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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46738-2019
)	
v.)	BONNER COUNTY NO. CR-2017-6741
)	
MATTHEW FRANK ARNETT,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Matthew Frank Arnett pled guilty to failure to register. He received a unified sentence of four years, with two years fixed, and the court retained jurisdiction. Following his rider, the district court relinquished jurisdiction. On appeal, Mr. Arnett contends that the district court abused its discretion in relinquishing its jurisdiction.

Statement of the Facts & Course of Proceedings

In the evening on December 22, 2017, law enforcement was contacted regarding a domestic dispute. (R., p.25.) The witnesses told officers that Matthew Arnett had struck and

held the neck of his then-girlfriend during an argument. (Presentence Investigation Report (*hereinafter*, PSI),¹ R., pp.25-26.) During the investigation, law enforcement learned that Mr. Arnett had been living there for the last six months. (PSI, p.26.) Mr. Arnett had not registered his place of residence. (PSI, p.26.) Based on these facts, Mr. Arnett was charged by information with one count of failure to register as a sex offender and a persistent violator sentencing enhancement. (R., pp.55-57.)

On March 28, 2018, pursuant to a plea agreement, Mr. Arnett pled guilty to failure to register. (3/28/18 Tr., p.5, L.18 – p.6, L.12; p.9, Ls.12-17; R., pp.70-81.) As part of the plea agreement, the State agreed to dismiss the persistent violator sentencing enhancement and to recommend a sentence of four years, with two years fixed, and a retained jurisdiction. (3/28/18 Tr., p.5, L.18 – p.6, L.12; R., pp.82-83.) The district court accepted the plea and agreed to be bound by the terms of the plea agreement.² (3/28/18 Tr., p.9, Ls.18-20; R., pp.74, 82-83.) The district court sentenced Mr. Arnett to a unified term of four years, with two years fixed, and retained jurisdiction. (3/28/18 Tr., p.10, L.25 – p.11, L.4; R., pp.85-88.)

On January 2, 2019, after a hearing, the district court relinquished jurisdiction and ordered Mr. Arnett to serve the underlying sentence previously imposed. (1/2/19 Tr., p.12, Ls.17-19; R., pp.102-105.) On January 29, 2019, Mr. Arnett filed a timely Notice of Appeal.³ (R., pp.111-113, 119-123.)

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copies of the APSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

² The plea agreement contained a waiver of Mr. Arnett's rights to appeal the judgment and sentence. (R., p.75.) Mr. Arnett did not waive his right to appeal the district court's decision to relinquish its jurisdiction.

³ Mr. Arnett filed a timely I.C.R. 35 Motion (*hereinafter*, Rule 35) seeking a reduction of his sentence. (R., pp.106-107.) The district court denied Mr. Arnett's Rule 35 motion without a hearing, finding he had submitted no new or additional information in support of his motion for

ISSUE

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

ARGUMENT

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

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.

In reviewing a trial court’s decision for an abuse of discretion, the relevant inquiry regards four factors:

Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018).

Mr. Arnett contends the district court abused its discretion by relinquishing jurisdiction in light of his limited successes during his period of retained jurisdiction, his recognition of a

leniency. (R., pp.108-109.) On appeal, Mr. Arnett does not challenge the denial of his Rule 35 motion as there was no new information submitted to the court in support of the motion. *See State v. Huffman*, 144 Idaho 201 (2007) (holding “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information).

problem, and his desire to make the changes necessary so that this type of incident does not happen again.

Mr. Arnett was participating in his programming and had expressed a willingness to change his criminal thinking and behavior. (1/2/19 Tr., p.9, Ls.1-10; PSI, p.8.) Although, while on his rider, Mr. Arnett did receive disciplinary sanctions,⁴ he made tremendous progress notwithstanding these setbacks—he passed several GED classes and, at one point, he made enough progress to be eligible for enrollment in the Honors Team. (1/2/19 Tr., p.7, Ls.13-21; PSI, pp.7-8, 27.) He was very engaged in and completed all of the required coursework for his Cognitive-Behavioral Interventions for Sexual Offending programming; he shared insightful comments based on his own negative experiences. (PSI, p.8.) While on the rider, he also demonstrated that he could handle confrontational situations in a non-violent manner. (1/2/19 Tr., p.9, Ls.3-10.) However, Mr. Arnett’s progress on the rider was impeded by the fact that he was being harassed by other program participants. (1/2/19 Tr., p.8, Ls.2-5; PSI, pp.16-17, 22-23, 29.)

As Mr. Arnett told the district court at the hearing on his rider performance:

Well, Your Honor, if I may, I apologize for taking up the Court’s time first off, Your Honor. Second off, I do take full responsibility for my actions and behaviors that I created while I was in Cottonwood. I also thank you for sending me to Cottonwood and I see—there was quite a few things that I learned, more about myself as well as more of respecting others as well as their boundaries.

I did have some hiccups there, Your Honor. But I learned a lot more than I would have ever learned anywhere else. And that’s why I thank you for that.

I do apologize, Your Honor, for getting relinquished. That was not my intentions, Your Honor. I was three weeks away from completion.

⁴ Mr. Arnett had one confrontational encounter with other program participants and falsified a document in order to keep a sweatshirt a peer had given him; this behavior resulted in two Disciplinary Offense Reports (DOR). (1/2/19 Tr., p.7, Ls.13-17; PSI, pp.7, 20.)

Again, I was doing a program, Your Honor, that I had already had completed as well as served my time for my debt to society for that crime.

I repeatedly asked for the ART as well as for the T4C program, Your Honor; and I eventually got the ART program. When I first got there, all they wanted me to do was the SO program. I asked for the ART program as well as the T4C. I did not get the T4C. I did get the ART, and I am very thankful for the ART as well.

I just ask, Your Honor, that I be allowed this opportunity to be put on probation. And I'm a great candidate for probation as well as I just would like to go back home, Your Honor, and finish out my time there. Thank you, Your Honor.

(1/2/19 Tr., p.10, L.3 - p.11, L.10.)

The district court failed to recognize that Mr. Arnett's accomplishments while on the retained jurisdiction would equate to a successful probation. The district court abused its discretion when relinquished its jurisdiction over Mr. Arnett.

CONCLUSION

Mr. Arnett respectfully requests that this Court place him on probation.

DATED this 23rd day of October, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of October, 2019, 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