

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

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

KENNETH K. JORGENSEN  
Deputy Attorney General  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
Email: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47997-2020
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR03-19-4703
	)	
TIMOTHY JO FERNANDEZ,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Fernandez failed to show that the district court abused its sentencing discretion when it relinquished jurisdiction upon the recommendation of IDOC?

ARGUMENT

Fernandez Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Police arrested Fernandez for false imprisonment, domestic battery and second degree stalking. (R., p. 12; PSI, p. 4.) The victim was his estranged wife, Claire. (R., p. 12; PSI, p. 4.) While in custody Fernandez was served with a no contact order, prohibiting contact with the

victim. (R., p. 12; PSI, p. 4.) Within ten minutes of his release, however, Fernandez contacted the victim. (R., pp. 12-13; PSI, p. 4.) Fernandez was abusive in the first telephone contact, and the victim refused to answer his successive calls. (R., p. 13.) Fernandez called her repeatedly and also tried to contact her by calling her parents' home where she was staying. (R., p. 13; PSI, pp. 4-5.)

The state charged Fernandez with stalking, elevated to first degree stalking by prior stalking convictions. (R., pp. 35-36.) Fernandez pled guilty. (R., p. 73.) The district court imposed a sentence of five years with two years determinate and retained jurisdiction. (R., pp. 84-88.) The court also entered a no contact order regarding the victim. (R., pp. 81-82.)

Less than three months into the retained jurisdiction period the state moved the court to relinquish its jurisdiction because Fernandez continued to contact the victim in violation of the no contact order. (R., pp. 94-95.) The district court denied the motion to relinquish jurisdiction on the basis that any contact of the victim could be evaluated by IDOC and by the court at a later date. (R., pp. 107-11.)

About eight months after entry of judgment, IDOC recommended relinquishment of jurisdiction. (PSI, pp. 67-74.) The recommendation for relinquishment was based on Fernandez's "lack of interest in his programming at NICI; his continual disregard for rules; and his admission that he intends to violate the current No Contact Order." (PSI, pp. 73-74.) The district court relinquished its jurisdiction. (R., p. 119.) Fernandez filed a timely notice of appeal. (R., pp. 122-24.)

On appeal, Fernandez argues the district court abused its discretion because he "has strong potential for rehabilitation." (Appellant's brief, p. 4.) This argument fails because the district court did not unreasonably assess Fernandez's potential to be successful on probation.

B. Standard Of Review

“[W]e review a decision to relinquish jurisdiction for abuse of discretion.” State v. Latneau, 154 Idaho 165, 166, 296 P.3d 371, 372 (2013). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “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. Herrera, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. Fernandez Has Shown No Abuse Of The District Court’s Discretion

“The hallmark of a discretionary decision that is not reached by an exercise of reason is arbitrariness.” State v. Le Veque, 164 Idaho 110, 115, 426 P.3d 461, 466 (2018). “Good performance at NICI, though commendable, does not alone create an abuse of discretion in the district judge’s decision not to place the defendant on probation or reduce the sentence.” State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001). “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.” State v. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013) (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

Fernandez had a significant criminal record, including a prior felony conviction for conspiracy to commit burglary and several arrests and convictions for domestic violence and violations of no contact orders. (PSI, pp. 8-14.) He did not do well on the probation imposed on his prior felony conviction. (PSI, p. 14.) The victim reported the extreme difficulties she has had

because of Fernandez's heroin use, controlling behaviors, and domestic violence, stating that he needed both rehabilitation and to be held "accountable for his behaviors." (PSI, pp. 6-8.) The domestic violence evaluator found a "high propensity for abuse," and that this was a "highly dangerous time" for the victim because of Fernandez's "reported jealousy" and intent to be "together again" with the victim. (PSI, pp. 87-88.)

At sentencing the district court noted the prior felony conviction, and how the court "ended up having to impose the sentence" despite giving Fernandez "opportunities" on probation. (Tr., p. 31, Ls. 6-22.) The court found that Fernandez was "impulsive," as demonstrated by his "multiple protection orders and no-contact order violations." (Tr., p. 31, L. 23 – p. 32 L. 13.) The district court recognized Fernandez's issues with drug addiction and mental health problems. (Tr., p. 32, L. 4 – p. 33, L. 4.) The court was concerned that the domestic violence evaluation showed Fernandez was "pretty high in the range of dangerousness and illegality." (Tr., p. 33, Ls. 5-15.)

The district court applied the four goals of sentencing. (Tr., p. 34, Ls. 2-5.) It concluded that Fernandez was not at that point a good candidate for probation, so the retained jurisdiction program met the goals of sentencing better. (Tr., p. 34, L. 5 – p. 36, L. 21.) The court also left in place the no contact order. (Tr., p. 36, L. 22 – p. 37, L. 7.) The district court told Fernandez that the "first thing" he had to learn was that he could not contact the victim. (Tr., p. 37, Ls. 8-13.)

The rider review showed that Fernandez was not learning the first thing. He minimized his violence and domestic abuse, and his drug addiction, and was not compliant with the rules of the program. (PSI, pp. 69-71.) Fernandez showed "little in the way of remorse for his actions," he conveyed "irritation and indifference toward change," and displayed "a lack of commitment to treatment." (PSI, p. 71.) Fernandez was "highly disdainful of his wife and spoke about her using expletives and aggression to describe her and his feelings that she will not allow him to see their

children when he is using.” (PSI, p. 71.) “It is clear from his thinking and his behavior that he has not changed his thinking regarding his ex-wife ....” (PSI, p. 71.) Fernandez was “highly volatile and would escalate quickly.” (PSI, p. 71.) IDOC recommended relinquishment because of Fernandez’s “lack of interest in his programming at NICI; his continual disregard for rules; and his admission that he intends to violate the current No Contact Order.” (PSI, pp. 73-74.)

The district court found that Fernandez was not an appropriate candidate for probation at the time of his sentencing, and the record amply supports that finding. The record shows that Fernandez was not a more viable candidate for probation as a result of the retained jurisdiction program. Far from being arbitrary, the district court’s relinquishment of jurisdiction was reasonable.

Fernandez argues the record shows he was a “suitable candidate for probation” because he “has strong potential for rehabilitation.” (Appellant’s brief, p. 4.) He claims that his performance on his rider “demonstrates that he is amenable to treatment and willing to doing [sic] the hard work that will be needed to turn his life around.” (Appellant’s brief, p. 5.) Although it is possible to cherry-pick positive aspects from the report on his rider, Fernandez’s overall performance offered no assurance that he was no longer a threat to the victim or society in general. The very factors that made Fernandez a poor candidate for probation in the first place were still present at the conclusion of the retained jurisdiction. Fernandez has failed to show that the district court abused its sentencing discretion when it relinquished jurisdiction upon the recommendation of IDOC.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 25th day of November, 2020.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of November, 2020, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd