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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46889-2019
)	
v.)	ADA COUNTY NO. CR01-17-44279
)	
ADAM JAMES SMITH,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
)	

STATEMENT OF THE CASE

Nature of the Case

Mr. Smith appeals from the district court's order relinquishing jurisdiction. He asserts the district court abused its discretion when it relinquished jurisdiction because his performance on his rider was as close to perfect as is humanly possible. Executing Mr. Smith's sentence and sending him to prison after such a performance was a waste of resources, contrary to public policy, and clearly illustrated that the district court did not act consistently with the legal standards applicable to the specific choices available to it, and failed to reach its decision through an exercise of reason.

Statement of the Facts and Course of Proceedings

In May of 2018, Mr. Smith pled guilty to one count of attempted injury to children. (R., p.16; Tr., p.17, Ls.8-11.) Mr. Smith admitted that he purchased alcohol and put it in the trunk of his girlfriend's car, but his girlfriend's daughter knew about it, took it from the car, and drank it with a friend who drank so much she got alcohol poisoning. (Tr., p.16, Ls.7-14, p.34, Ls.12-21.) The district court imposed a sentence of five years, with three years fixed, but retained jurisdiction so Mr. Smith could participate in a rider program.¹ (R., p.17; Tr., p.53, L.25 – p.54, L.3.) The court said the rider was for “evaluative purposes at this point,” and it wanted Mr. Smith to have “additional programming,” and take “Thinking for Change” and “substance abuse treatment.” (Tr., p.54, Ls.7-20.) It said it did “not in any way intend to communicate that” it would place Mr. Smith back in the community even if his rider was successful. (Tr., p.54, Ls.3-6.) Despite the court's warnings, Mr. Smith completed his rider “with great success” in February of 2019, and the Idaho Department of Correction recommended that he be placed on probation. (APSI, pp.1, 4.)²

At the rider review hearing, the State admitted that Mr. Smith did a “good” rider but recommended that the district court execute Mr. Smith's underlying sentence because of his prior record. (Tr., p.61, L.9 – p.66, L.3.) Quoting I.C. § 19-2521, it said that there was “an undue risk that during the period of suspended sentence or probation the defendant will commit another crime.” (Tr., p.64, Ls.16-21.) And it then proclaimed, based on Mr. Smith's prior record only, that “This will absolutely occur.” (Tr., p.64, Ls.21-25.)

¹ The sentence in the original judgment of conviction was five years, with two years fixed, but the district court issued an amended judgment of conviction to correct a clerical error after the rider review hearing. (Tr., p.74, L.5 – p.75. L.14; R., pp.16-17.)

² All citations to the APSI refer to the 15-page electronic document.

By contrast, Mr. Smith's attorney focused on the remarkable progress Mr. Smith had made in the prior six months. He said he did not feel it was appropriate for the State to use Mr. Smith's prior record to "invalidate" his performance on the rider because the reason the rider program exists is that "we believe people will change." (Tr., p.66, L.10 – p.67, L.3.) And he went on to explain that Mr. Smith's rider was not simply good, it was "perfect." (Tr., p.67, Ls.15-20.) He recounted that Mr. Smith was described by the IDOC staff as a "class leader" who would come to his classes with "detailed work." (Tr., p.67, Ls.21-25.) He also pointed out that the APSI made it clear that Mr. Smith had talked at length about the underlying crime in this case, and the fact that he was remorseful and acknowledged he should have done things differently. (Tr., p.68, Ls.4-11.) Additionally, he spoke about how Mr. Smith regularly helped a disabled man get to class on time. (Tr., p.68, L.1 – p.69, L.3.) He said that Mr. Smith had done everything the court asked him to do, and he asked the court to place him on probation and reduce his sentence based on his "exemplary performance on the rider." (Tr., p.70, Ls.5-12.)

The district court then said, "Sir, when I placed you on the rider I specifically stated that . . . the rider was for evaluative purposes only indicating that even if you had a very good rider, the Court was free to impose your sentence based on considering all of the factors that the Court must consider." (Tr., p.72, Ls.6-11.) And then, after acknowledging that Mr. Smith did indeed do a "very good rider," in which he helped others and had "minimal disciplinary issues," it said it was going to relinquish jurisdiction anyway "based on a review" of Mr. Smith's prior record. (Tr., p.72, L.22 – p.73, L.12.) However, "in consideration of how well" Mr. Smith did on the rider, it reduced his fixed time by six months. (Tr., p.73, Ls.13-24.) Mr. Smith then filed a notice of appeal timely from the district court's order relinquishing jurisdiction and reducing sentence. (R., pp.21-25.)

ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction instead of placing Mr. Smith on probation after he completed a virtually flawless rider?

ARGUMENT

The District Court Abused Its Discretion When It Relinquished Jurisdiction Instead Of Placing Mr. Smith On Probation After He Completed A Virtually Flawless Rider

A. Introduction

The district court abused its discretion when it relinquished jurisdiction. Mr. Smith's rider was not only very good, it was spectacular by any measure, and it showed that he was not only motivated to improve himself, but also the lives of those around him. This was reflected at multiple points in the APSI. Despite all of these positive comments, however, the district court relinquished its jurisdiction and sent Mr. Smith to prison. This decision devalued Mr. Smith's remarkable efforts on the rider, and disregarded how those efforts demonstrated his rehabilitative potential and suitability for probation. Indeed, the decision constituted a waste of the State's resources because Mr. Smith worked on classes during his rider that he could have completed in prison if the district court had decided ahead of time to execute his sentence regardless of his rider performance. The record clearly reflects that it had made that decision before it sent Mr. Smith on the rider. Therefore, it should not have given Mr. Smith false hope that he might be put on probation if he applied himself on the rider.

B. Standard Of Review

The decision to relinquish jurisdiction is a matter of discretion for the court. *State v. Schultz*, 149 Idaho 285, 288-89 (Ct. App. 2010). "Where the trial court has exercised its discretion after careful consideration of relevant factual circumstances and principles of law,

without arbitrary disregard for such facts and principles of justice, the reviewing court will not disturb the action without a clear showing of abuse of discretion.” *Deford v. State*, 105 Idaho 865, 868 (1983). In determining whether a court abused its discretion, the appellate court will determine 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).

C. The District Court Did Not Reach Its Decision To Relinquish Jurisdiction Through An Exercise Of Reason, And It Did Not Act Consistently With The Legal Standards Applicable To Its Decision

The purpose of retaining jurisdiction is to evaluate the offender's potential for rehabilitation and suitability for probation. *State v. Urrabazo*, 150 Idaho 158, 161 (2010); *State v. Lutes*, 141 Idaho 911, 915 (Ct. App. 2005) (“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.”). This precedent clearly illustrates that a district court should not retain jurisdiction if it has no intention of later engaging in a careful analysis of how a defendant’s performance on a rider reflects on his rehabilitative potential and suitability for probation. This would be a clear abuse of discretion because it would not be consistent with applicable legal standards, and it would demonstrate an arbitrary disregard for the facts regarding a defendant’s performance on a rider. It would also demonstrate an arbitrary disregard for the principles of justice. Yet that is precisely what happened here. The district court made it clear at the rider review hearing that it never had any intention of placing Mr. Smith on probation when it sent him to do the rider. It said it sent him

on the rider “for evaluative purposes only so that [he] could receive programming at the front end of [his] incarceration period.” (Tr., p.72, Ls.19-22.)

At the sentencing hearing, the district court warned Mr. Smith that it was making no promises to put him on probation at the end of the rider, but it gave him false hope. It said it was sending him on the rider “for evaluative purposes *at this point. . . .*” (Tr., p.54, Ls.7-8 (emphasis added).) And it said Mr. Smith needed to take “Thinking for a Change” and “substance abuse treatment.” (Tr., p.54, Ls.14-20.) Thus, understandably, Mr. Smith thought that if he did a great rider, and he completed those classes successfully, he would at least have a *chance* at probation, so he worked hard to show the district court that he actually had great potential for rehabilitation and was clearly suited for probation. However, as he found out at the rider review hearing, he never even had a chance at probation because this was never the district court’s intention. Thus, the rider was a waste of the State’s resources. If Mr. Smith had struggled on the rider, the district court certainly had the discretion to execute his sentence. However, his rider was anything but a struggle.

First, it is clear that Mr. Smith had no significant disciplinary issues of any kind; he received one verbal warning because an officer “perceived that [he] was being disrespectful.” (APSI, p.3.) Nevertheless, the district court said he had “minimal disciplinary issues.” (Tr., p.73, L.1.) But one officer’s *perception* of how Mr. Smith communicated with him on one day, over the course of six months of incarceration, should not be characterized as a “disciplinary issue.” Moreover, Mr. Smith’s overall performance on the rider demonstrated that the officer’s perception was likely mistaken. For example, his case manager wrote, “While attending his classes at ISCI, Mr. Smith displayed no resistance and was willing to engage in the curriculum in all of his assigned classes. He actively participated in group discussions, came to class with

detailed practice work, asked questions as well as assisted others with their daily class tasks.” (APSI, p.3.) The manager also noted that Mr. Smith had “volunteered to assist and mentor a struggling peer by demonstrating use of problem-solving skills,” and he had worked “well within his groups” and was “respectful of his peers and alternative ways of thinking.” (APSI, p.3.) She also wrote that Mr. Smith had shared his life stories and taken “accountability for his past crime and negative behaviors; showing remorse.” (APSI, p.3.)

Apropos of Mr. Smith’s rehabilitative potential, the manager wrote, “Over time, he learned to slow down and think through each of the skill steps, allowing him to brainstorm his options and use problem solving skills. Mr. Smith chose to use his real-life situations to role play, enabling him to think about healthier outcomes and practice the coping skills.” (APSI, p.3.) She also wrote, “Mr. Smith participated in his classes in a positive manner, completing assignments on time, taking accountability, helping a struggling peer and keeping an open mind to learning new skills.” (APSI, p.3.)

Similarly, when Mr. Smith was asked about what he learned on the rider, he said, among many other things, that he learned *new strategies* on how to cognitively approach situations. (APSI, p.5 (emphasis added).) He also spoke at length about situations that are risky for him, and how he plans to deal with them. (APSI, p.5.) He said he “understands he will need to make changes in order to be successful on probation, stating, “Boundary setting, process counseling, grievance counseling, absolutely no drugs or alcohol, obey all of the rules and laws no matter how big or small, complete aftercare, pay all restitution. I see that these are all factors of holding myself accountable.” (APSI, p.6.) With respect to the underlying offense in this case, he wrote, “I held the responsibility with the trust of supervising someone else’s children in keeping them safe and out of harm’s way. Looking back at what I could have done, I should have called 911

first and foremost or drove them to the hospital. I wouldn't be in this situation that I'm in today if I would have acted more responsibly." (APSI, p.6.)

Mr. Smith's case manager also wrote that Mr. Smith not only completed the classes that the district court said he needed to, but completed them "*with great success.*" (APSI, p.6 (emphasis added).) She wrote that "Mr. Smith was viewed as a leader in his classes . . . he also volunteered his time to work with other extraordinarily difficult clients by helping and tutoring them with class material. Staff felt that Mr. Smith had an excellent command of class materials and he was entrusted to serve in this capacity as a student tutor. His work with these clients was greatly appreciated." (APSI, pp.6-7.) The C-Notes from Mr. Smith's Thinking for a Change class in particular were extremely positive. In one of them, the instructor wrote, "Mr. Smith is doing an excellent job in TFAC class." (APSI, p.11.) In another, the instructor wrote that Mr. Smith had "done an excellent [job] in maintaining his assignments and attendance. In addition, he has assisted with another inmate in class who has some disabilities. Without Mr. Smith's *consistent assistance* this person would have had a difficult time completing the course." (APSI, p.10 (emphasis added).) That same instructor commented later that Mr. Smith had, "in conjunction with another inmate quickly responded" to defuse a situation where an inmate "became extremely irate because he missed the graduation presentation by the Program Manager." (APSI, p.9.) The instructor noted that Mr. Smith solved the problem by bringing the manager back to give another presentation. (APSI, p.9.) This demonstrated not only Mr. Smith's compassion for others, but also his ability to work effectively with others to solve problems.

His case manager also emphasized the fact that Mr. Smith had "worked with a disabled offender who resides in our Medical Annex (our "nursing home" of the facility) and helped him

get to class on a daily basis.” (APSI, p.7.) And even though Mr. Smith was clearly taking time to help others, his efforts in his own classes were described as “exemplary.” (APSI, p.7.) Notably—again with respect to his rehabilitative potential and suitability for probation—the case manager wrote, “Mr. Smith has demonstrated *good insight* into the behavior(s) that brought him to prison; he has accepted responsibility for his actions and shows remorse and understanding for what he did. He has shown that he recognizes what he could have and should have done differently.” (APSI, p.7 (emphasis added).) Finally, the case manager wrote, “We believe Mr. Smith has demonstrated *sound amenability to treatment* as evidenced by completing all required programming . . . gaining an increased insight into his behaviors, his volunteerism and hard work, and his efforts at applying the skills he has learned into his daily living while at ISCI. We feel that Mr. Smith is a *solid candidate for community supervision . . .*.” (APSI, p.7 (emphasis added).) She then recommended that the district court place Mr. Smith on probation. (APSI, p.7.)

All of the case manager’s comments reflect very positively on Mr. Smith’s rehabilitative potential and suitability for probation. But there is no indication the district court was genuinely interested in those things. The APSI makes it clear that Mr. Smith could likely have done nothing more to increase his chances to be put on probation, but the record as a whole shows there was actually nothing he could have done to avoid the district court ultimately executing his sentence. Indeed, by refusing to entertain the possibility of putting Mr. Smith on probation, the district court failed to act consistently with the legal standards applicable to its decision. Further, the district court’s decision to execute the sentence in the face of clear evidence that Mr. Smith was ready to be placed on probation, and deserved probation, needlessly contributed to the overcrowding of Idaho’s prisons and was thus contrary to public policy.

The State, like the district court, focused on Mr. Smith's prior record. At one point, the prosecutor said that many of Mr. Smith's prior convictions were "for violence and harming people." (Tr., p.65, L.23 – p.66, L.1.) As Mr. Smith's counsel pointed out, however, Mr. Smith's behavior on the rider showed he had changed because he was attacked without provocation when he started the rider, and he did not respond with violence. (Tr., p.69, Ls.6-25.) If there is any situation in which a person's violent tendencies might come out, this would be it. However, the staff at the prison said, "Inmate Smith *showed great control* both physically and mentally during an altercation with another inmate. He was hit three or four times and did not retaliate. Even after the event he did not react negatively. This was appreciated by staff, his behavior was *exemplary*." (APSI, p.15 (emphasis added).) This, along with his other commendable behavior and insights throughout the program, showed that any prior problems Mr. Smith may have with self-control or responding to a situation with violence are no longer an issue for him.

The district court did not adequately consider any of this. If it felt—at the time of sentencing—that Mr. Smith's prior record demanded a prison sentence in this case, it should have executed the sentence. The district court certainly has the discretion to determine, after the completion of a rider, whether a defendant is ready for probation. But it must make that determination through an exercise of reason, not arbitrary action. The purpose of the retained jurisdiction is to determine the offender's potential for rehabilitation and suitability for probation, but the district court failed to make that determination at the review hearing. Instead, it executed the sentence, not based on Mr. Smith's rider performance but on his prior record.

The Court of Appeals in *Lutes* held that

When the district court agrees to a plea agreement calling for retained jurisdiction, we conclude, absent evidence to the contrary, that the only implied term one

might reasonably infer is that the district court agrees to give *genuine consideration* to the Department of Correction's recommendation made at the conclusion of the retained jurisdiction period.

Lutes, 141 Idaho at 915 (emphasis added). In this case, the district court did not give "genuine consideration" to the recommendation made by the Department of Corrections at the conclusion of the period of retained jurisdiction. Rather, it focused on his prior record. After briefly summarizing the comments in the APSI, it said, "However, the Court finds that based on a review of your record in total that there are still concerns to the Court regarding placement in the community at this time. And the Court has determined that it is appropriate to relinquish jurisdiction in this case." (Tr., p.73, Ls.7-12.)

The district court did not adequately consider what Mr. Smith got out of the rider and whether he was ready for probation. In this manner, the district court acted with arbitrary disregard for the facts and principles of justice. Mr. Smith did everything the Department of Corrections asked of him on the rider and much more. He was ready for probation. He may have had a significant prior record, but the rider very clearly showed that he had changed. That is the conclusion the district court should have reached based on a sincere and genuine evaluation of his progress. Therefore, the district court abused its discretion when it relinquished jurisdiction because it failed to apply the applicable legal standard, and it failed to reach its decision to relinquish jurisdiction through an exercise of reason.

CONCLUSION

Mr. Smith respectfully requests that this Court vacate the district court's order relinquishing jurisdiction and remand the case to the district court.

DATED this 1st day of November, 2019.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 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

RPA/eas