

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) Nos. 45821-2018 & 46817-2019  
 Plaintiff-Respondent, )  
 ) Kootenai County Case No.  
 v. ) CR-2014-20024  
 )  
 MATTHEW ALLEN ALLMARAS, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

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**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF KOOTENAI**

\_\_\_\_\_  
**HONORABLE JOHN T. MITCHELL**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Matthew Allen Allmaras appeals from the district court's revocation of his probation and relinquishment of jurisdiction. He argues that the district court violated his Fifth Amendment rights and that one of the district court's orders was ambiguous.

### Statement Of The Facts And Course Of The Proceedings

Matthew Allen Allmaras entered an Alford<sup>1</sup> plea to injury to a child. (46817 R., p.94.<sup>2</sup>) The district court imposed a sentence of ten years with three years fixed, suspended the sentence, and placed Allmaras on probation for four years. (45821 R., pp.158-60.<sup>3</sup>) As a condition of probation, the district court required Allmaras to spend 180 days in jail. (45821 R., p.163.) The condition noted that Allmaras would be released early if he "pass[ed] a full disclosure polygraph" and would be sent on a rider if he failed the polygraph or failed to take the polygraph. (45821 R., p.163.)

Allmaras filed a Rule 35 motion for modification of sentence in which he argued that the condition of probation requiring him to pass a full disclosure polygraph violated his Fifth Amendment rights. (46817 R., pp.150-52.) At a hearing on the Rule 35 motion, Allmaras's counsel sought clarification on the polygraph probation condition. (11/7/2017 Tr., p.5, Ls.11-23.<sup>4</sup>)

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup> Citations to "46817 R." refer to the record for Case No. 46817, which can be found in the PDF file with the title starting "Clerk Record Appeal Volume 1 6-27-2019."

<sup>3</sup> Citations to "45821 R." refer to the record for Case No. 45821, which can be found in the PDF file with the title starting "Supplemental Clerk Record Appeal Volume 1 11-30-2018."

<sup>4</sup> While the various transcripts make multiple appearances in the record, the most convenient place to find the transcripts is the PDF file with the title starting "Transcript Appeal Volume 1 6-27-2019," which contains all of the transcripts in a single file.

The district court clarified that Allmaras could start his rider immediately if he chose not to participate in the polygraph rather than wait in the jail for the 180 days to run. (11/7/2017 Tr., p.5, L.24 – p.7, L.2.) After hearing that clarification, Allmaras’s counsel decided to withdraw the Rule 35 motion. (11/7/2017 Tr., p.7, Ls.3-14 (“I’ll withdraw the Rule 35 now that I understand more clearly what the Court’s intent was.”).)

The discussion then turned to how to start Allmaras’s rider immediately. (11/7/2017 Tr., p.7, Ls.9-25.) The district court found “the appropriate procedural thing to do would be for [Allmaras] to admit that he violated his probation at this time by not getting a full disclosure polygraph.” (11/7/2017 Tr., p.7, Ls.18-24.) Allmaras’s counsel asserted that she read the probation condition differently: in her view, Allmaras’s decision not to take the polygraph was not a violation of his probation because he was choosing an option provided in the conditions of his probation. (11/7/2017 Tr., p.8, L.25 – p.9, L.16.) Given the disagreement over the probation condition, the district court observed that they were “back to needing to argue the Rule 35.” (11/7/2017 Tr., p.13, Ls.23-24.) Allmaras chose to move forward with an “admit/deny hearing on [the] probation violation.” (11/7/2017 Tr., p.15, Ls.14-21.) Allmaras then denied that he violated the polygraph term of his probation (11/7/2017 Tr., p.15, L.22 – p.18, L.15), and the district court scheduled an evidentiary hearing (11/7/2017 Tr., p.20, Ls.11-18). At the end of what had become a joint Rule 35 and admit/deny hearing, Allmaras’s counsel indicated that she wanted to “leave the [Rule 35] motion on the table.” (11/7/2017 Tr., p.21, Ls.11-13.)

