

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48328 & 48329

STATE OF IDAHO,)
)
) **Filed: May 4, 2021**
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) **Melanie Gagnepain, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Rick Carnaroli, District Judge.

Orders relinquishing jurisdiction, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kacey L. Jones, Deputy Attorney General, Boise, for respondent.

Before GRATTON, Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

In Docket No. 48328, Kane Lee Simons pled guilty to burglary. I.C. § 18-1401. The district court sentenced Simons to a unified term of four years, with a minimum period of confinement of two years. The district court suspended the sentence and placed Simons on probation.

While on probation, Simons was charged with conspiracy to commit robbery in Docket No. 48329. He later pled guilty to an amended charge of accessory to aggravated battery. I.C. § 18-908. The district court sentenced Simons to a unified term of five years, with a minimum period of confinement of three years, to run consecutively to his burglary sentence.

Simons admitted to violating the terms of his probation with regard to his burglary conviction. The district court revoked probation and ordered execution of that original sentence.

Simons filed I.C.R. 35 motions for reduction of his sentences, which the district court granted in part and denied in part. The district court granted the motions by retaining jurisdiction in both cases, allowing Simons to participate in the rider program. The district court declined to further reduce the sentences or order that they be served concurrently. Simons appealed and, in an unpublished opinion, this Court affirmed the order revoking probation, the sentences, and the partial denial of his I.C.R. 35 motions. *See State v. Simons*, Docket Nos. 47461 and 47462 (Ct. App. June 2, 2020).

After Simons completed his rider, the district court relinquished jurisdiction. Simons again filed I.C.R. 35 motions asking the district court to reconsider placing him on probation. The district court denied the motions. Simons appeals, claiming that the district court erred by failing to grant his request for probation.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant 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. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that Simons has failed to show that the district court abused its discretion in relinquishing jurisdiction.

Therefore, the orders of the district court relinquishing jurisdiction are affirmed.