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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 47613-2019, 47614-2019, 47615-2019,
)	& 47616-2019
v.)	
)	ADA COUNTY NOS. CR01-18-40580,
ALLEN RAY FREEMAN, JR.,)	CR01-18-40807, CR01-18-145228, &
)	CR01-18-49629
Defendant-Appellant.)	
)	APPELLANT’S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

In these consolidated cases, the district court relinquished jurisdiction over Allen Ray Freeman, instead of granting him probation, even though Mr. Freeman had successfully completed his rider programming and had earned the Department of Correction’s recommendation for probation. Disregarding the Department’s recommendation, the district court instead focused on Mr. Freeman’s single disciplinary infraction: taking chopped jalapenos left in the kitchen fridge he was assigned to clean, and adding them to his soup. Even after Mr. Freeman submitted additional information with his Criminal Rule 35 motion, explaining the

use of leftovers was allowed, the district court declined to grant probation. On appeal, Mr. Freeman argues that the district court's decisions are unreasonable under the circumstances, and represent an abuse of discretion.

Statement of the Facts and Course of Proceedings

After losing his business and family home to flash-flooding in 2016, Mr. Freeman's life began to fall apart. (10/31/18 Tr., p.27, L.14 – p.29, L.2.)¹ While he was evacuated and separated from his wife and children, "friends" introduced him to methamphetamine, and for a time, Mr. Freeman fell into its powerful hold. (10/31/18 Tr., p.27, L.14 – p.29, L.2; PSI, pp.176.) To support his wife and pre-teen children, Mr. Freeman embarked on a crime spree that included going to banks and cashing forged and stolen checks, using other's identities to obtain bank cards, and taking property that did not belong to him. (10/31/18 Tr., p.27, L.14 – p.29, L.2.) This crime spree was short-lived, and after Mr. Freeman was apprehended, the State charged him with numerous offenses in multiple cases. (*See* Appeal No. 47613, R., pp.8, 20; Appeal No. 47614, R., p.2, 18; Appeal No. 47615, R., pp.8, 20; Appeal No. 47616-2019, R., pp.10, 25.)

Mr. Freeman and the State entered into an agreement for the global resolution of these four cases. (R., pp.27-28.) Pursuant to the agreement, Mr. Freeman pled guilty to possessing forged bank notes, grand theft, forgery, burglary, and misappropriation of personal information;²

¹ Unless otherwise noted, all citations are to documents filed in Appeal No. 47613 (CR01-18-40580), in the appellate record, which is the lead case according to the Supreme Court's order consolidating these appeals. "Conf.Docs" refers to the 460-page electronic file found in that same appellate record, and contains the 2017 presentence investigation report (PSI) and the Addendum to the PSI (APSI), and all associated documents. "Tr." refer to hearings after consolidation of the cases, which were conducted before the Hon. Peter Barton, district court judge, and are located at pages 22 – 35 of the transcript filed in this appeal.

²Appeal No. 47613 (CR01-18-40580 (pled guilty to possession of forged notes)); Appeal No. 47614 (CR01-18-40807 (pled guilty to grand theft)); Appeal No. 47615 (CR01-18-145228 (pled

the State dismissed the other counts in these cases and agreed to not pursue a persistent violator enhancement; and all four cases were consolidated for sentencing before the district court judge in the burglary case, CR01-18-40580. (R., pp.27-28.)

At the sentencing hearing, the State asked the district court to impose an aggregate term of twenty years, with five years fixed. (10/31/18 Tr., p.17, L.22 – p.18, L.14.) Mr. Freeman requested an aggregate sentence of not more than seven years, with two years fixed, with either probation or retained jurisdiction. (10/31/18 Tr., p.30, Ls.3-24.) The district court sentenced Mr. Freeman to an aggregate term of ten years, with three years fixed, and retained jurisdiction and ordered a rider. (10/31/18 Tr., p.33, Ls.21-25; R., p.43.)

Mr. Freeman successfully completed his rider at North Idaho Correctional Institution (NICI), far exceeding the program requirements. (PSI, pp.449-51.) He performed extra class assignments, volunteered to work in the kitchen on weekends, volunteered to help his instructors and to help other participants in their career planning, and volunteered to help the janitors on his unit. (PSI, pp.449-51.) The Department of Correction acknowledged these achievements and recommended that Mr. Freeman be placed on probation. (PSI, pp.449-51.) At the jurisdictional review hearing, however, the district court disregarded that recommendation; instead, the district court focused on the single disciplinary infraction Mr. Freeman had incurred: a “theft” of leftover chopped-up peppers which he put into his soup. (Tr., p.47, Ls.6-19.) The district court stated, “how much do I put on that ‘theft’ while in custody?” and then decided to relinquish jurisdiction because of that incident. (Tr., p.47, Ls.6-19; R., pp.50-53.)

Mr. Freeman filed a motion pursuant to Criminal Rule 35 in each of his cases seeking a reduction of his sentences. (R., p.54.) The motion included new and additional information

guilty to grand theft and forgery)); Appeal No. 47616-2019 (CR01-18-49629 (pled guilty to three theft offenses involving obtaining and using bank card)).

explaining the jalapeno pepper incident, and showing his kitchen boss allowed kitchen workers like him to use leftovers in their soups. (*See R.*, pp.59-60.) He also provided the court with additional documentation of his strong rider performance, further detailing the numerous instances in which he had performed above and beyond the requirements of his program. (*R.*, pp.61-73.) Finally, he pointed out that in one of his other contemporaneous cases, Canyon County Case, CR14-18-114296, the district court judge had accepted the Department's recommendation and granted Mr. Freeman probation based on the same rider performance. (*R.*, p.55; *see Conf.Docs.447.*) The district court denied Mr. Freeman's Rule 35 motions and Mr. Freeman filed a Notice of Appeal in each of his cases, that are timely from the judgments, orders of relinquishment, and orders denying his rule 35 motion. I.A.R. 14, 17(e)(1)(C). (*R.*, pp.85, 88.)³

This Court then consolidated the appeals for all purposes under Appeal No. 47613-2019 (CR01-18-40580). (*See Order Granting Motion to Consolidate*, dated January 21, 2020.)

ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction over Mr. Freeman and when it subsequently refused to reduce his excessive sentences?

³ The documents establishing the timeliness of the appeal for each case may be located as follows: Appeal No. 47613-2019 *R.*, pp.85, 88; Appeal No. 47614-2019 *R.*, pp.77, 88; Appeal No. 47615-2019 *R.*, pp.85, 88; and Appeal No. 47616-2019, *R.*, pp.91, 94.

ARGUMENT

The District Court Abused Its Discretion When It Relinquished Jurisdiction Over Mr. Freeman, And When It Refused To Reduce His Excessive Sentences

A. Introduction

The district court abused its discretion when it relinquished jurisdiction over Mr. Freeman and refused to place him on probation. Mr. Freeman's rider performance was outstanding by all accounts, and the district court's decision to relinquish jurisdiction over him because he had added jalapeno peppers to his soup was unreasonable, especially in light of the additional information presented with the Rule 35 motion. This Court should vacate the district court's orders and remand Mr. Freeman's cases to the district court, with the instruction that Mr. Freeman be placed on probation.

B. Standard Of Review

Whenever the appellate court reviews a district court's decision for abuse of discretion, it inquires whether the district 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 choices available to it; and (4) reached its decision by an exercise of reason. *State v. Le Veque*, 164 Idaho 110, 113 (2018).

The decision to relinquish jurisdiction or grant probation is committed to the district court's discretion. *Id.* Relevant to the third prong of the abuse of discretion inquiry, the governing legal standards are set forth in Idaho Code § 19-2521, and require that the district court *not* impose a prison sentence "unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public. . . ." *Id.* Relevant to the fourth

prong of the inquiry, in determining whether the district court reached its decision by an exercise of reason, the role of the appellate court “is to review the process the district court engaged in to make its decision.” *Le Veque*, 164 Idaho at 115. “The hallmark of a discretionary decision that is not reached by an exercise of reason is arbitrariness.” *Id.*

The district court also has discretion to reduce a defendant’s sentence on a Criminal Rule 35 motion made following relinquishment of jurisdiction. *State v. Adair*, 145 Idaho 514 (2007). A request for reduction of sentence pursuant to Idaho Criminal Rule 35(b) is essentially a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* Where a defendant challenges his sentence as excessively harsh, the appellate court conducts an independent review of the record, giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *Miller*, 151 Idaho at 834.

C. District Court’s Decisions To Relinquish Jurisdiction Over Mr. Freeman And To Deny His Rule 35 Motion, Represent An Abuse Of The District Court’s Discretion, Especially In Light of the Additional Information Presented

The district court stated that its refusal to place Mr. Freeman on probation was based on the kitchen incident involving the leftover chopped jalapeno peppers. While it is true that Mr. Freeman was cited for a “theft” based on that incident, the incident did not warrant sending Mr. Freeman to prison instead of placing him on probation, especially given his explanation of the surrounding circumstances, and his otherwise exemplary performance on his rider.

