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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46788-2019
Plaintiff-Respondent,)	
)	Ada County Case No. CR01-16-31426
v.)	
)	
NATHAN DEAN CECIL,)	RESPONDENT’S BRIEF
)	
Defendant-Appellant.)	
_____)	

Has Cecil failed to show that the district court abused its sentencing discretion when it relinquished jurisdiction?

ARGUMENT

Cecil Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Nathan Dean Cecil obtained and posted pornographic images of two different women with whom he had a relationship as “revenge porn.” (45848 PSI, pp. 3-6, 57-60, 67-71.) Cecil pled guilty to two counts of video voyeurism, and the district court imposed consecutive, unified sentences of five years, with two years fixed, and three years, with zero years fixed, suspended the

sentences, and placed Cecil on probation for eight years. (R., pp.101-05.) He violated his probation by having contact with the victims in violation of his no-contact orders, and the district court (with a different judge than the original sentencing judge) revoked his probation and retained jurisdiction. (45848 Tr., p. 10, Ls. 2-18; p. 30, L. 24 – p. 32, L. 8; 45848 R., pp. 183-85.) The district court (with the original sentencing judge) later relinquished jurisdiction. (Tr., p. 12, L. 13 – p. 13, L. 24; R., pp. 29-30.) Cecil filed a timely notice of appeal. (R., pp. 32-33.)

Cecil contends that the district court abused its discretion, basing his argument upon the recommendation of probation in the APSI. (Appellant’s brief, pp. 4-5.) Although the APSI did recommend probation (APSI, p. 1), the district court did not abuse its discretion in light of the evidence before it.

B. Standard Of Review

A district court’s decision to relinquish jurisdiction is reviewed by the appellate court for an abuse of discretion. State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001) (citing State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981)). To determine whether the district court abused its discretion, the appellate court examines “whether the district court: (1) correctly perceived the issue as discretionary; (2) acted within the outer boundaries of its discretion and consistently with relevant legal standards; and (3) reached its decision by an exercise of reason.” State v. Flores, 162 Idaho 298, 396 P.3d 1180, 1182 (2017) (citation omitted).

C. Cecil Has Shown No Abuse Of The District Court’s Discretion

A court's decision to relinquish jurisdiction will not be deemed an abuse if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate pursuant to I.C. § 19–2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584

(Ct. App.1984). Good performance while on a retained jurisdiction program “does not alone create an abuse of discretion in the district judge's decision not to place the defendant on probation or reduce the sentence.” State v. Flores, 162 Idaho 298, 300, 396 P.3d 1180, 1182 (2017) (internal quotation omitted). A court does not abuse its discretion in relinquishing jurisdiction if it “properly considered the information before it and determined that probation was not appropriate.” State v. Pelland, 159 Idaho 870, 367 P.3d 265, 269 (Ct. App. 2016). The rider program’s recommendation is “purely advisory” and is not binding on the court’s decision. State v. Coassolo, 136 Idaho 138, 143, 30 P.3d 293, 298 (2001) (citing State v. Merwin, 131 Idaho 642, 648, 962 P.2d 1026, 1032 (1998)).

In this case the district judge who conducted the probation violation disposition hearing stated that the only reason he was ordering retained jurisdiction was to give the original sentencing court a chance to review the case and determine if Cecil should be placed on probation. (45848 Tr., p. 30, L. 24 – p. 31, L. 25.) The district judge stated that Cecil’s situation was “egregious,” and that he had “no intention of putting [Cecil] back on probation” because, under applicable legal standards, Cecil “deserves to be in prison.” (45848 Tr., p. 31, Ls. 4-11.) If it were up to him, Cecil would just “go to prison and that’s it” and he would “say no” to probation. (45848 Tr., p. 31, Ls. 12-15, 22.) However, the sentencing judge “should have the final say.” (45848 Tr., p. 31, Ls. 16-18.) The judge then retained jurisdiction with the specific intent of letting the original sentencing judge “make the final determination of whether or not [Cecil] should be placed back on probation.” (45848 Tr., p. 31, Ls. 16-21.)

After the retained jurisdiction, before the original sentencing judge, the district court stated that during probation Cecil has been engaged in a “course of conduct that was sort or relentless in its avoidance of what the Court had directed in order to protect the victims in this case.” (Tr., p.

12, Ls. 13-20.) The district court stated it was “expecting an extraordinarily good performance on the rider,” but instead there were a “couple of offense reports” that demonstrated “manipulative behavior and avoidant behavior” and Cecil had not completed two of the programs. (Tr., p. 12, L. 24 – p. 13, L. 6.) These facts gave the district court “a great deal of concern.” (Tr., p. 13, Ls. 5-6.) Therefore, the district court did not grant probation. (Tr., p. 13, Ls. 7-24.)

The record establishes that Cecil’s crimes hurt the victims, as they were intended to do. (PSI, pp. 57-60.) Cecil was “relentless” in avoiding the conditions of probation designed to protect those same victims. (Tr., p. 12, Ls. 13-20.) The judge at the probation disposition hearing determined that executing the sentence was proper at that time, and retained jurisdiction only to give the sentencing judge the opportunity to make the final determination. That judge indicated a willingness to order probation upon an extraordinary performance, but Cecil’s performance fell short of that and indicated a lack of commitment to actual rehabilitation and victim safety. The district court did not abuse its discretion.

Cecil argues that his performance on the retained jurisdiction program was good enough. (Appellant’s brief, pp. 4-5.) Although Cecil did gain a probation recommendation from the retained jurisdiction program, such was not binding on the district court. Rather, the findings by the district court, both judges, support the exercise of discretion employed in relinquishing jurisdiction.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 23rd day of October, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of October, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS
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/s/ Kenneth K. Jorgensen
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