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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 40402, 40403,
Plaintiff-Respondent,)	40404, 40405
)	
vs.)	Kootenai Co. Case Nos.
)	CR-2004-18711, CR-2005-5028,
JEREMY MICHAEL GLEESE,)	CR-2005-6115, CR-2011-22368
)	
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 KOOTENAI

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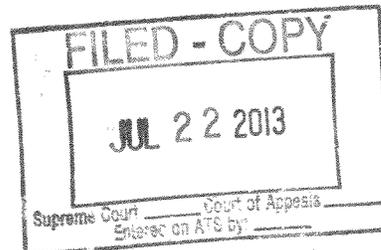


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STATEMENT OF THE CASE

Nature Of The Case

Jeremy Michael Gleese appeals from his judgment of conviction for burglary and the district court's orders revoking his probations. On appeal, he argues that the Idaho Supreme Court denied his due process rights when it denied his motion to augment the record, and that the district court abused its sentencing discretion.

Statement Of The Facts And Course Of The Proceedings

In 2004, Gleese was charged with burglary. (R., pp.69-70.) Pursuant to a plea agreement, Gleese pleaded guilty. (R., pp.73-76.) The district court withheld judgment and placed Gleese on probation for a period of two years. (R., pp.85-91.)

On March 10, 2005, Gleese was arrested on suspicion of burglary, robbery, kidnapping in the second degree, resisting and obstructing officers, and being under the influence of a controlled substance. (R., pp.99-100.) As a result of Gleese's actions, probation officers alleged that he violated the terms of his probation (R., pp.119-20), and the state charged Gleese with burglary, aggravated assault, malicious injury to property, two counts of false imprisonment, resisting and obstructing an officer, and public intoxication (R., pp.159-61). While these matters were pending, Gleese was charged with an additional burglary and grand theft. (R., pp.149-50.) Pursuant to a global plea agreement, Gleese pleaded guilty to both burglaries, the charge of aggravated assault, and the felony charge of malicious injury to property, and also admitted the probation violation, while the state dismissed the false imprisonment, resisting and obstructing, public intoxication, and grand theft charges. (R., pp.177-82.)

The district court entered judgment against Gleese in the 2005 cases and sentenced him to eight years with two and a half years fixed on the first burglary, five years with two years fixed on the second burglary, five years with two years fixed on the aggravated assault, and five years with two years fixed on the felony malicious injury to property. (R., pp.197-205.) In the 2004 case, the district court found that Gleese had violated his probation, revoked his withheld judgment, and imposed a sentence of three and a half years with one year fixed. (R., pp.207-09.) The district court ran all sentences concurrently and retained jurisdiction for 180 days. (R., pp.197-209.) After the period of retained jurisdiction, on January 25, 2006, the district court again placed Gleese on concurrent probations in the various cases for a period of five years. (R., pp.226-45.)

A few months later, on August 7, 2006, the state again alleged that Gleese had violated his probation by, among other things, committing second degree assault, robbery, grand theft auto, attempting to elude police, and possession of cocaine and marijuana in Spokane, Washington. (R., pp.247-50; see also pp.251-68.) A warrant was issued (R., p.291), but Gleese would be incarcerated in Washington until January, 2010 (R., p.292). A probation violation admission hearing was therefore delayed until January 22, 2010, at which time Gleese admitted most of the violations. (R., pp.323-26.) Based on the admissions, the district court revoked Gleese's probations and executed the previously imposed sentences, but again retained jurisdiction. (R., pp.342-49.) After the period of retained jurisdiction, the district court again suspended Gleese's sentences and reinstated him on the concurrent probations for an additional two years. (R., pp.355-63.)

On December 26, 2011, Gleese was again arrested for burglary for stealing property from Walmart, then attempting to return it for a gift card. (R., pp.364-65.) The state charged Gleese with burglary and attempted petit theft (R., pp.394-95) and filed a report alleging that Gleese violated the conditions of his probations (R., pp.407-09, 423-25). Gleese was released on bail (R., pp.416-19), then failed to appear at a subsequent pretrial conference and a bench warrant was issued (R., p.426). Back in custody, Gleese pleaded guilty to the burglary and admitted the probation violations, in exchange for the state's dismissal of the attempted petit theft. (Tr., p.5, L.3 – p.6, L.1; p.9, L.23 – p.13, L.21.)

