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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47997-2020
)	
v.)	BANNOCK COUNTY NO. CR03-19-4703
)	
TIMOTHY JO FERNANDEZ,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Timothy Jo Fernandez pled guilty to felony stalking and the district court sentenced him to five years, with two fixed, but ordered a period of retained jurisdiction to allow Mr. Fernandez to complete the rider program and demonstrate his suitability for probation. Although Mr. Fernandez completed his program, and did particularly well in a class the court had emphasized at sentencing, the district court relinquished jurisdiction.

On appeal, Mr. Fernandez claims that the district court abused its discretion by relinquishing jurisdiction instead of granting him probation.

Statement of the Facts and Course of Proceedings

On May 7, 2019, Mr. Fernandez was arrested and charged with felony stalking of his now-estranged wife. (R., pp.8-9.) At the time of the offense, Mr. Fernandez was a heavy, daily user of heroin and methamphetamine, which is why weeks earlier, his wife had had to leave their home, and why she took their daughter. (Conf.Docs., pp.7-8.) Days before the arrest, Mr. Fernandez had been hospitalized at the behavioral unit after writing a suicide note. (Conf.Docs., pp.7-8.) After his release from the hospital, his wife tried to take care of him and prevent another relapse, but Mr. Fernandez got high and an altercation resulted instead, leading to misdemeanor domestic battery charges and the issuance of a no-contact order. (Conf.Docs., pp.7-8.) Regrettably, however, Mr. Fernandez immediately called his wife twice, resulting in the felony stalking charge underlying this case. (Conf.Docs., pp.7-8; R., pp.8-9.)

Pursuant to an agreement, Mr. Fernandez pled guilty to the stalking charge and the State recommended retained jurisdiction. (R., pp.84-91.) Prior to sentencing, Mr. Fernandez was accepted into the court's special domestic violence program, and at sentencing he asked for probation. (Tr., p.21, L.7 – p.23, L.23.) He also requested an underlying sentence of five years, with two years fixed. (Tr., p.22, Ls.5-8.) The district court sentenced Mr. Fernandez to five years, with two years fixed, but denied his request for probation. (Tr., p.35, L.1 – p.36, L.1.) Instead, the court ordered retained jurisdiction, telling Mr. Fernandez, "I really want you to take advantage of the aggression behavior module that they provide you up there" and "do the very best that you can." (Tr., p.35, L.1 – p.36, L.1.)¹

¹ Prior to Mr. Fernandez starting his rider program, the State filed a motion to relinquish jurisdiction, alleging Mr. Fernandez had attempted to have letters delivered to his wife, in violation of a no-contact order. (R., pp.96-99; Ex.A.) The district court denied the State's motion, concluding that Mr. Fernandez should "be afforded an opportunity for evaluation with regard to his amenability for probation." (R., pp.107-12.)

Mr. Fernandez completed his rider program at North Idaho Correctional Institution (NICI). Although he performed well in his classes and sought help to correct his disciplinary issues, his case manager ultimately concluded that Mr. Fernandez had “failed” because he conveyed a bad attitude about the programming at NICI, indicating he was not committed to the program. (Conf.Docs., p.72.) After receiving the Department of Correction’s Amended Presentence Investigation, and without holding a review hearing, the district court entered an order relinquishing jurisdiction. (R., p.119.) Mr. Fernandez filed a timely Notice of Appeal. (R., p.122.)

ISSUE

Did the district court abuse its discretion by relinquishing jurisdiction over Mr. Fernandez instead of granting him probation?

ARGUMENT

The District Court Abused Its Discretion By Relinquishing Jurisdiction Over Mr. Fernandez Instead Of Granting Him Probation

A. Introduction

Mr. Fernandez asserts he was a suitable candidate for probation under the statutory factors, and that the district court’s decision to relinquish jurisdiction was unreasonable and represents an abuse of discretion.

B. Standard Of Review

The district court’s sentencing decisions are reviewed under the multi-tiered abuse of discretion standard. *State v. Miller*, 151 Idaho 826, 834 (2011). When reviewing a district court’s decision for an abuse of discretion, the appellate court engages in a multi-tier inquiry to 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.” *State v. Le Veque*, 164 Idaho 110, 113 (2018).

The determination whether to place a defendant on probation or instead to send him to prison is governed by the legal standards set forth in Idaho Code § 19-2521, which 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...” *Miller*, 151 Idaho at 835. The same criteria apply where, as in this case, the district court defers its probation decision, and retains jurisdiction under I.C. § 19-2601(4), for further evaluation by the Department of Correction. *See State v. Merwin*, 131 Idaho 642, 648 (1998). Generally, 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 pursuant to I.C. § 19-2521. *See State v. Chapel*, 107 Idaho 193, 194 (Ct. App. 1984).