At the subsequent evidentiary hearing on the probation violation, Allmaras’s counsel argued that “the probation violation hasn’t been shown.” (1/30/2018 Tr., p.4, Ls.12-15.) She continued to press her argument that the probation condition gave Allmaras options and choosing one of those options was not a violation of probation:

So, your Honor, I believe that the way it's phrased in the Condition Number 21, it gives him three options. And I believe that he's not gotten the polygraph at this point. I don't believe the 180 days has expired, so I don't believe he's violated that in that time period.

(1/30/2018 Tr., p.6, Ls.5-9.) The district court rejected Allmaras's counsel's argument and found Allmaras had violated his probation. (1/30/2018 Tr., p.6, L.21 – p.7, L.16.)

The district court imposed Allmaras's prison sentence of ten years with three years fixed and retained jurisdiction for up to one year. (1/30/2018 Tr., p.7, Ls.17-22.) The district court then explained to Allmaras that he "need[ed] to pass [a] full disclosure polygraph regarding the events in question" while on his rider or the district court would "impose the prison sentence." (1/30/2018 Tr., p.7, L.17 – p.8, L.22.) Allmaras's counsel asked the district court for clarification as to what it meant by a "full disclosure polygraph." (1/30/2018 Tr., p.8, L.24 – p.9, L.17.) The district court said that it meant a polygraph "regarding the event in question with this [REDACTED] and any other acts." (1/30/2018 Tr., p.9, Ls.18-22.) Allmaras's counsel objected to the district court's requirement as a violation of Allmaras's Fifth Amendment rights. (1/30/2018 Tr., p.9, L.23 – p.10, L.18.) The district court responded: "[Y]ou're going to have to advise your client appropriately. But if I don't see a polygraph that details his knowledge of the events in question, I guarantee you I will impose the prison sentence." (1/30/2018 Tr., p.10, Ls.22-25.) The district court then explained to Allmaras the requirement and Allmaras acknowledged he understood the requirement:

THE COURT: If you don't have a polygraph at least concerning the events in question, I will impose your prison sentence. Do you understand that?

THE DEFENDANT: Yes.

(1/30/2018 Tr., p.11, Ls.8-12.) In its order of retained jurisdiction, the district court wrote that Allmaras "needs to pass a full disclosure polygraph regarding the events in question on August 9,

2014.” (45821 R., p.150 (strikethrough in original; capitalization altered).) The district court initialed and dated next to the hand-written strikethrough of “full disclosure.” (45821 R., p.150.)

Allmaras completed his period of retained jurisdiction. (Conf. Docs., pp.51-55.) The program manager and case manager recommended “the court consider placing [Allmaras] on probation.” (Conf. Docs., p.55.) Allmaras’s counsel asked the district court to put Allmaras on probation, and the state simply noted that Allmaras had not submitted the results of a polygraph. (1/17/2019 Tr., p.16, L.22 – p.20, L.15.)

The district court imposed Allmaras’s sentence of ten years with three years fixed. (1/17/2019 Tr., p.21, Ls.5-8.) The district court explained that, while it could not require a “full disclosure polygraph because of Idaho case law,” it acted “within [its] discretion to order [Allmaras] to take a polygraph to find out about the events in question.” (1/17/2019 Tr., p.21, Ls.9-17.) The district court explained that it needed the polygraph “to know who [it was] dealing with” because “there’s clearly two different stories” between Allmaras and the victim. (1/17/2019 Tr., p.21, L.18 – p.22, L.7.)

Allmaras filed an amended Rule 35 motion. (46817 R., pp.250-53.) He argued that the probation condition requiring his submission to a polygraph violated his Fifth Amendment rights. (46817 R., pp.251-52.) The district court denied the Rule 35 motion on the basis that a requirement for a polygraph limited to the facts of the crime of conviction is not incriminating and thus could not have violated Allmaras’s Fifth Amendment rights. (4/3/2019 Tr., p.13, L.16 – p.15, L.18.)

Allmaras timely appealed. (46817 R., pp.272-77, 310-15; 45821 R., pp.152-56.)



## ISSUES

Allmaras states the issues on appeal as:

- I. Whether the district court violated Mr. Allmaras's Fifth Amendment rights by revoking his probation based on his refusal to waive those rights and participate in a full-disclosure polygraph.
- II. Whether the district court erred by relinquishing jurisdiction over Mr. Allmaras based on a provision which was neither specific or distinct enough to be an enforceable order.
- III. Whether the district court violated Mr. Allmaras's Fifth Amendment rights by relinquishing jurisdiction based on his failure to take a polygraph examination after it had put him in the classic penalty scenario.

(Appellant's brief, p.6.)

The state rephrases the issues as:

- I. Has Allmaras failed to show that the district court violated his Fifth Amendment rights when it revoked his probation?
- II. Has Allmaras failed to show that the district court erroneously relinquished jurisdiction over Allmaras because a provision was not sufficiently specific or distinct?
- III. Has Allmaras failed to show that the district court violated Allmaras's Fifth Amendment rights by relinquishing jurisdiction?

## ARGUMENT

### I.

#### The District Court Revoked Allmaras's Probation For Refusing To Take A Polygraph

##### A. Introduction

The district court ordered as a condition of probation that Allmaras take a full-disclosure polygraph about the crime of conviction. Allmaras objected to that condition as a violation of his Fifth Amendment rights. The district court found that the condition did not violate Allmaras's Fifth Amendment rights because it limited the polygraph to the crime of conviction.

##### B. Standard Of Review

“[T]his Court may freely review the trial court's application of constitutional principles.”  
State v. Perez, 164 Idaho 626, 628 (2019).

##### C. A Probation Condition Requiring A Polygraph Does Not Necessarily Violate The Fifth Amendment

A district court can, in some circumstances, order an individual to take a polygraph as a condition of probation without violating the Fifth Amendment. The Fifth Amendment to the United States Constitution protects against compelled self-incrimination. U.S. Const. amend. V. “It has long been held that this prohibition not only permits a person to refuse to testify against himself at a criminal trial in which he is a defendant, but also ‘privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.’” Minnesota v. Murphy, 465 U.S. 420, 426 (1984) (quoting Lefkowitz v. Turley, 414 U.S. 70, 77 (1973)). “A defendant does not lose this protection by reason of his conviction of a crime; notwithstanding that a defendant is imprisoned or on probation at the time he makes incriminating statements . . . .” Id.

A state can, however, compel answers from a probationer that would not incriminate him in future criminal proceedings. See id. at 435 n.7. For example, a state could demand answers from a probationer about a residential restriction imposed as a condition of probation, even if “such questions might reveal a violation of the residential requirement and result in the termination of probation” because “a revocation proceeding . . . is not a criminal proceeding.” Id.; see United States v. Locke, 482 F.3d 764, 767 (5th Cir. 2007) (holding Fifth Amendment not violated where state required probationer to answer questions about pornography because “these questions attempted to ascertain whether [the probationer] had violated conditions of his probation, and [the probationer’s] answers could not serve as a basis for a future criminal prosecution”).

Applying these principles, the Idaho Court of Appeals has held that a district court can also impose a term of probation “that *may* lead to incriminating questions.” State v. Widmyer, 155 Idaho 442, 446-47, 313 P.3d 770, 774-75 (Ct. App. 2013) (emphasis added). But “the defendant does not, by virtue of accepting the term[], waive the right to assert the Fifth Amendment when the questions are presented.” Id. at 445-47, 313 P.3d at 773-75. “Thus, a district court may lawfully impose a psychosexual evaluation [that includes a polygraph] as a condition of probation as part of a defendant’s rehabilitation.” Id. (holding probation condition requiring “a psychosexual evaluation with a polygraph exam” was “a lawful condition of probation”).

Here, the district court lawfully required Allmaras, as a condition of probation, “to submit to a polygraph exam” at the request of his probation officer or “any therapist” as part of his rehabilitation. (9/7/2017 Tr., p.15, Ls.3-5; see 45821 R., p.164.) And, because that polygraph may have led to incriminating questions, Allmaras retained his right to assert the Fifth Amendment in response to any incriminating questions in the polygraph exam. See Widmyer, 155 Idaho at 445-47, 313 P.3d at 773-75.