In the most recent case, the district court entered judgment against Gleese and sentenced him to five years with two years fixed on the burglary. (R., pp.435-37.) The court also revoked the previous probations and executed the previously imposed sentences with credit for time served. (R., pp.438-45.) The district court ordered that all sentences be served concurrently. (R., pp.435-45.) Gleese filed notices of appeal in his various criminal cases timely from the district court's judgment and orders revoking his probations. (R., pp.455-69.) The Idaho Supreme Court consolidated the appeals. (Order Consolidating Appeals, October 15, 2012.)

Pending appeal, Gleese filed a motion to augment the settled record with transcripts from (1) the January 22, 2010 probation violation admission hearing, (2) the March 11, 2010 probation violation disposition hearing, and (3) the August 20, 2010 jurisdictional review hearing. (Motion To Augment And To Suspend The Briefing Schedule And Statement In Support Thereof (hereinafter "Motion to Augment"), filed June 29, 2013.) The state objected to the transcripts on the basis that they were

unnecessary to review any claim over which the Court had jurisdiction. (Objection To “Motion To Augment And To Suspend The Briefing Schedule And Statement In Support Thereof,” filed May 1, 2013.) The Idaho Supreme Court denied Gleese’s motion for the unnecessary transcripts. (Order Denying Motion To Augment And To Suspend The Briefing Schedule (hereinafter “Order”), filed May 22, 2012.)

ISSUES

Gleese states the issues on appeal as:

1. Whether the Idaho Supreme Court denied Mr. Gleese due process and equal protection when it denied his motion to augment the record with transcripts necessary for review of the issues on appeal.

2. Whether the district court abused its discretion by executing all of Mr. Gleese's sentences without sufficiently considering the mitigating factors in his cases, or alternatively, by failing to reduce the sentences when it revoked probation.

(Appellant's brief, p.7.)

The state rephrases the issues as:

1. Has Gleese failed to establish that the Idaho Supreme Court violated his constitutional rights by denying his motion to augment the appellate record with irrelevant transcripts?

2. Has Gleese failed to establish that the district court abused its sentencing discretion either by revoking his probation or by not *sua sponte* reducing his sentence?

ARGUMENT

I.

Gleese's Claim That His Due Process And Equal Protection Rights Were Violated By The Denial Of His Motion To Augment The Appellate Record With Irrelevant Transcripts Lacks Merit

A. Introduction

After the appellate record was settled, Gleese filed a motion to augment the record with the as-yet unprepared transcripts of the January 22, 2010 probation violation admission hearing, the March 11, 2010 probation violation disposition hearing, and the August 20, 2010 jurisdictional review hearing. (Motion To Augment.) The Idaho Supreme Court denied Gleese's motion. (Order.) Gleese now contends that, by denying his motion to augment the appellate record with those transcripts, the Idaho Supreme Court violated his constitutional rights to due process and equal protection and denied him effective assistance of counsel on appeal. (Appellant's brief, pp.8-22.) Gleese's argument is without merit. First, if this case is assigned to the Court of Appeals, Gleese has failed to provide any basis for the Court to reconsider the Idaho Supreme Court's order denying his motion. Alternatively, due process and equal protection require the state only to provide a record sufficient for appellate review of the errors alleged. Because the denied transcripts are not relevant to, much less necessary for, appellate review of the district court's judgment and orders revoking Gleese's probations (the only issues over which this Court has jurisdiction), Gleese has failed to show any error in the Idaho Supreme Court's denial of his motion to augment.

B. Standard Of Review

The standard of appellate review applicable to constitutional issues is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Bromgard, 139 Idaho 375, 380, 79 P.3d 734, 739 (Ct. App. 2003); State v. Smith, 135 Idaho 712, 720, 23 P.3d 786, 794 (Ct. App. 2001).