C. Mr. Fernandez Was A Suitable Candidate For Probation And The District Court Abused Its Discretion By Relinquishing Jurisdiction Over Him

The information presented in this case shows Mr. Fernandez was a suitable candidate for probation, and that a suspended sentence, rather than imprisonment, was appropriate in his case. Mr. Fernandez has strong potential for rehabilitation. He is in his early thirties, and according to his GAIN evaluation, he has a severe drug addiction and significant, under-addressed mental health conditions. (Conf.Docs., pp.42-50.) Mr. Fernandez is motivated to change. (Conf.Docs., p.42.)

Mr. Fernandez's rider performance, though imperfect, shows that he recognizes he has problems with impulsiveness and anger, and demonstrates that he is amenable to treatment and is willing to doing the hard work that will be needed to turn his life around. (Conf.Docs., p.77-82.) While Mr. Fernandez received disciplinary write-ups for "horse play," yelling out to an inmate in another unit, being outside of his designated area, and sharing commissary (coffee) with another participant (Conf.Docs., p.77-82), he also went to his case manager asking for help addressing his behaviors; together they came up with a "corrective action plan" which, according to his case manager, Mr. Fernandez "did an excellent job" of completing (Conf.Docs., p.78).

Mr. Fernandez also worked hard in his classes and excelled in several of them. In his Thinking for a Change class, he "performed at the level of a role model." (Conf.Docs., p.76.) Of that performance, his instructor wrote that Mr. Fernandez,

has been willing to go way above and beyond in group by assisting a fellow participant who is neurologically different and helped him to break down the skills so he could understand him. I witnessed Mr. Fernandez as he exercised an immense level of patience, kindness, and compassion with this participant. As a facilitator, Mr. Fernandez was very helpful in the group as this would have taken a great deal of time for me to explain the same information ... Additionally, Mr. Fernandez met all the group commitments without incident, he appeared to have a sincere desire to change (as evidenced by several future-looking statements where he was planning out a better future by his willingness to make better choices). He also appeared to learn a new way to examine this thinking through the three steps of [cognitive self-change].

(Conf.Docs., p.72.)

Mr. Fernandez also performed well in his Aggression Replacement Training class – the course that was highlighted by the court at sentencing. (Conf.Docs., p.72; Tr., p.35, Ls.1-4.) The instructor wrote that Mr. Fernandez showed good knowledge and understanding of the program materials, and was able to complete assignments with "a high level of understanding of the Social Skills." (Conf.Docs., p.72.) Mr. Fernandez showed he could "identify situations that

lead to risky behavior” in his anger control class, and in his moral reasoning class, he showed he was “able to make good decisions” and understand “why.” (Conf.Docs., p.72.) Mr. Fernandez also “showed up on time, ready to work, and with his work completed each day.” (Conf.Docs., p.72.) In addition to his coursework, Mr. Fernandez also did work as a janitor and took over watering the plants. (Conf.Docs., pp.77-78.) He was commended for being “always so positive and a hard worker.” (Conf.Docs., p.78.)

His programming notes also demonstrate that Mr. Fernandez can put his anger-management skills to use. (Conf.Docs., p.77.) It was also noted that, when discussing his wife, Mr. Fernandez “seemed highly volatile” and would escalate quickly,” but that he could “just as quickly de-escalate himself” (Conf.Docs., p.77), demonstrating the ability to control his anger.

Notwithstanding Mr. Fernandez’ strong class performances, his case manager decided that he had “failed” because he “conveyed an air of irritation and indifference” toward the programming and NICI, and because of a general “attitude and demeanor” showing a “lack of commitment.” (Conf.Docs., p.72.) The case manager also cited a phone conversation she had with the victim about unspecified “video posts of Mr. Fernandez on Facebook during his stay at NICI,” and cited to the victim’s negative comments about Mr. Fernandez and the underlying offense. (Conf.Docs., p.74.) However, while Mr. Fernandez does not expect his now-estranged wife to view him favorably or not to be angry, the decision whether to place him on probation or have him serve out his sentence in prison should be based upon his rider performance, as indicated by the district court at sentencing.

As he told the court at sentencing, Mr. Fernandez finds himself taking a long, hard look at himself. He acknowledges he lost what he loved most and that he, alone, is the cause. (Tr., p.30, Ls.3-19.) He is aware he has mental health and anger issues that he must address, a

deadly serious drug problem, and “a serious me problem.” (Tr., p.30, Ls.3-19.) Mr. Fernandez is driven by his desire to be a good father, and he is determined to start putting his children first. (Tr., p.27, Ls.6-17, p.30, Ls.3-19.) He has strong support from his parents and his sister, and he will have a stable, supportive place to live in the community, which will help him succeed on probation. (Tr., p.29, Ls.10-20; Conf.Docs., p.78.)

Mr. Fernandez respectfully submits that the information before the district court shows he was a suitable candidate for probation, and that a suspended sentence, rather than imprisonment, was appropriate in his case. The district court abused its discretion in concluding otherwise, and its order relinquishing jurisdiction therefore should be reversed.

CONCLUSION

Mr. Fernandez respectfully asks that this Court to vacate the district court’s order relinquishing jurisdiction, and remand his case to the district court with the instruction that the district court place him on probation.

DATED this 2nd day of November, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

KAC/eas