

8-5-2011

State v. Petty Respondent's Brief Dckt. 38091

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Petty Respondent's Brief Dckt. 38091" (2011). *Not Reported*. 65.
https://digitalcommons.law.uidaho.edu/not_reported/65

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

STEPHEN A. BYWATER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 38091
)	
v.)	
)	
RAYNA RANAE PETTY,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

Issue

Has Petty failed to establish that the district court abused its discretion, either by revoking probation, or by declining to further reduce her sentence pursuant to her Rule 35 motion for reduction?

Petty Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Petty was on misdemeanor probation when she was arrested on an agent's warrant. (PSI, p.2.) Petty "struggled with police and her probation officer" and was cited for resisting arrest. (PSI, p.2.) When officers searched Petty's residence, they located 1.20 ggw of suspected marijuana, nine syringes, three metal spoons with

residue, four glass methamphetamine pipes, and 10 plastic bindles with suspected methamphetamine residue. (PSI, p.2.)

The state charged Petty with possession of methamphetamine with a second or subsequent offense enhancement. (R., pp.36-39.) The case was transferred to Mental Health Court where, pursuant to a plea agreement, Petty pled guilty to possession of methamphetamine and the state withdrew the second or subsequent offense enhancement. (R., pp.52-53, 68-71.) Approximately one year later, Petty was terminated from Mental Health Court for violating her probation. (R., pp.73-74.) The district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.88-91.) Following the period of retained jurisdiction, the district court suspended Petty's sentence and placed her on supervised probation for five years. (R., pp.94-99.)

Approximately one month later, Petty's probation officer filed a report of violation alleging that Petty had violated the conditions of her probation by failing to attend the mandatory probation orientation group. (R., pp.101-02.) Petty's probation officer advised that Petty "is avoiding supervision and absconded." (R., p.102.) Petty admitted the allegation and the district court revoked her probation and ordered the underlying sentence executed. (R., pp.108-09, 121-25.)

Petty filed a notice of appeal timely from the district court's order revoking probation. (R., pp.128-30.) She also filed a timely Rule 35 motion for a reduction of sentence, which the district court granted in part, reducing the indeterminate portion of Petty's sentence to two years. (R., pp.119-20; Minute Entry & Order and Amended Minute Entry & Order (Augmentations).)

Petty asserts that the district court abused its discretion by revoking her probation in light of her mental health problems and acceptance of responsibility. (Appellant's brief, pp.4-7.) Petty has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Petty has clearly demonstrated that she is not an appropriate candidate for community supervision. Petty reported a 17-year history of methamphetamine and cocaine use. (PSI, p.13.) She has been legally sanctioned and granted multiple opportunities to rehabilitate, but nevertheless continues to abuse substances and commit crimes. Petty was convicted of felony possession of a controlled substance in 2000 and was granted the opportunity to participate in the retained jurisdiction program. (PSI, p.4.) Petty successfully completed the retained jurisdiction program and was placed on supervised probation. (PSI, p.5.) She subsequently violated her probation and her prison sentence was imposed. (PSI, p.5.) While incarcerated, Petty "was placed in disciplinary 29 times" and she refused to participate in the Therapeutic Community Substance Abuse Program. (PSI, pp.5, 14.) Following her release from prison, Petty committed a DUI and was placed on misdemeanor probation. (PSI, pp.4, 6.) Petty's probation officer described Petty as "[a] big meth user. She's a habitual

drug user who runs from police.” (PSI, p.6.) Petty’s probation officer noted that Petty was terminated from treatment for noncompliance and that discretionary jail time had been utilized but was unsuccessful in deterring Petty’s continued drug use. (PSI, p.6.) Petty committed the instant offense while still on misdemeanor probation. (PSI, p.2.)

Petty was subsequently granted the opportunity to participate in Mental Health Court, during which time she was twice placed in inpatient substance abuse treatment. (PSI, pp.6, 13.) However, Petty continued to use methamphetamine, alcohol, marijuana, and cocaine, and was eventually terminated from the Mental Health Court program. (PSI, p.6.) At that time, the presentence investigator recommended incarceration, stating:

[Petty] did not seem remorseful for her non-compliance in the mental health court program. She seemed indifferent about her drug use and she didn’t appear motivated to change in order to care for her son. [Petty] has a lengthy substance abuse and mental health history. She has not performed well on probation and I’m concerned her continued behavior places herself and others at risk. I do not believe [Petty] is a viable candidate for probation, and feel she needs to be incarcerated to ensure the safety of herself and the community.

(PSI, p.16.) The district court showed leniency by granting Petty another opportunity to participate in the retained jurisdiction program, after which it placed her on supervised probation. (R., pp.88-91, 94-99.) Within days, Petty failed to show up for her mandatory probation orientation group. (R., p.101.) She subsequently failed to report to her supervising officer for over a month and absconded supervision. (R., p.102.) Petty’s probation officer recommended that the district court impose Petty’s original sentence. (R., p.102.) The district court considered all of the relevant information and reasonably concluded that Petty was no longer an appropriate candidate for community supervision. Her continued substance abuse, unwillingness to abide by the terms of

community supervision, absconding behavior, and failure to benefit from the multiple programs offered her demonstrate Petty's failure to rehabilitate and her continued danger to society. The penitentiary's long-term treatment program is appropriate, due to the severity of Petty's substance abuse and her multiple failed attempts to rehabilitate in the community. Given any reasonable view of the facts, Petty has failed to establish an abuse of sentencing discretion.

Petty next asserts that the district court abused its discretion by declining to further reduce her sentence pursuant to her Rule 35 motion for reduction. If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Petty must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id.

Petty provided no new information in support of her Rule 35 request. Despite this, the district court showed leniency when it reduced the indeterminate portion of Petty's sentence by two years. Because Petty presented no new evidence in support of her Rule 35 motion, she failed to demonstrate in the motion that her sentence was excessive. Having failed to make such a showing, she has failed to establish any basis for reversal of the district court's order denying her Rule 35 motion in part.

Conclusion

The state respectfully requests this Court to affirm the district court's orders revoking probation and denying Petty's Rule 35 motion for a reduction of sentence in part.

DATED this 5th day of August, 2011.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of August, 2011, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SPENCER J. HAHN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General