

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

KALE D. GANS
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 47038 & 47039
Plaintiff-Respondent,)	
)	Bingham County Case Nos.
v.)	CR-2018-1030 & CR-2018-1655
)	
ZACKARIAH FLOYD HILLMAN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Hillman failed to establish the district court abused its discretion when it relinquished jurisdiction?

Hillman Has Failed To Establish The District Court Abused Its Discretion By Relinquishing Jurisdiction

In two cases now consolidated on appeal, the state charged Hillman with burglary (47038 R., pp.45-46), and assault with intent to commit a serious felony on certain personnel (47039 R., pp.78-79). Hillman pleaded guilty to both counts pursuant to a plea agreement with the state.

(47038 R., pp.93-96; 47039 R., pp.87-89.) The district court sentenced Hillman to ten years with three years fixed for the burglary charge, and a concurrent five years with three years fixed for the assault charge. (8/27/18 Tr., p.29, L.9 – p.30, L.11.) Citing the need “to determine whether or not” Hillman was “a candidate for probation,” the district court retained jurisdiction. (8/27/18 Tr., p.30, Ls.12-16.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (5/3/19 Tr., p.47, Ls.19-21.)

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). “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. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013) (citing State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205–06, 786 P.2d 594, 596–97 (Ct.App.1990)). “A court’s decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate.” Id. (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

Hillman fails to show that the district court abused its discretion by relinquishing jurisdiction following his period of retained jurisdiction. Hillman performed poorly on his rider, as the Addendum to the Presentence Investigation made clear. On December 12, 2018, Hillman “admitted to staff that he became angry and placed his hands on” his cellmate’s shoulders. (47039 PSI, p.81.) A week later, a corporal conducting a count on B-tier overhead Hillman repeatedly yelling “White N*****s!” and “Fuck you White N*****s!” (Id. (asterisks substituted).) In March of 2019, other inmates reported that Hillman was making violent threats:

I asked them what Hillman had said and Warner told me that Hillman told him “He better watch his back.” At this time Hillman has returned to Pannell and they

had gone to take showers. I went back to Merrill's cell and told them that if they make more threats to them to please let me know. After Hillman and Pannell were done with their showers they went over to Warner's cell and I heard Hillman yell at Warner that he was going to beat him up.

(Id.) This incident required the officer to separate Hillman from the other inmates and explain to him why "making threats across the tier was not acceptable." (Id.) The disciplinary notes also showed, among other things, that Hillman "received verbal warnings for making false statements" and for "instigating drama amongst other inmates." (47039 PSI, p.82.)

Hillman's disciplinary performance was particularly concerning given his criminal history; despite his young age, he had already been convicted of resisting and obstructing law enforcement and had a juvenile conviction for petit theft. (47039 PSI, p.10.) And in case no. 47039, Hillman pleaded guilty to threatening to kill Blackfoot Police Department officer Greg Austin. (47039 PSI, p.8.) Hillman later explained that threatened to kill the officer because "he felt very pressured and angry about" a no contact order. (47039 PSI, p.10.) The no-contact order was one of several that Hillman had accumulated; this particular order protected a twelve-year-old whom Hillman had also "threatened to kill ... if she didn't respond to his messages." (47039 PSI, pp.10, 12.)

Thus, while Hillman admittedly showed some signs of improvement on the rider (see 47039 PSI, pp.85-86), the informal disciplinary reports showed that he was still making threats and acting aggressively—which rightly troubled the district court, in light of Hillman's history:

... [W]here I'm concerned, when I read through the entire report and then I see this sort of stuff going on in spite of the past participation, he's going to be in situations in the future where he doesn't have a correctional officer right on the scene that's going to make him back off.

And—and that gives me some real pause when you got [sic] somebody that's been violent in the past.

(5/3/19 Tr., p.42, L.22 – p.43, L.4.) Given the court’s concerns, relinquishing jurisdiction was proper.

On appeal Hillman argues that “the district court abused its discretion by focusing on the nature of the informal disciplinary incidents that occurred” during the rider, as opposed to the ways he “showed progress toward rehabilitation in the way he dealt with those situations.” (Appellant’s brief, p.6.) In Hillman’s view, “[t]hat decision is particularly problematic” because the court told Hillman at sentencing that “‘I will follow’ the rider staff’s recommendation for probation, if such was given.” (Id. (citing 8/27/18 Tr., p.30, L.22 – p.31, L.10).)

