

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35490

STATE OF IDAHO,)	2011 Unpublished Opinion No. 481
)	
Plaintiff-Respondent,)	Filed: May 19, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
FREDERICK FRANKLIN HARDT,)	THIS IS AN UNPUBLISHED OPINION
)	AND SHALL NOT BE CITED AS
Defendant-Appellant.)	AUTHORITY
_____)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Thomas F. Neville, District Judge.

Order relinquishing jurisdiction, affirmed.

Greg S. Silvey, Kuna, for appellant.

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

Before GRATTON, Chief Judge; GUTIERREZ, Judge;
and MELANSON, Judge

PER CURIAM

Frederick Franklin Hardt pled guilty to sexual battery of a minor child sixteen or seventeen years of age. Idaho Code § 18-1508A. The district court sentenced Hardt to a unified term of fifteen years, with a minimum period of confinement of two years and retained jurisdiction. Hardt was sent to participate in the rider program at the North Idaho Correctional Institution (NICI). During the first month at NCIC Hardt violated the terms of the program numerous times and was placed in segregation before the staff at NCIC recommended relinquishment. At a review hearing the district court entered an Amended Judgment of Conviction and Sentence ordering Hardt’s sentence executed, but ordered a second period of retained jurisdiction and evaluation at NICI. After a second review hearing, the district court relinquished jurisdiction and executed Hardt’s original sentence. Hardt appeals asserting that the

district court abused its discretion by relinquishing jurisdiction and executing his original sentence rather than placing him on probation.

We consider first the State's argument that Hardt can obtain no relief because the district court had no ability to retain jurisdiction a second time and hence no jurisdiction to place him on probation at the end of the second retained jurisdiction period. The State is correct.

The only authority for a trial court to place a defendant on a second period of retained jurisdiction within the same case is that provided in Idaho Code § 19-2601(4) which states, in part, "The court in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case." The Idaho Supreme Court recently held that this statutory provision does not empower a court to place a defendant on successive periods of retained jurisdiction without an intervening period of probation. *State v. Urrabazo*, 150 Idaho 158, 244 P.3d 1244 (2010). The Court there said:

The plain language of section 19-2601(4) unconditionally requires an intervening period of probation prior to ordering an additional period of retained jurisdiction. The provision only permits a court to sentence a defendant to a second rider "*after* a defendant has been placed on probation in a case." In other words, a court may retain jurisdiction for a second time only after sentencing the defendant to a period of probation.

The Supreme Court further held that this limitation on the trial court's power in section 19-2601(4) is jurisdictional, and therefore the district court's order granting the second rider and relinquishing jurisdiction thereafter were void for want of subject matter jurisdiction.

Idaho Code § 19-2601(4) requires an intervening period of probation prior to ordering a second period of retained jurisdiction. Additionally, the provisions of the section limit a district court's subject matter jurisdiction to order a second period of retained jurisdiction. The district court was without jurisdiction to order probation. Therefore, the district court's order relinquishing jurisdiction is affirmed.