

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 40592

STATE OF IDAHO,)	2013 Unpublished Opinion No. 676
)	
Plaintiff-Respondent,)	Filed: September 20, 2013
)	
v.)	Stephen W. Kenyon, Clerk
)	
GARY RODNEY HILBERT, II,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Benjamin R. Simpson, District Judge.

Order relinquishing jurisdiction, affirmed.

Sara B. Thomas, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Gary Rodney Hilbert, II was convicted of two counts of burglary, Idaho Code § 18-1401. The district court sentenced Hilbert to concurrent unified terms of four years with two years determinate and retained jurisdiction. At the conclusion of the retained jurisdiction program, the district court relinquished jurisdiction and ordered execution of Hilbert's sentence. Hilbert filed an Idaho Criminal Rule 35 motion for reduction of his sentence, which was denied. Hilbert appeals the district court's decision to relinquish jurisdiction.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). It follows that a decision to relinquish

jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*, 120 Idaho 466, 472, 816 P.2d 1023, 1029 (Ct. App. 1991). Idaho Code § 19-2521 sets out the criteria a court must consider when deciding whether to grant probation or impose imprisonment. A decision to deny probation will not be held to represent an abuse of discretion if the decision is consistent with the Section 19-2521 standards. *State v. Merwin*, 131 Idaho 642, 962 P.2d 1026 (1998). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. Therefore, we hold that the district court did not abuse its discretion.

The order relinquishing jurisdiction is affirmed.