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### State v. Avila Respondent's Brief Dckt. 48500

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48500-2020
Plaintiff-Respondent,	)	
	)	
v.	)	Ada County Case No. CR01-20-30067
	)	
ANTONIO LLANES AVILA,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Antonio Llanes Avila failed to show that the district court abused its discretion by declining to retain jurisdiction?

ARGUMENT

Avila Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

In April of 2020, Antonio Llanes Avila threatened his wife, Christa, with a bat, and hit her left hand with his hand. (PSI. p. 1.) Avila broke Christa’s hand, and she also suffered a cut behind her left ear. (PSI, p. 1.) The state charged Avila with one count of felony domestic violence or

battery. (R., pp. 31-32.) Avila pleaded guilty to felony domestic violence or battery, and the district court sentenced him to eight years, with 1.5 years determinate. (R., pp. 47-51.) Avila then filed a timely appeal. (R., pp. 60-61.)

On appeal, Avila argues that “the district court abused its discretion when it did not retain jurisdiction.” (Appellant’s brief, p. 1.) Avila has failed to show that the district court abused its discretion by declining to retain jurisdiction.

B. Standard Of Review

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)).

The decision whether to retain jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The primary purpose of a district court retaining jurisdiction is to enable the court to obtain additional information regarding whether the defendant has sufficient rehabilitative potential and is suitable for probation. State v. Jones, 141 Idaho 673, 677, 115 P.3d 764, 768 (Ct. App. 2005). Probation is the ultimate goal of retained jurisdiction. Id. There can be no abuse of discretion if the district court has sufficient evidence before it to conclude that the defendant is not a suitable candidate for probation. Id.

C. Avila Has Shown No Abuse Of The District Court's Discretion

The record shows the district court perceived its discretion, employed the correct legal standards to the issue before it, and acted reasonably and within the scope of its discretion.

At the sentencing hearing, the district court stated it “read the pre-sentence report” and the “domestic violence evaluation.” (Tr., p. 29, Ls. 18-20.) The district court considered “protection of the community,” as well as “rehabilitation, deterrence, and punishment.” (Tr., p. 29, Ls. 23-24.) The district court stated Avila “pleaded guilty to a significant crime of violence against [his] wife involving hitting her hard enough to break her hand.” (Tr., p. 29, L. 25 – p. 30, L. 4.) The district court noted that Avila “attributed,” his violent behavior “to a fair degree,” to “a relapse on drugs,” but, while that “may well be a contributor,” Avila had a lengthy history of violence and domestic violence. (Tr., p. 30, Ls. 6-12.) The district court also noted Avila “had a prior stint in prison a long while back based on some forgery charges” from 2005. (Tr., p. 30, Ls. 13-15.)

The district court stated the “domestic violence evaluation notes [Avila's] substantial lifetime history of violent behavior,” concludes that he's “a high risk for future intimate partner violence,” and notes Avila was demonstrating “some minimization and some degree of denial.” (Tr., p. 30, Ls. 16-21.) The district court stated Avila's “level of accountability perhaps leaves something to be desired, involves some degree of minimization of what has happened,” but there “are some bright sides here.” (Tr., p. 31, Ls. 1-4.) The district court credited Avila for obtaining “spots in outpatient substance abuse and domestic violence programs, so [he's] welcomed the notion of treatment and appear[s] to believe that it would benefit [him].” (Tr., p. 31, Ls. 5-8.) The district court stated it doesn't “doubt how difficult dealing with the loss of a son must be for almost any parent, and [the district court] can understand how that might send someone into a tailspin,” but wasn't sure “that you can draw a very straight line between that and the willingness to engage

in abusive sorts of behavior.” (Tr., p. 31, Ls. 9-17.) The district court stated it seems “to be something that likely afflicts [Avila] independently of [his] use of illegal substances. Certainly there are indicia of controlling and threatening behaviors that are beyond the outburst of violence here that resulted in breaking Ms. Avila’s hand.” (Tr., p. 31, Ls. 17-22.)

The district court determined that this “is an appropriate case for a prison sentence that is simply imposed. It’s not going to be as long as the sentence the state had recommended and asked for a retained jurisdiction,” but “Mr. Avila has earned, through his behavior here, a return trip to the penitentiary and can work on himself there.” (Tr., p. 32, Ls. 12-18.) The district court didn’t see Avila “as somebody that ought to be put on a probation track that really sending someone on a rider is.” (Tr., p. 32, Ls. 18-20.)

Avila argues that the “district court should have retained jurisdiction considering the four objectives of criminal punishment.” (Appellant’s brief, p. 4.) Avila’s argument does not show an abuse of discretion. His LSI score is thirty-three, placing Avila in the high risk to reoffend category. (PSI, p. 3.) Avila's extensive criminal history consists of numerous battery convictions and opportunities on probation. (PSI, pp. 10-14.) The presentence investigator stated that Avila “appeared to blame his abuse of methamphetamine, reportedly to cope with the grief of losing his son in 2018, as being the reason for his aggressive and violent behaviors.” (PSI, p. 17.) The presentence investigator noted that “Avila has a lengthy and significant criminal history which ... includes over 10 instances of aggression/assault/violence dating back to 1993.” (PSI, p. 17.) Moreover, Avila “has been supervised on community supervision on more than one occasion and has received domestic violence treatment” which did not prevent his criminal and violent acts in this case. (PSI, p. 17.) The presentence investigator also stated that Avila “has demonstrated he is not willing to abide by no contact orders in the current offense as well as in Ada County case

CR01-20-30053.” (PSI, p. 17.) In August of 2020, authorities responded to another domestic dispute at Avila’s residence. (PSI, pp. 41-42.) In that event, Christa and Avila were arguing over their grandson, and Christa reported that Avila pushed her into the corner of an end table and slapped her face. (PSI, p. 42.)

Avila’s continued criminal pattern of domestic violence shows that he presents a significant risk to society. Avila’s extensive criminal history and previous periods on probation shows that he is not amenable to community supervision, and a rider is not necessary to conclude that Avila is not a suitable candidate for probation. Avila broke his wife’s hand in a fight, and a lesser sentence would depreciate the seriousness of the instant offense. His conduct caused harm, and will continue to threaten harm without a period of incarceration. Imprisonment provides appropriate punishment and deterrent to Avila, and there’s an undue risk that he will reoffend without a period of imprisonment. Avila has failed to show that the district court abused its discretion by declining to retain jurisdiction.

### CONCLUSION

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

DATED this 28th day of October, 2021.

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

ZACHARI S. HALLETT  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of October, 2021, 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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/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General