C. If This Case Is Assigned To The Idaho Court Of Appeals, Gleese Has Failed To Provide Any Basis For The Court To Reconsider The Idaho Supreme Court's Order Denying His Motion To Augment

In State v. Morgan, 153 Idaho 618, 288 P.3d 835 (Ct. App. 2012), the Idaho Court of Appeals considered a claim that the Idaho Supreme Court denied the appellant his constitutional rights by denying his motion to augment the record on appeal with various transcripts. In doing so, the Court “disclaim[ed] any authority to review, and, in effect, reverse an Idaho Supreme Court decision made on a motion made prior to assignment of the case to [the Idaho Court of Appeals] on the ground that the Supreme Court decision was contrary to the state or federal constitutions or other law.” Id. at 620, 288 P.3d at 837. Such an undertaking, the Court explained, “would be tantamount to the Court of Appeals entertaining an ‘appeal’ from an Idaho Supreme Court decision and is plainly beyond the purview of this Court.” Id. The Court, however, “deem[ed] it within [its] authority ... to evaluate and rule on [a] renewed motion” if, for example, “the completed appellant’s brief and/or respondent’s briefs have refined, clarified or expanded issues on appeal in such a way as to demonstrate the need for additional records or transcripts, or where new evidence is presented to support a renewed motion.” Id. To the extent this case is assigned to the Court of Appeals, Gleese’s

arguments fail to provide any basis for the Court to reconsider the Idaho Supreme Court's order denying his motion to augment the record with irrelevant transcripts.

D. In The Alternative, Gleese Has Failed To Show Any Constitutional Entitlement To The Requested Augmentation

Even if this Court considers the merits of Gleese's claim, all of his arguments fail. As in Morgan, Gleese argues that he is entitled to the additional transcripts because, he claims, the failure to provide them is a violation of his constitutional rights to due process, equal protection, and the effective assistance of appellate counsel. (Appellant's Brief, pp.8-22.) This is not "new information or justification for [Gleese's] motion to augment the record." See Morgan, 153 Idaho at 629, 288 P.3d at 837. Even if it were, his arguments still lack merit.

A defendant in a criminal case has a right to "a record on appeal that is sufficient for adequate appellate review of the errors alleged regarding the proceedings below." State v. Strand, 137 Idaho 457, 462, 50 P.3d 472, 477 (2002) (citations omitted). The state, however, "will not be required to expend its funds unnecessarily" to provide transcripts or other items that "will not be germane to consideration of the appeal." Draper v. Washington, 372 U.S. 487, 495 (1963); see also M.L.B. v. S.L.J., 519 U.S. 102, 112 n.5 (1996) ("an indigent defendant is entitled only to those parts of the trial record that are germane to consideration of the appeal") (internal citations omitted). To demonstrate that the record is not sufficient, the defendant must show that any omissions from the record prejudiced his ability to pursue the appeal. State v. Polson, 92 Idaho 615, 620-21, 448 P.2d 229, 234-35 (1968). To show prejudice, Gleese "must

present something more than gross speculation that the transcripts were requisite to a fair appeal.” Scott v. Elo, 302 F.3d 598, 605 (6th Cir. 2002).

Gleese filed timely appeals from the district court’s August 20, 2012 judgment and orders revoking his probations. (See R., pp.455, 459, 463, 479 (notices of appeal filed on September 28, 2012).) Gleese argues that the Idaho Supreme Court denied him due process and equal protection by denying his motion to augment the appellate record with transcripts of the admission and disposition hearings from his several prior probation violations (Appellant’s brief, pp.8-22), but he has failed to explain, much less demonstrate, how those transcripts are necessary to decide the issues over which this Court has jurisdiction on this appeal. There is no indication that the trial court relied upon anything said at those previous hearings as a basis for its decision to revoke his probation. Because the as-yet unprepared transcripts were never presented to the district court in relation to the revocation of Gleese’s probation, they were never part of the record before the district court and are not properly considered for the first time on appeal. See State v. Mitchell, 124 Idaho 374, 376 n.1, 859 P.2d 972, 974 n.1 (Ct. App. 1993) (in rendering a decision on the issues raised on appeal, the appellate court is “limited to review of the record made below” and “will not consider new evidence that was never before the trial court”); see also Huerta v. Huerta, 127 Idaho 77, 80, 896 P.2d 985, 988 (Ct. App. 1995) (“It is not the role of this Court to entertain new allegations of fact and consider new evidence.”). Gleese has failed to show how the requested transcripts are relevant to any issue raised on appeal.

