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### State v. Young Appellant's Brief Dckt. 46920

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ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

BEN P. MCGREEVY  
Deputy State Appellate Public Defender  
I.S.B. #8712  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46920-2019
Plaintiff-Respondent,	)	
	)	ELMORE COUNTY NO. CR20-18-1602
v.	)	
	)	
KASSANDRA NICOLE YOUNG,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Kassandra Nicole Young pleaded guilty to felony possession of a controlled substance. The district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. The district court subsequently relinquished jurisdiction and executed the sentence. On appeal, Ms. Young asserts the district court abused its discretion by retaining jurisdiction rather than placing her on probation.

## Statement of the Facts & Course of Proceedings

Officer Dudley with the Mountain Home Police Department saw a green car with no license plates roll past a stop sign. (*See* Conf. Exs., p.3.)<sup>1</sup> When the officer stopped the car, he noticed the date on the car's temporary registration tag appeared to have been changed, and his K9 unit alerted on the car. (Conf. Exs., p.3.) Samantha Stout was the driver of the car, and Ms. Young was the passenger. (Conf. Exs., p.3.) Officers searched Ms. Young, finding a black straw with residue, a plastic bag with white residue, and two plastic bags containing a white crystal substance that tested presumptively positive for methamphetamine. (Conf. Exs., p.3.) The officers arrested Ms. Young. (Conf. Exs., p.3.)

The State charged Ms. Young by Information with possession of a controlled substance, felony, I.C. § 37-2732(c)(1), and possession of drug paraphernalia, misdemeanor, I.C. § 37-2734A. (R., pp.29-30.) Pursuant to a plea agreement, Ms. Young agreed to plead guilty to possession of a controlled substance, and the State agreed to dismiss the possession of drug paraphernalia charge. (*See* R., pp.34-37.) Ms. Young also advised the district court that she was on probation in Ada County No. CR-FE-2016-205 (*hereinafter*, the Ada County case). (R., p.34.) The district court accepted Ms. Young's plea. (R., p.35.)

At the sentencing hearing, Ms. Young recommended the district court impose a unified sentence of seven years, with two years fixed, suspend the sentence, and place her on a period of probation. (*See* Tr. 9/18/18, p.13, Ls.5-15.) The State recommended the district court impose a unified sentence of seven years, with two years fixed. (Tr. 9/18/18, p.10, Ls.2-3.) The State left it to the district court's discretion as to whether the sentence would run consecutively to the sentence in the Ada County case, and did not have an objection to a "rider" if the district court

believed Ms. Young would benefit from that. (Tr. 9/18/18, p.10, Ls.3-10.) Ms. Young’s counsel clarified for the district court that there had been no probation violation proceedings in the Ada County case at that time, and the alleged probation violations in the Ada County case included use of controlled substances and the commission of the new crime in this case. (See Tr. 9/18/18, p.13, L.16 – p.14, L.5.)

The district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.43-47.) The sentence would run concurrently with the sentence in the Ada County case. (See R., p.44.)

Ms. Young was placed in an Advanced Practices rider. (See Conf. Exs., p.158.) She was also placed on a rider in the Ada County case. (See Conf. Exs., p.157.) About six weeks after her arrival at the rider facility, rider program staff recommended the district court consider relinquishing jurisdiction. (Conf. Exs., pp.157, 161.) Rider program staff stated that Ms. Young had a Class II DOR for harassment, related to aggressive statements and behavior she reportedly directed towards another rider participant. (See Conf. Exs., pp.159-60.) Rider program staff recommended the district court relinquish jurisdiction based on that DOR. (See Conf. Exs., p.161.) She did not have any other disciplinary corrective actions. (Conf. Exs., p.160.)

At the rider review hearing, the State noted that the district court in the Ada County case had already relinquished jurisdiction. (See Tr. 2/11/19, p.6, Ls.4-9.) The State recommended the district court relinquish jurisdiction and execute the sentence. (See Tr. 2/11/19, p.6, L.16 – p.8, L.14.) Ms. Young’s counsel stated: “Your Honor, we concur. The decision by Judge Bail [in the Ada County case] very much limits the Court’s options at this time. So we believe

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<sup>1</sup> All citations to “Conf. Exs.” refer to the 168-page PDF version of the Confidential Exhibits, including the Presentence Report and three Addenda to the Presentence Investigation.

relinquishment is really the Court’s only option.” (Tr. 2/11/19, p.8, Ls.17-20.) The district court relinquished jurisdiction and executed Ms. Young’s sentence. (R., pp.51-53.)

Ms. Young filed a Notice of Appeal timely from the district court’s Order Relinquishing Jurisdiction and Commitment and Judgment of Conviction, Order Retaining Jurisdiction and Commitment. (R., pp.54-56.)<sup>2</sup>

### ISSUE

Did the district court abuse its discretion by retaining jurisdiction rather than placing Ms. Young on probation?

### ARGUMENT

#### The District Court Abused Its Discretion By Retaining Jurisdiction Rather Than Placing Ms. Young On Probation

Ms. Young asserts the district court abused its discretion by retaining jurisdiction. The district court should have instead followed Ms. Young’s recommendation by placing her on probation. (See Tr. 9/18/18, p.13, Ls.5-15.)

“The choice of probation, among the available sentencing alternatives, is committed to the sound discretion of the trial court.” *State v. Hostetler*, 124 Idaho 191, 192 (Ct. App. 1993) (per curiam) (citing *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982)). “The denial of probation will not be deemed an abuse of discretion if the decision is consistent with the criteria articulated in I.C. § 19-2521.” *Id.*

Ms. Young submits the district court abused its discretion by retaining jurisdiction rather than placing her on probation. For example, at the sentencing hearing, Ms. Young told the

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<sup>2</sup> Ms. Young also appealed in the Ada County case, and the Idaho Court of Appeals affirmed the order relinquishing jurisdiction and sentence in an unpublished opinion. *State v. Young*, No. 46755 (Idaho Ct. App. Aug. 5, 2019).

district court: “I do take full accountability for my actions, being placed on felony probation and catching this new charge on felony probation. I knew that it was not in my best interest to leave with that individual, but I went against my better judgment and I did.” (Tr. 9/18/18, p.14, Ls.11-16.) Ms. Young’s defense counsel informed the district court that “Ms. Young was forthright with the officers, was forthright with me and pled guilty without any significant fight over that.” (Tr. 9/18/18, p.11, Ls.2-5.) According to counsel, Ms. Young “recognized that the fact she was on probation meant that there was no way to challenge the search of her person,” and additionally “recognized that associating with the folks she was associating with did not mitigate the fact that she was, in fact, guilty of possession of methamphetamine for another time.” (Tr. 9/18/18, p.11, Ls.5-11.)

Further, Ms. Young’s counsel informed the district court, “Ms. Young has taken every effort she can take while she has been in custody to attempt to mitigate the effects of this offense . . . . She is in green, meaning she is an inmate worker, and has been entrusted with some responsibility while she has been in the jail.” (Tr. 9/18/18, p.11, Ls.12-17.) The jail trusted Ms. Young “to move about the facility and get her work done without posing a security threat to other inmates or to the staff at the jail.” (Tr. 9/18/18, p.11, Ls.18-23.) Moreover, Ms. Young had engaged in several jail programs; the presentence report stated she had completed life skills, parenting, and anger management classes, and was close to completing the SAT class. (*See* Conf. Exs., p.7.)

Ms. Young also told the district court: “And I am not trying to make excuses for my actions, but I would like the help that I need because this is an everyday struggle with me, and I will continue to struggle with this drug addiction for the rest of my life probably. And I am tired of this revolving door that I have.” (Tr. 9/18/18, p.14, Ls.20-25.) She had “seen the toll that it

takes on my children every time I leave.” (Tr. 9/18/18, p.14, L.25 – p.15, L.2.) Ms. Young had given birth while she was in custody. (See Conf. Exs., p.7; Tr. 9/18/18, p.12, Ls.11-15.) Defense counsel stated that Ms. Young “would be anxious to get back to raising not only her new baby but also the other children that she has. And I think that is a strong motivator for her.” (Tr. 9/18/18, p.12, Ls.15-18.) In her statement to the district court, Ms. Young expressed her desire “to return back home to my kids and hope to close this door and hope that they never have to do any of this or have me absent again. And that I would like the help that I need.” (Tr. 9/18/18, p.15, Ls.4-8.)

Ms. Young submits that, for the above reasons, the district court abused its discretion by retaining jurisdiction rather than placing her on probation.

#### CONCLUSION

For the above reasons, Ms. Young respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 15<sup>th</sup> day of August, 2019.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</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

BPM/eas