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### State v. Cecil Appellant's Brief Dckt. 46788

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46788-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-16-31426
v.	)	
	)	
NATHAN DEAN CECIL,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Nathan Deal Cecil appeals from the district court’s order relinquishing jurisdiction and executing unified sentences of five years, with two years fixed, and three years fixed, consecutive, for two counts of video voyeurism. He asserts that the district court abused its discretion by relinquishing jurisdiction.

Statement of the Facts & Course of Proceedings

Sometime between 2013 and 2016, Mr. Cecil posted photographs of several woman on an internet site called “Tumblr” or “Tumblr porn,” without the females’ consent. (Presentence

Investigation (“PSI”) dated July 11, 2017, p.3) One victim, M.H., reported to police that she dated Mr. Cecil between August and December of 2015. In November 2015, she took photos of her genitals on her cell phone, and she believed Mr. Cecil somehow got the photos and posted them on the internet in April and July of 2016. (PSI, pp.32-33, 68.) M.H. showed the investigating officer a Tumblr site that contained photos of her in a bathing suit and another photo of her genitals. (PSI, p.68.) Another victim, R.S., Mr. Cecil’s ex-wife, also made a report, indicating that Mr. Cecil had problems with pornography throughout their marriage, started an internet porn site, and had posted photos on the internet of her in lingerie and one of her genital area. (PSI, p.69.) R.S. also took the photos of herself but did not send them to Mr. Cecil; she believes he sent them to himself while they were separated. (PSI, p.70.) The images ultimately made their way to other pornography sites, often with sexually graphic and enticing comments, which the victims believed Mr. Cecil posted. (PSI, pp.3-4.) After the victims discovered these images were posted, they contacted law enforcement who investigated. Mr. Cecil was ultimately indicted for three counts of video voyeurism. (R., No. 45848, pp.37-39.)<sup>1</sup>

Mr. Cecil pled guilty to two counts of video voyeurism and was sentenced to five years, with two years determinate, on one count, plus a consecutive three years, with zero years determinate time, on the second count, execution of sentence suspended. He was placed on probation for eight years. (R., No. 45848, pp.101-104.)

After Mr. Cecil’s sentencing but prior to his release from serving jail time imposed as a condition of his probation, the State filed a Motion for Probation Violation, alleging Mr. Cecil had violated a protection order between November 22 and December 4, 2017; violated a no-

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<sup>1</sup> This Court has augmented the record with the record of Mr. Cecil’s prior appeal, Docket No. 45848. (R., p.2.)

contact order on November 26, 2017; and violated a no-contact order between November 7 and November 26, 2017. (R., No. 45848, p.167.) Mr. Cecil admitted two of the alleged violations - violating a no-contact order and a protection order. (R., No. 45848, p.181.) The district court revoked Mr. Cecil's probation and retained jurisdiction. (R., No. 45848, pp.182-185.) Mr. Cecil appealed, and the Court of Appeals affirmed. *State v. Cecil*, Docket No. 45848 (Ct. App. Oct.19, 2018.)

Following the period of retained jurisdiction, the district court relinquished jurisdiction and executed Mr. Cecil's sentences. (R., p.29.) Mr. Cecil appealed. (R., p.32.) He asserts that the district court abused its discretion by relinquishing jurisdiction.

### ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction?

### ARGUMENT

#### The District Court Abused Its Discretion When It Relinquished Jurisdiction

“The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant's rehabilitative potential and suitability for probation.” *State v. Jones*, 141 Idaho 673, 676 (Ct. App. 2005). “[P]robation is the ultimate objective of a defendant who is on retained jurisdiction.” *Id.* at 677. The district court's decision to retain jurisdiction is reviewed for an abuse of discretion. *Id.* “There can be no abuse of discretion in a trial court's refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation.” *Id.*

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

*Stevens*, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

In this case, the Addendum to the PSI recommended that the court place Mr. Cecil on probation. (*See generally*, APSI). While the State emphasized that Mr. Cecil did not complete the pre-release plan, as indicated by the C-Notes, counsel noted that this was not completed because Mr. Cecil did not do the mock interview and final test, which was “because of his transport date and that he would not be at the facility.” (Tr., p.10, Ls.8-18.) Counsel did not dispute that this was from Mr. Cecil’s free will, but emphasized that during the rider, “Mr. Cecil was participating in the rider programming, was doing a good job in the rider programming and was making himself available to it.” (Tr., p.10, Ls.19-23.)

Further, when looking at a treatment program, Mr. Cecil reported that he had completed the work for that program and only missed the final class, which was due to his transport date. (Tr., p.11, Ls.3-10.) Counsel noted, “[i]f you look at his performance during the rider, he has numerous positive C-Notes. He volunteered. He continually attempted to educate himself with literary classes, with dairy classes. He tried his hardest to avail himself to learning. He also had a couple minor warnings due to his behavior. But these were minor.” (Tr., p.11, Ls.11-17.)

Considering that the APSI recommended probation and that Mr. Cecil performed well on his rider, Mr. Cecil submits that the district court abused its discretion by relinquishing jurisdiction.

CONCLUSION

Mr. Cecil respectfully requests that the order relinquishing jurisdiction be vacated and he be placed on probation.

DATED this 21<sup>st</sup> day of August, 2019.

/s/ Justin M. Curtis  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 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](mailto:ecf@ag.idaho.gov)

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

JMC/eas