This is insufficient to show an abuse of discretion. Of course, the district court was not eternally bound by its earlier indication that it would follow the Department of Correction recommendation—it is not “problematic,” much less an abuse of discretion, to change one’s mind. Moreover, the court’s earlier indication that it would follow the recommendation has to be placed in context. This is what the district court told Hillman at sentencing:

... I believe, Mr. Hillman, that under the circumstances I need to retain jurisdiction in this matter to determine whether or not you are a candidate for probation. So that’s what I’m going to do, retain jurisdiction for up to 365 days. That means you’ll go to the Idaho Department of Correction[.]. They will determine which programs are best suited for you and then transport you to the facility where those programs are available.

When you get there, you’ll be explained the rules. They will send me a report, at the end of your period of retained jurisdiction, telling me whether I should place you on probation or confine you to prison. And what that means is, if you show progress in your treatment and rehabilitation, and that you can follow the rules, more than likely they will send a report saying I should place you on probation. I will follow those recommendations.

If you go over there and have problems, you violate the rules and you don’t make any progress, they’ll send a letter saying that I should relinquish jurisdiction and impose the sentences. If I get that kind of a report, I will follow those recommendations as well.

(8/27/18 Tr., p.30, L.11 – p.31, L.10.) Put another way, the district court was only pledging to follow a probation recommendation with the *assumption* that such a recommendation would follow a period of good behavior.

That was not what happened here. Despite Hillman’s poor performance on the rider, the Department of Correction recommended probation. It was this disconnect—between Hillman’s poor performance and the positive recommendation—that led the district court to question the recommendation:

When I read through the summary of [Hillman’s] participation in the programming, it’s pretty basic, pretty—pretty superficial in terms of his understanding of what’s—really needs to be happening to make his life better here.

I mean, we’re dealing with some pretty serious crimes, including involvement in some incidents with—with law enforcement, and then showing the same sort of behavior during the court of a—the rider and not showing, in my view, a—a very understanding participation in recovery issues.

So I’m really puzzled here as to why they’re saying put him on probation.

(5/3/19 Tr., p.38, L.25 – p.39, L.11.)

The district court, responding the Hillman’s counterargument that the report showed his “ability to follow directions” and discontinue his bad behavior (5/3/19, Tr., p.39, Ls.21-23), went on:

... I’m having trouble—I’m having trouble understanding that kind of comment when I read through the disciplinary report and [Hillman], at least twice, if not three time, in that March incident was told to back off, and then he comes back and reengages.

And, you know, there’s no physical contact, but there’s certainly words, and there’s certainly threats in the process.

And he doesn’t seem to respond to the fact that he’s been told to back off and then physically being made to back off. And he comes back and [re-aggresses].

And I don't see that as applying—I think that's just the next—the next step's going to be throwing punches. That's what he had—that's the problem he had before.

And I can't really—I'm at the point now where I can't really be assured that he's not going to be aggressive in the future.

(5/3/19 Tr., p.40, Ls.5-22.)

The district court went on to explain why it was not following the Department's non-binding recommendation, and why it was relinquishing jurisdiction:

THE COURT: All right. Thank you.

Well, as you know, I'm not bound by that.

[DEFENSE COUNSEL]: I understand that, your Honor.

THE COURT: Their recommendation's a recommendation to me. And I—I read this with years of experience in dealing with these issues.

I have a significant—a significant concern about the safety of the community. And that's my primary duty as a judge, to preserve that.

So, based on what I read here—and—and I've reread the conclusion, where he talks about—or the defendant talks about the response that he's had from the program, where we continue to see that that's just, basically, a superficial recitation of kind of the tops of the waves, the knowledge on the top, and he's not getting the underlying current.

And it's led him in the past to behavioral issue that involve violence against others. And I—I just—I just think we're not done dealing with those things.

(5/3/19 Tr., p.47, Ls.2-21.)

The district court accordingly relinquished¹ jurisdiction. (5/3/19 Tr., p.47, Ls.20-21.) This was not an abuse of discretion. A court does not abuse its discretion by changing its mind, and the district court's decision here was based on Hillman's performance on the rider—not the

¹ The district court also shortened Hillman's determinate time from three years to two years—more evidence that the decision below was carefully considered and reasonable. (5/3/19 Tr., p.47, Ls.22-24.)

Department's contrary recommendation. The court's reliance on the record, as opposed to simply rubberstamping the Department's recommendation, shows self-evident discernment and careful consideration. Because the district court's decision was based on the record, and justified in light of the record, Hillman fails to show any error.

Conclusion

The state respectfully requests this Court to affirm the district court's order relinquishing jurisdiction.

DATED this 24th day of January, 2020.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of January, 2020, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General