The district court, however, *also* required a separate “full disclosure polygraph regarding the events in question.” (9/7/2017 Tr., p.15, Ls.6-16; see 45821 R., p.163.) The district court believed it could require a polygraph about the crime of conviction because, in the district court’s view, the risk of incrimination ended after Allmaras entered his plea and the district court imposed its sentence. (4/3/2019 Tr., p.14, L.22 – p.15, L.12 (explaining that “the questions sought would’ve only dealt with the act that he had pled guilty to, and the State can’t charge any additional or different crime as a result of those questions” and “I can’t impose a different sentence as a result of any responses to those questions”).)

“It is true, as a general rule, that where there can be no further incrimination, there is no basis for the assertion of the privilege.” Mitchell v. United States, 526 U.S. 314, 326 (1999). The state notes, however, that this “principle applies to cases in which the sentence has been fixed and the judgment of conviction has become final.” Id. Put differently, only “[i]f no adverse consequences can be visited upon the convicted person by reason of further testimony, then there is no further incrimination to be feared.” Id.<sup>5</sup>

The question for this Court, then, is whether Allmaras’s sentence had been fixed and his judgment of conviction had become final by the time the district court ordered Allmaras to take a full disclosure polygraph about the crime of conviction as a condition of probation. To that end, the state acknowledges that Allmaras timely appealed from the judgment of conviction (45821 R., pp.152-56), and his appeal (i.e., this appeal) is still pending (3/22/2019 Order Granting Motion to

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<sup>5</sup> The state also notes the distinction between requiring an individual to divulge specific facts and information about the crime of conviction and drawing negative inferences from the defendant’s general “[un]willingness to cooperate.” State v. Jimenez, No. 42098, 2015 WL 7785141, at \*3-4 (Idaho Ct. App. Dec. 4, 2015) (concluding “that *Mitchell* does not prohibit a sentencing court from considering a defendant’s invocation of his or her Fifth Amendment privilege to refuse participation in the psychosexual evaluation as part of determining an appropriate sentence”).

Consolidate). See State v. Jakoski, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003) (holding judgment becomes final “either by expiration of the time for appeal or affirmance of the judgment on appeal”).

## II.

### Allmaras Has Failed To Show That The District Court Gave An Ambiguous Order

#### A. Introduction

The district court ordered Allmaras to take a polygraph about the crime of conviction during the time the district court retained jurisdiction, and that order was specific and distinct. The language of the order communicated to Allmaras that he was required to take the polygraph: “defendant *needs* to pass a polygraph regarding the events in question on August 9, 2014.” (45821 R., p.150 (emphasis and capitalization altered).) Moreover, when explaining the written order, the district court expressly told Allmaras that it would “impose [his] prison sentence” unless he “ha[d] a polygraph at least concerning the events in question,” and Allmaras told the district court that he understood the requirement. (1/30/2018 Tr., p.11, Ls.8-12.) Thus, based on the plain language of the order and the district court’s explanation of the order to Allmaras, the order was specific and definite rather than ambiguous.

#### B. Standard Of Review

This Court freely reviews whether a district court’s order was specific and definite. See State v. Le Veque, 164 Idaho 110, 116-17, 426 P.3d 461, 467-68 (2018).

#### C. The District Court Specifically And Distinctly Told Allmaras That He Had To Take A Polygraph About The Crime Of Conviction To Avoid Prison After His Rider

The district court’s order that Allmaras take a polygraph about the crime of conviction was both specific and distinct. A district court can relinquish jurisdiction if the defendant fails to

comply with a lawfully issued order. See State v. Le Veque, 164 Idaho 110, 116, 426 P.3d 461, 467 (2018). A lawful order must be “specific” and “definite as to what it required and to whom it was directed.” Id.

For example, the Idaho Supreme Court has held that a district court cannot relinquish jurisdiction based on the defendant’s failure to obey an order that is not specific or definite. See id. In Le Veque, the district court revoked the defendant’s probation, retained jurisdiction, and included this statement in its order: “The court specifically recommends sex offender treatment after he fully discloses his involvement in [a separate] crime, and that his disclosure is verified with a polygraph.” Id. (capitalization altered; emphasis removed). The Idaho Supreme Court found two problems with this order: First, it “did not use a term like ‘shall’ or ‘must’ that would have made the district court’s desires unambiguous commands.” Id. Second, “it [was] unclear who the subject of the recommendation [was]” between the defendant and the Department of Corrections. Id. Thus, the Idaho Supreme Court held the district court erroneously relinquished jurisdiction because the order the defendant violated was not specific or definite. Id.

Here, the order was specific and definite. Unlike the order in Le Veque, which did not use a term indicating the necessity of complying with the request, the order here expressly stated that “defendant *needs* to pass a polygraph regarding the events in question on August 9, 2014.” (45821 R., p.150 (capitalization and emphasis altered)); see Need, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/need> (last visited Jan. 13, 2020) (defining need as “necessary duty”). And, also unlike in Le Veque, the district court explained the requirement to Allmaras, and Allmaras indicated that he understood the requirement. (1/30/2018 Tr., p.11, Ls.8-12); cf. Le Veque, 164 Idaho at 116, 426 P.3d at 467 (using exchange between defense counsel and district court to support conclusion a written order was ambiguous). Because the district court

indicated Allmaras “need[ed]” to have a polygraph and reviewed that order with Allmaras in open court, the order was specific and definite rather than ambiguous.

### III.

#### The District Court Relinquished Jurisdiction Based On Allmaras’s Refusal To Take A Polygraph

##### A. Introduction

The district court ordered Allmaras to take a polygraph about the crime of conviction during the period of retained jurisdiction and subsequently relinquished jurisdiction over Allmaras when he refused to do so. Allmaras objected to the relinquishment of jurisdiction as a violation of his Fifth Amendment rights. The district court found the polygraph requirement did not violate Allmaras’s Fifth Amendment rights because it limited the polygraph to the crime of conviction.

##### B. Standard Of Review

“[T]his Court may freely review the trial court’s application of constitutional principles.”  
Perez, 164 Idaho at 628.

##### C. The District Court Relinquished Jurisdiction Based On Allmaras’s Failure To Take A Polygraph About The Crime Of Conviction As Ordered By The District Court

The district court relinquished jurisdiction over Allmaras because Allmaras refused to take a polygraph about the crime of conviction as ordered by the district court. A district court cannot relinquish jurisdiction based on the defendant’s refusal to waive the Fifth Amendment and take a polygraph that could incriminate him in any criminal proceedings. See State v. Komen, 160 Idaho 534, 540, 376 P.3d 738, 744 (2016). As explained above, even where a defendant has pled guilty to a crime, the risk of incrimination with respect to that particular crime persists until “the sentence has been fixed and the judgment of conviction has become final.” Mitchell, 526 U.S. at 326.

Here, the district court found it could require a polygraph about the crime of conviction as a requirement of Allmaras's rider given that "it's not incriminating because it's not gone to any other act other than the offense to which Mr. Allmaras pled guilty to." (4/3/2019 Tr., p.15, Ls.4-12.) Thus, the question for this Court is whether Allmaras's sentence had been fixed and his judgment of conviction had become final by the time the district court ordered Allmaras to take a polygraph about the crime of conviction during the period of retained jurisdiction. The state acknowledges, again, that Allmaras timely appealed from the judgment of conviction (45821 R., pp.152-56), and his appeal (i.e., this appeal) is still pending (3/22/2019 Order Granting Motion to Consolidate). See Jakoski, 139 Idaho at 355, 79 P.3d at 714 (holding judgment becomes final "either by expiration of the time for appeal or affirmance of the judgment on appeal").

#### CONCLUSION

The state respectfully requests this Court reject Allmaras's argument that the district court's order was not specific or definite.

DATED this 15th day of January, 2020.

/s/ Jeff Nye  
JEFF NYE  
Deputy Attorney General



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of January, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Jeff Nye  
JEFF NYE  
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JN/dd