Gleese relies on the Court of Appeals’ statement from State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 8 (Ct. App. 2009), that appellate “review [of] a sentence that is

ordered into execution following a period of probation” is based “upon the facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation.” (Appellant’s brief, p.13.) According to Gleese, this language from Hanington requires augmentation with transcripts of all hearings from sentencing to the revocation of his probation. (Id.) The Court in Morgan, however, held that this interpretation of Hanington is too broad. Morgan, 153 Idaho at 621, 288 P.3d at 838. The Court clarified that although it “will not arbitrarily confine [itself] to only those facts which arise after sentencing to the time of the revocation of probation ... that does not mean that *all* proceedings in the trial court up to and including sentencing are germane.” Id. (emphasis original). Rather, the Court will simply consider the portions of the record before the trial court which are relevant to the ultimate issue on appeal, in this case, the revocation of Gleese’s probation. Id.

Citing Mayer v. City of Chicago, 404 U.S. 189 (1971), Gleese also claims that if he can make a “colorable argument” that he needs “items” to complete a record, the state bears the burden of proving “that the requested items are not necessary for the appeal.” (Appellant’s brief, p.12.) Mayer does not support this argument. Mayer was convicted on non-felony charges punishable only by a fine and he appealed, challenging the sufficiency of evidence and asserting a claim of prosecutorial misconduct. Id. at 190. The appellate court denied his request for a trial transcript at government expense on the basis of a local rule providing that verbatim transcripts of trial proceedings would be provided at government expense only for felonies. Id. at 191-93. The issue was not whether Mayer was entitled to a record of his trial, but whether he was entitled to a verbatim transcript of his trial. Id. at 193. The Court noted

it had addressed a similar issue in Draper v. Washington, 372 U.S. 487 (1963), where the Court held that the government need not provide transcripts that were not “germane to consideration of the appeal, and a State will not be required to expend its funds unnecessarily in such circumstances.” Mayer, 404 U.S. at 194 (quoting Draper, 372 U.S. at 495-96). However, “the State must provide a full verbatim record where that is necessary to assure the indigent as effective an appeal as would be available to the defendant with resources to pay his own way.” Id. at 195. “Moreover, where the grounds of appeal, as in this case, make out a colorable need for a complete transcript, the burden is on the State to show that only a portion of the transcript or an ‘alternative’ will suffice for an effective appeal on those grounds.” Id.

Thus, if it is not clear on the existing record, an indigent appellant must establish that a record of certain proceedings is germane to the appeal. Id. at 194. Only after the germaneness of the requested record of the proceedings is established and a colorable need for a verbatim record is shown by the appellant will the burden shift to the state to demonstrate that a partial transcript or some record other than a verbatim transcript will be adequate. Id. at 194-95; see also Britt v. North Carolina, 404 U.S. 226, 227-28 (1971) (in deciding whether a requested record is necessary, the Court should consider the “value of the transcript to the defendant in connection with the appeal,” but the standard does not require “a showing of need tailored to the facts of the particular case” and the Court may take notice of the importance of a transcript).

Gleese’s appeal is timely from the district court’s judgment and orders revoking his probations. The record related to those orders is complete. (See, e.g., R., pp.85-91, 119-20, 197-209, 226-50, 342-49, 355-63, 407-09, 423-25, 435-45; generally PSI

and Tr.) Gleese has failed to establish that the requested transcripts are necessary to create an adequate appellate record to review the court's orders. Nothing in the record suggests that the transcripts Gleese requested in his augmentation were relied upon by the district court in relation to the final revocation of Gleese's probations. Because Gleese failed to make a showing of germaneness and colorable need for the requested transcripts, there is no burden on the state. Because all of the evidence before the district court is in the appellate record, that record is adequate for appellate review, and Gleese has failed to establish a violation of his due process rights.¹ See Strand, 137 Idaho at 463, 50 P.3d at 478.

Gleese also argues that the denial of his request to augment the record on appeal with irrelevant transcripts denied him equal protection. (Appellant's brief, pp.8-20.) The Court of Appeals in Morgan rejected the argument that equal protection mandates augmentation of all transcripts the appellant desires, stating:

Morgan was not denied the transcripts because of indigency. Morgan was afforded the opportunity to designate not only the standard clerk's record, but also additional records necessary for inclusion in the clerk's record on appeal. He had time to review the record and make any objections, corrections, additions, or deletions prior to settling of the record, pursuant to I.A.R. 29(a). Morgan's failure to fully and timely utilize the Idaho Appellate Rules, and his failure to demonstrate the need for the transcripts in his motion to augment the record, precluded him from including the first probation violation hearing transcripts, not his indigency. Morgan's motion to augment failed to make a showing that any appellant, indigent or otherwise, would be entitled to the record as requested.

¹ As a component of his due process claim, Gleese also argues that the denial of his motion to augment the record with the requested transcripts has deprived him of effective assistance of counsel on appeal. (Appellant's brief, pp.21-22.) Because Gleese has failed to show that the requested transcripts are necessary, or even relevant, for appellate review of the district court's order revoking his probation, there is no possibility that the denial of the motion to augment has deprived Gleese of effective assistance of counsel on this appeal.

Morgan, 153 Idaho at 622, 288 P.3d at 839. Gleese's equal protection claim fails for the same reasons.

Gleese essentially asks this Court to reverse Morgan and adopt a *per se* rule that transcripts of all prior proceedings, whether or not they were before the district court at the final disposition hearing, are relevant as a matter of law. (Appellant's brief, pp.15-19.) But Gleese has provided no legal basis for this proposition, only self-serving conclusory assertions. Gleese identifies no factual basis to find that the requested transcripts would be relevant on this appeal. Thus, he has failed to show the requested transcripts are either legally or factually relevant on this appeal.

Gleese is entitled to a record adequate for appellate review of the district court's order revoking his probation and nothing more. He has failed to show that the requested transcripts are relevant to appellate review, much less necessary for adequate appellate review. Having failed to make any such showing, his motion to augment the record with irrelevant transcripts that were not relied upon by the district court was properly denied. Having failed to show his due process and equal protection rights were implicated, much less violated, by that denial, Gleese has failed to show any basis for relief.

II.

Gleese Has Failed To Establish An Abuse Of The Court's Sentencing Discretion

A. Introduction

Gleese asserts that the district court abused its sentencing discretion by revoking his probations or, alternatively, by not *sua sponte* reducing his sentence upon revoking

probations. (Appellant's brief, pp.23-31.) Gleese has failed to establish an abuse of the district court's discretion.

B. Standard Of Review

"Sentencing decisions are reviewed for an abuse of discretion." State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)).

C. The District Court Did Not Abuse Its Sentencing Discretion By Revoking Gleese's Probations

Gleese argues that the district court abused its discretion when it revoked his probations. (Appellant's brief, pp.23-30.) "Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation is also within the court's discretion. State v. Sanchez, 149 Idaho 102, 105, 233 P.3d 33, 36 (2009) (citing State v. Lafferty, 125 Idaho 378, 381, 870 P.2d 1337, 1340 (Ct. App. 1994)). In reviewing a district court's decision to revoke probation, this Court employs a two-step analysis. Sanchez, 149 Idaho at 105, 233 P.3d at 36 (citation omitted). First, the Court considers whether the defendant actually violated his probation. Id. "If it is determined that the defendant has in fact violated the terms of his probation, the second question is what should be the consequences of that violation." Id. A district court's decision to revoke probation is a discretionary one that will not be overturned on appeal absent an abuse of that discretion. Id.

Gleese was not a model probationer. Rather, his probationary history reads like a broken record: In 2004, Gleese pleaded guilty to burglary (R., pp.73-76) and was given a withheld judgment and placed on probation for a period of two years (R., pp.85-

91). Within a few months, Gleese was arrested for burglary, robbery, kidnapping in the second degree, resisting and obstructing officers, and being under the influence of a controlled substance. (R., pp.99-100.) The state charged Gleese with burglary, aggravated assault, malicious injury to property, two counts of false imprisonment, resisting and obstructing an officer, and public intoxication. (R., pp.159-61.) While these matters were pending, Gleese was charged with an additional burglary and grand theft. (R., pp.149-50.)

Gleese resolved the charges, and several pending probation violations, through a global plea agreement. (R., pp.177-82.) The district court revoked Gleese's withheld judgment and imposed concurrent sentences in all of the various cases, but retained jurisdiction. (R., pp.197-209.) On January 25, 2006, the district court gave Gleese another chance on probation, this time for a period of five years. (R., pp.226-45.) Within a few months, on August 7, 2006, Gleese again violated his probation. (R., pp.247-50; 323-26; see also pp.251-68.) The district court revoked Gleese's probation and imposed the previously announced sentences, but again retained jurisdiction. (R., pp.342-49.) After the period of retained jurisdiction, the district court again suspended Gleese's sentences and gave him yet another chance on probation, this time for a period of just two years. (R., pp.355-63.)

Gleese failed. On December 26, 2011, Gleese was again arrested for burglary after he stole property from Walmart and attempted to return it for a gift card. (R., pp.364-65.) Gleese was released on bail (R., pp.416-19), then failed to appear at a subsequent pretrial conference and a bench warrant was issued (R., p.426). Back in

custody, pursuant to a plea agreement, Gleese pleaded guilty to the burglary and admitted the probation violations. (Tr., p.5, L.3 – p.6, L.1; p.9, L.23 – p.13, L.21.)

Despite his arguments to the contrary, Gleese's probationary history does not show signs of success; rather it shows a consistent pattern of relapse and criminality. After Gleese committed multiple violations of the terms and conditions of his probations, over the course of multiple years, having been offered multiple chances to succeed, the district court properly revoked those probations. (R., pp.438-45.) Considering Gleese's repeated failure to simply avoid committing new crimes while on probation, his probations were not meeting the goals of rehabilitation or protecting society. The district court properly exercised its discretion when it revoked Gleese's probations.

D. The District Court Did Not Abuse Its Discretion By Not *Sua Sponte* Reducing Gleese's Sentence Pursuant To Idaho Criminal Rule 35

After the district court revoked Gleese's various probations, it executed his underlying sentences. (R., pp.438-45.) On appeal, Gleese argues that the district court abused its discretion by not *sua sponte* reducing his sentences pursuant to Rule 35. (Appellant's brief, p.31.) Gleese has failed to show an abuse of discretion.

Upon revoking probation, the district court may, pursuant to Idaho Criminal Rule 35, reduce an underlying sentence *sua sponte*. I.C.R. 35. A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing whether a sentence is excessive. State v. Hanington, 148 Idaho 26, 27, 218 P.3d 5, 7 (Ct. App. 2009); State v. Marks, 116 Idaho 976, 978, 783 P.2d 315, 317 (Ct. App. 1989)). Where a sentence is legal, those standards require an appellant to establish that the sentence is a clear abuse of discretion. State v. Baker,

136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden, the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable if appropriate to achieve the primary objective of protecting society, and any or all of the related sentencing goals of deterrence, rehabilitation, or retribution. State v. Wolfe, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978). In deference to the trial judge, the Court will not substitute its view of a reasonable sentence where reasonable minds might differ. State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

Gleese's criminal history is extensive. Considering only the criminal conduct that is the subject of this appeal, Gleese was sentenced on four burglaries, the most recent in 2011, an aggravated assault, and a felony malicious injury to property. (See R., pp.197-209, 435-37.) During his 14-year criminal history, Gleese has been convicted of at least 10 separate felonies, including second degree robbery, conspiracy to commit robbery, and felony attempting to elude police, all of which are dangerous crimes. (PSI, pp.101-06.) Only one of his felony convictions is for possession of drugs. (PSI, p.104.) Gleese also has several misdemeanor convictions, his first occurring in 2002. (PSI, p.99.) Considering the demonstrated risk Gleese poses to the community, he has failed to show that the district court abused its discretion by requiring him to serve his previously imposed sentences, without reduction, concurrently. The district court's orders revoking the probations and executing the sentences should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm Gleese's conviction and sentence for burglary, and the district court's orders revoking Gleese's probations and executing his sentences.

DATED this 22nd day of July, 2013.

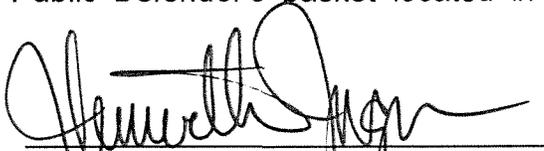

RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of July, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BRIAN R. DICKSON
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.


RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm