mr. Asian began his programming with a positive attitude and a willingness to learn the material. He completed all of the required assignments, participated in class discussions and role play scenarios. Mr. Asian identified his high risk situations and developed alternative ways to cope, and learned how to recognize his feelings, so when they come up, he knows how to respond to them before he acts on impulse. Throughout the duration of his time at CAPP, Mr. Asian voluntarily became more involved in his program, as he signed up for fly tying classes, held a job for [the] majority [of] the time he was here, and completed over 25 hours of community service on his unit. He was able to identify the importance of keeping active in order to challenge his thinking by utilizing skills he has gained.

(PSI, p.372.)

Unfortunately for Mr. Asian, the district court did not believe the CAPP rider program was appropriate for Mr. Asian, and did not believe the IDOC adequately reported on Mr. Asian's performance on the rider. At sentencing, the district court said, "I'll also recommend that—or require that the defendant be required to complete the most intensive, long-term rider program available for cognitive self-change, that's thinking errors, and for substance abuse challenges." (1/17/18 Tr., p.61, L.24 – p.62, L.3.) Despite the district court's "requirement," the IDOC placed Mr. Asian in the CAPP rider program, which is shorter and arguably less intensive than what the district court recommended. (PSI, p.366; 10/4/18 Tr., p.9, Ls.17-19.) The district court made clear at the rider review hearing that the CAPP rider is not what it had in mind for Mr. Asian. The court said, "The defendant was not sent to a program recommended by the court. His program was changed 'per need of institution.' That does not explain it." (10/4/18 Tr., p.8, L.23 – p.9, L.1.)

Counsel for Mr. Asian pointed out to the district court that the IDOC was no longer using the therapeutic community rider because it was “found to be ineffective.” (10/4/18 Tr., p.14, Ls.4-7.) The district court disagreed, stating that “just because corrections is not using that program doesn’t mean it wasn’t the right program for him and for his entire full picture.” (10/4/18 Tr., p.16, Ls.12-15.) The district court explained that the issue he was “most concerned with” was, “Was this the right program? Was this program long enough to set the defendant up for success?” (10/4/18 Tr., p.22, Ls.18-21.) It concluded it was not, and penalized Mr. Asian for getting “an abbreviated rider” through no fault of his own. (10/4/18 Tr., p.28, Ls.22-25.)

The district court believed the IDOC did not adequately report on Mr. Asian’s performance on the CAPP rider, and held this against Mr. Asian. The district court said it was “hard to say, given the formatting for reporting from CAPP” whether Mr. Asian did well on his rider. (10/4/18 Tr., p.11, Ls.9-14.) The court said that because of the reporting, it was “hard for [him] to kind of fathom how [Mr. Asian] actually did” and was concerned that the CAPP rider did not “set [Mr. Asian] up for success.” (10/4/18 Tr., p.15, Ls.1-4.) Again, the district court penalized Mr. Asian for the IDOC’s rider report formatting. Mr. Asian earned a recommendation for probation, which was enough for Judges Barton and Greenwood, but which was not enough for Judge Neville. (PSI, p.367; Motion to Augment, Exs. A-D.)

The district court abused its discretion because the IDOC has the sole discretion to determine rider program placement. *See* I.C. § 19-2601(4)(“Except [for a blended juvenile sentence], during the period of retained jurisdiction, the state board of correction shall be responsible for determining the placement of the prisoner and such education, programming and treatment as it determines to be appropriate.”). The purpose of a rider program is to evaluate a defendant’s rehabilitative potential and suitability for probation. *See State v. Urrabazo*, 150

Idaho 158, 161 (2010), *abrogated on other grounds by Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 (2011), *State v. Goodlett*, 139 Idaho 262, 264 (Ct. App. 2003). Mr. Asian did very well on his rider, and earned a recommendation for probation. The district court did not place Mr. Asian on probation because it wanted Mr. Asian to do a different rider, and did not like the formatting of the IDOC's rider report. These are not legally valid reasons for relinquishing jurisdiction, and the district court's decision represents an abuse of discretion.

CONCLUSION

Mr. Asian respectfully requests that the Court vacate the district court's order relinquishing jurisdiction over him and remand this case to the district court with instructions to place him on probation.

DATED this 19th day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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

AWR/eas