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### State v. Atkinson Appellant's Brief Dckt. 48141

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 48141-2020
	)	
v.	)	TWIN FALLS COUNTY NO.
	)	CR42-19-6571
BRIER DELORE ATKINSON,	)	
	)	APPELLANT’S BRIEF
Defendant-Appellant.	)	
_____	)	

**Statement of the Case**

**Nature of the Case**

Brier Atkinson challenges the district court’s order relinquishing jurisdiction. Because the district court had no hard proof that Mr. Atkinson violated the no contact order in this case, and the Idaho Department of Correction recommended that the district court place him on probation, the district court abused its discretion by relinquishing jurisdiction.

**Factual and Procedural Background**

Mr. Atkinson pled guilty to felony domestic violence, I.C. § 18-918, related to an altercation with his girlfriend, Ms. Chaput. R. 44–51; *see generally* 8/23/2019 Tr. As part of the binding plea agreement, the district court sentenced him to three years fixed with five years indeterminate, and retained jurisdiction. R. 51–57; 8/23/2019 Tr., p.9, Ls.5–14, p.21, Ls.15–22.

After Mr. Atkinson’s rider program, the Idaho Department of Correction (“IDOC”) recommended that the district court place him on probation. PSI<sup>1</sup> 21. The IDOC reported that Mr. Atkinson was about to complete three programs (thinking for a change, aggression replacement training, and pre-release), he had no formal disciplinary sanctions, and he had made progress in his rehabilitation. PSI 22–23. Mr. Atkinson had a positive attitude, was willing to learn, and consistently completed his assigned work. PSI 23–24. He made progress in his anger management by recognizing his triggers and coping mechanisms. PSI 24. “Mr. Atkinson worked diligently to change his thought processes and outlook towards anger, and understands that he must practice and implement his new skills to find success upon release.” *Id.* He understood that he would need to begin his life over again to be successful in the community, and he intended to use his support network—including his employer, church, family, daughter, and sober friends—to keep himself on track. PSI 23–24.

The State, however, filed a motion to relinquish jurisdiction. R. 112–15. It claimed that, despite a no contact order prohibiting Mr. Atkinson from contacting Ms. Chaput, he had contacted her about 180 times in the roughly four months leading up to the rider review hearing. *Id.*; *see also* State’s Exs. A–B to 5/29/2020 Tr. (a list of phone calls and audio files containing phone calls, purportedly made by or on behalf of Mr. Atkinson to Ms. Chaput and a woman believed to be Mr. Atkinson’s sister).

At the rider review hearing, the State called its investigator, Mr. Lewin, to testify about the phone calls provided to the district court in State’s Exhibits A and B. Mr. Lewin testified that he had collected and listened to approximately 180 phone calls that were made from Mr. Atkinson’s rider facility to a phone number that he believed belonged to Ms. Chaput; that approximately

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<sup>1</sup> Citations to “PSI” refer to the .pdf document containing the confidential exhibits.

twenty inmate accounts made calls to that number; that he recognized Ms. Chaput's voice as the woman receiving the calls; and that he either recognized Mr. Atkinson's voice as the man making the calls or believed other inmates made the calls on Mr. Atkinson's behalf. 5/29/2020 Tr., p.11, L.8–p.42, L.25. Mr. Lewin acknowledged, however, that he did not have hard proof that it was in fact Mr. Atkinson placing the calls or Ms. Chaput receiving them. 5/29/2020 Tr., p.43, L.6–p.44, L.16.

The State thus asked that the district court relinquish jurisdiction, citing its belief that Mr. Atkinson had repeatedly violated the no contact order and continued to mistreat Ms. Chaput. 5/29/2020 Tr., p.47, L.21–p.51, L.5. Defense counsel argued that there was no definitive proof of who made the phone calls and that Mr. Atkinson denied any involvement. 5/29/2020 Tr., p.51, Ls.8–14. Because Mr. Atkinson did well in his programming, as reflected in the IDOC's probation recommendation, defense counsel asked that the district court place Mr. Atkinson on probation. 5/29/2020 Tr., p.51, Ls.15–24.

The district court relinquished jurisdiction. R. 123. It first found that it was Mr. Atkinson and Ms. Chaput talking during the phone calls. 5/29/2020 Tr., p.57, L.2–p.58, L.3. It also found that those conversations violated its no contact order and that Mr. Atkinson engaged in emotional and verbal abuse during the calls. 5/29/2020 Tr., p.58, Ls.8–16. Therefore, despite having earned a probation recommendation from the IDOC, the district court did not believe Mr. Atkinson was an appropriate candidate for probation and relinquished jurisdiction. 5/29/2020 Tr., p.58, L.17–p.60, L.10.

Mr. Atkinson timely appealed. R. 138–141.

### **Issue**

Did the district court abuse its discretion by relinquishing jurisdiction?

## **Argument**

This Court reviews a district court’s decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). That analysis considers 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 specific choices available to it; and (4) reached its decision by the exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

Here, the district court abused its discretion by relinquishing jurisdiction because it did not reach its decision by an exercise of reason. As argued by defense counsel, the State had no definitive proof that Mr. Atkinson had been communicating with Ms. Chaput during his ride, and Mr. Atkinson denied his involvement. 5/29/2020 Tr., p.51, Ls.8–14. He did well during his programming, earning a probation recommendation from IDOC. PSI 22–23. Thus, the district court should have placed Mr. Atkinson on probation, and it abused its discretion by relinquishing jurisdiction.

## **Conclusion**

Mr. Atkinson respectfully requests that this Court place him on probation.

DATED February 18, 2021.

/s/ Maya P. Waldron  
MAYA P. WALDRON  
Attorney for Appellant

## Certificate of Service

A true and correct copy of this Appellant's Brief has been served on February 18, 2021, via the File and Serve system, to the following:

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/s/ Maya P. Waldron  
MAYA P. WALDRON