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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47599-2019
Plaintiff-Respondent,)	
)	
v.)	Ada County Case Nos. CR01-19-13551
)	
VINCENT JOSEPH OLSZEWSKI,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Is Olszewski’s claim that the district court abused its discretion by not immediately placing him on probation, but instead retaining jurisdiction, moot?

ARGUMENT

Olszewski’s Claim That The District Court Abused Its Discretion By Not Immediately Placing Him On Probation Is Moot

Vincent Joseph Olszewski possessed methamphetamine, marijuana and drug paraphernalia under a Boise River Greenbelt bridge. (PSI, p. 93 (citations to electronic file named “Conf.Docs.-Olsz.pdf”).) The state charged Olszewski with one count of possession of a controlled substance,

one count of possession of drug paraphernalia, along with a persistent violator enhancement. (R., pp. 19-20, 26-27.) Olszewski pleaded guilty to possession of a controlled substance, and the state agreed to dismiss the paraphernalia charge and the persistent violator enhancement. (R., p. 32; Tr., p. 4, L. 9 – p. 16, L. 4.) Olszewski requested a sentence of “two years fixed plus three years indeterminate, suspended, and placed on probation.” (Tr., p. 26, Ls. 14-17.) The district court sentenced Olszewski to five years, with two years determinate and retained jurisdiction. (R., pp. 45-46.) Olszewski filed a timely appeal. (R., pp. 51-52.) Olszewski acknowledges that he has since been placed on probation by the district court. (Appellant’s brief, p. 3.)

On appeal, Olszewski is “[m]indful that he is currently on probation,” but argues that “the district court abused its discretion by not placing him on probation when he was initially sentenced.” (Appellant’s brief, p. 1.) Because he has already been placed on probation, the remedy he seeks on appeal, Olszewski’s claim is moot.

“An issue is moot if it does not present a real and substantial controversy that is capable of being concluded through judicial decree of specific relief or if a favorable judicial decision would not result in any relief or the party lacks a legally cognizable interest in the outcome.” Interest of Doe, 165 Idaho 72, 76, 438 P.3d 769, 773 (2019) (quotation marks omitted). Here, Olszewski received the underlying sentence he requested at sentencing. (Compare Tr., p. 26, Ls. 14-17 with R., pp. 45-46.) As Olszewski acknowledges (Appellant’s brief, p. 3), he has already been placed on probation, the relief he seeks from this Court. This appeal is therefore moot, and should be dismissed.

CONCLUSION

The state respectfully requests this Court to dismiss this appeal.

DATED this 31st day of December, 2020.

/s/ Kenneth K. Jorgensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of December, 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:

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