The incident was described by the correctional officer (CO) as follows:

On 08/15 I started a check of the kitchen during chow. When I entered the kitchen Inmate Freeman #124113 was over by the microwaves. Inmate Freeman

had two bowls and was adding items to them. When I asked him what he was doing he place one bowl in the microwave. I looked in the microwave and found soup with chopped up peppers. I asked him who the food was for, and he said it was for him. When I asked him again why he was putting peppers in it, he told me they could. I asked him again what was he doing and he told me they could use the leftover peppers for soup. I spoke with the FSO and was told that was not allowed and he already had his lunch.

(Conf.Docs., p.454.)

The following day, “corrective action” was taken in the form of a citing Mr. Freeman with an infraction for “Theft under 25\$,” terminating Mr. Freeman and requiring him to speak with an FSO and ask for his job back – which he did and was immediately re-hired.

(Conf. Docs., p.454.)

At his review hearing, Mr. Freeman acknowledged to the district court he had he “messed up with the jalapeno incident,” and he took full responsibility for placing himself in that situation. (10/9/19 Tr., p.45, Ls.14-20.) However, and contrary to the district court’s comments, Mr. Freeman did not tell the court that what he did was wrong, at least not in the sense of a theft. (10/9/19 Tr., p.45, Ls.14-20, p.46, Ls.12-24.) And, contrary to the conclusion drawn by the district court, the incident did not show that “the rider did not work.” (Tr., p.46, Ls.16-23.)

Rather, as clarified by the letter submitted with his Rule 35 motion, Mr. Freeman was a kitchen worker at the time, and putting leftovers into the daily soup was not only a standard practice of the workers, it was condoned, if not encouraged, by his kitchen boss. (R., pp.59-61.)

Mr. Freeman explained the jalapeno incident as follows:

I was a cook in the kitchen at NICI. I was done with the soup of the day and was asked to clean out the diets fridge as we [have] done every week. So normally we would put anything we could in the soup and use it. Mrs. Chapman, who was my boss, said if we can use it then do that rather than throw it in the garbage. So when I used a small bowl of [jalapenos] in the kitchen worker’s soup. I put them in all the workers’ soup who wanted it, which we have on numerous times. Mrs. Chapman was OK with it. I would have done the exact same thing if she would have been standing right beside me.

As I was finishing the last bowl of soup a C/O walked in and asked me what I was doing. I told her [I was] putting some peppers in my soup. She asked whose it was. I told her mine. She asked if we were suppose[d] to. I told her Mrs. Chapman told us it's OK. She turned and walked out. Then later told me she was writing me an Infraction for lying to staff. I told her to call Mrs. Chapman because she told me for the last 3 months it was OK. . . .

(R., pp.58-59.)

In his letter, Mr. Freeman also explained he was immediately given his kitchen job back, that his kitchen boss, Mrs. Chapman, told him he should file a grievance because he never should have gotten in trouble, and that she would tell the sergeant he had done nothing wrong. (R., p.59.) However, after talking with his case manager and his "group", and receiving assurances the isolated incident would not be a problem, he let the matter drop. (R., p.60.) Mr. Freeman insisted in his letter, as he insists now, he was not stealing anything, and had not realized at the time he added the jalapenos that he was breaking a rule. (R., p.60.)

Mr. Freeman's clarification of the incident is entirely consistent both with his role as a kitchen worker, and with the record documenting his outstanding rider performance. He was an enthusiastic worker who volunteered on weekends; he helped out the program staff, helped his fellow inmates, and helped out the janitors in his unit. He came to class every day, prepared, and asked for additional assignments as well. (PSI, pp.449-51.)

The district court's refusal to accept Mr. Freeman's clarification of the jalapeno incident, even though within the court's discretionary power to do so, was an arbitrary and unreasonable exercise of that discretion. In any event, even had Mr. Freeman not been authorized by his boss to add the jalapenos to his soup, the single kitchen-soup incident did not justify the district court's decision to deny him probation, given Mr. Freeman's exceptional performance

throughout the nine months of his rider. The district court's orders relinquishing jurisdiction should be vacated, and Mr. Freeman should be placed on probation.

CONCLUSION

Mr. Freeman respectfully requests that this Court vacate the district court's orders relinquishing jurisdiction, and its orders denying his Rule 35 motions, and remand his cases to the district court with instructions that the district court place him on probation.

DATED this 25th day of June, 2020.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 2020, 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

KAC/eas