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State v. Pinard Respondent's Brief Dckt. 38864

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 38864
)	
vs.)	
)	
BEVERLY A. PINARD,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

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

**HONORABLE BENJAMIN R. SIMPSON
District Judge**

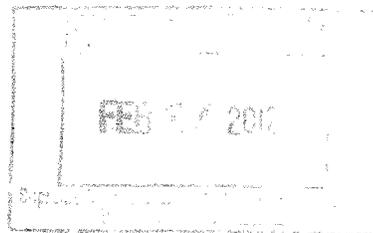
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STATEMENT OF THE CASE

Nature of the Case

Beverly A. Pinard appeals from the district court's order denying her motion to expunge or reduce her burglary conviction.

Statement of Facts and Course of Proceedings

Pinard stole beer, wine, and cigarettes from a Shell gas station. (R., p.5.) The state charged Pinard with burglary and petty theft, and Pinard pled guilty to both charges. (R., pp.14-16, 22-23.) The district court imposed a unified sentence of four years with two years fixed for the burglary charge, but retained jurisdiction. (R., pp.22-23.) Upon completion of the retained jurisdiction period, the district court suspended execution of the sentence and placed Pinard on supervised probation for two years. (R., pp.29-34.)

Approximately six months later, Pinard admitting breaking curfew, associating with an individual contrary to her probation officer's order, and using marijuana, all in violation of her probation. (R., pp.37-48.) The district court revoked Pinard's probation but retained jurisdiction for a second time. (R., pp.50-53.) After the conclusion of the second period of retained jurisdiction, the district court suspended execution of the sentence and placed Pinard back on supervised probation for five years. (R, pp.57-62.) After three years without a violation, the district court discharged Pinard from supervised probation and placed her on unsupervised probation. (R., pp.63-67.)

Three years after Pinard completed her unsupervised probation, she filed a motion asking the district court to "expunge" her burglary conviction or reduce it

to a misdemeanor. (R., p.68.) The district court denied the motion after finding that Pinard had not “at all times” complied with the terms of her probation, and was thus not eligible for dismissal or reduction under I.C. § 19-2604(1) or (2). (R., pp.71-72; 4/25/11 Tr., p.6, L.14 – p.7, L.19.) Pinard timely appealed. (R., pp.75-77.)

ISSUE

Pinard states the issue on appeal as:

Mindful that Ms. Pinard is not eligible for relief because the district court found that she had violated the terms of her probation, did the district court err when it failed to reduce her felony to a misdemeanor or expunge her conviction?

(Appellant's brief, p.3)

The state rephrases the issue on appeal as:

Has Pinard failed to show that the district court erred in denying her motion to expunge or reduce her burglary conviction?

ARGUMENT

Pinard Has Failed To Show That The District Court Erred In Denying Her Motion To "Expunge" Or Reduce Her Burglary Conviction

A. Introduction

While acknowledging that she is "not eligible for relief" under the controlling law, Pinard still contends that the district court erred in denying her motion to "expunge" or reduce her burglary conviction. (See generally Appellant's brief.) Pinard is correct that she is not entitled to relief, as the district court properly applied I.C. § 19-2604(1) and (2)¹ in denying her motion to "expunge" or reduce her burglary conviction.

B. The District Court Properly Applied I.C. § 19-2604 (1) And (2) In Denying Pinard's Motion To "Expunge" Or Reduce Her Burglary Conviction

At the time of Pinard's motion and the district court's ruling on it, a district court had the discretion, under some circumstances, to dismiss a criminal conviction, I.C. § 19-2604(1), or to reduce a felony conviction to a misdemeanor, I.C. § 19-2604(2), after a defendant completed probation. In order to be eligible for relief under either subsection, a defendant had to show, among other things,

¹ Subsequent to the district court's April 25, 2011 denial of Pinard's motion, I.C. § 19-2604 was amended. S.L. 2011, ch. 187 § 1. Effective July 31, 2011, I.C. § 19-2604 no longer requires a defendant to show that he or she has "at all times" complied with probation in order to be eligible for dismissal or reduction of a conviction under that statute. Instead, I.C. § 19-2604(1) now gives the district court the discretion to dismiss a conviction or reduce a felony conviction to a misdemeanor if there was no court finding or defendant admission, in any *probation violation proceeding*, of a probation violation. While Pinard, who admitted violating her probation at a probation violation proceeding, would still not be eligible for relief under the current statute, this brief refers to the former I.C. § 19-2604(1) and (2) in force at the time of Pinard's motion and the district court's ruling on it.

that he or she “has at all times complied with the terms and conditions upon which he [or she] was placed on probation.” I.C. § 19-2604(1), (2).

Idaho Code § 19-2604(1) and (2) thus create an “extraordinary remedy for a defendant who has strictly adhered to the terms of probation.” State v. Schumacher, 141 Idaho 484, 486, 959 P.2d 465, 467 (Ct. App. 1998). Indeed, I.C. § 19-2604(1) and (2) are unambiguous, and their plain language clearly requires a defendant’s compliance with the terms and conditions of probation “at all times” in order to be eligible for dismissal of her conviction.

The Idaho Supreme Court recognized as much in State v. Schwartz, 139 Idaho 360, 79 P.3d 719 (2003). In Schwartz, a district court placed a felony DUI defendant on probation and granted him a withheld judgment. Id. at 361, 79 P.3d at 720. After the defendant violated his probation, the district court revoked the withheld judgment, and retained jurisdiction. Id. After the period of retained jurisdiction, the court suspended the balance of the sentence and placed the defendant back on probation. Id. The defendant satisfactorily complied with all of the terms and conditions of this second period of probation, and then unsuccessfully moved to amend his judgment to a misdemeanor pursuant to I.C. § 19-2604(2). Id.

The defendant appealed, but the Idaho Supreme Court affirmed, stating:

The statute in this case is clear. The defendant must have “at all times complied with the terms and conditions of his probation.” The phrase “at all times” means just that. A defendant who has at any time failed to do what he or she was required to do while on probation in a particular case has not at all times complied with the terms and conditions of his or her probation in that case.

Id. at 362, 79 P.3d at 721. See also State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004), *abrogated on other grounds* by Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 265 P.3d 502 (2011) (“In [Schwartz], we stated that those words meant just what they said...The statute requires that defendant has ‘complied’ with his conditions of probation. It does not state that he must have obeyed to the satisfaction of the sentencing court or substantially complied. Finally, it states that he must have at all times complied with ‘the terms and conditions upon which he was placed on probation.’ Compliance with most of the terms, or the major terms, is not sufficient.”).

Pinard did not establish that she complied with the terms and conditions of her probation “at all times,” as required by I.C. § 19-2604(1) and (2). (See generally 4/25/11 Tr.) To the contrary, the record affirmatively showed, and Pinard did not dispute, that the district court previously revoked her probation after Pinard admitted violating it. (R., pp.50-53.) Consistent with the plain language of I.C. § 19-2604(1) and (2), and the Idaho Supreme Court’s holdings in Schwartz and Thompson, the district court properly denied Pinard’s motion to “expunge” or reduce her burglary conviction. (R., pp.69-72.)

On appeal, Pinard acknowledges that she “is not eligible for relief.” (See generally Appellant’s brief.) Pinard has not attempted to distinguish Schwartz or Thompson or assign any specific error to the district court. This Court should thus affirm the district court’s order denying Pinard’s motion to “expunge” or reduce or her burglary conviction.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Pinard's motion to "expunge" or reduce her burglary conviction.

DATED this 24th day of February 2012



MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of February 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

DIANE M. WALKER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



MARK W. OLSON
Deputy Attorney General

MWO/pm