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State v. Rhoades Respondent's Brief Dckt. 42724

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 42724, 42727, & 42820
Plaintiff-Respondent,)	
)	Bonneville Co. Case Nos.
v.)	CR-2012-16074, CR-2013-974,
)	CR-2014-6756
DEE ALAN RHOADES,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issues

1. Has Rhoades failed to establish that the district court abused its discretion by revoking his probation in docket numbers 42724 and 42727 and executing his concurrent unified sentences of seven years, with two and one-half years fixed, imposed upon his guilty pleas to possession of methamphetamine and burglary?

2. Has Rhoades failed to establish that the district court abused its discretion by imposing a unified sentence of 13 years with three years fixed in docket number 42820, upon his guilty plea to possession of methamphetamine and a second offense sentencing enhancement?

3. Has Rhoades failed to establish that the district court abused its discretion by denying his Rule 35 motion in docket number 42820?

Statement Of The Facts And Course Of The Proceedings

In 2013, Rhoades pled guilty to possession of methamphetamine in case number 41057, and to burglary in case number 41058 and the district court imposed concurrent unified sentences of seven years, with two and one-half years fixed. (41057 R., pp.88-93; 41058 R., pp.62-66.¹) Rhoades timely appealed and timely filed a Rule 35 motion for reduction of sentence in both cases. (41057 R., pp.94-95, 103-110; 41058 R., pp.70-71, 75-78, 82-85.) In 2014, the Court of Appeals affirmed Rhoades' sentences. State v. Rhoades, 2014 Unpublished Opinion No. 400, Docket Nos. 41057/41058 (Idaho App. February 28, 2014.)

While Rhoades' appeal was pending, the district court granted Rhoades' Rule 35 motion and placed him in the retained jurisdiction program. (R. Vol. I, pp.26-31.²) After a period of retained jurisdiction, the district court suspended Rhoades' sentences and placed him on probation for three years. (R. Vol. I, pp.32-39, 102-08.)

Just over a month after Rhoades was released on probation, Rhoades' probation officer filed a Report of Violation in both cases alleging Rhoades had violated his probation by possessing and consuming alcohol, incurring a new misdemeanor charge for possession of drug paraphernalia, and incurring a new felony charge for possession of methamphetamine with the intent to manufacture or deliver in docket number 42820.

¹ The Idaho Supreme Court issued an Order taking judicial notice of the record and transcripts in Rhoades' prior consolidated appeals, docket numbers 41057 and 41058, and ordering a limited record for this appeal. (12/16/14 Order Consolidating Appeals and Taking Judicial Notice.)

² Citations to Volume I of the Record are to the Record served May 1, 2015 (R. Vol. 1, p.278) containing pages 1-278.

(R. Vol. I, pp.45-49, 114-18; R. Vol. II, pp.22-23.³) In docket number 42820, the state also filed a persistent violator sentencing enhancement. (R. Vol. II, pp.34-36.) Pursuant to a plea agreement encompassing all three cases, Rhoades admitted to violating his probation as alleged, pled guilty to an amended charge of possession of methamphetamine with a second or subsequent offense enhancement. (R. Vol. I, pp.58-61, 128-31; R. Vol. II, pp.41-44.) In docket numbers 42724 and 42727, the district court revoked Rhoades' probation and ordered his underlying sentences executed without reduction. (R. Vol. I, pp.68-71, 142-45.) In docket number 42820, the district court imposed a unified sentence of 13 years with three years fixed, to run concurrently with Rhoades' sentences in docket numbers 42724 and 42727. (R. Vol. II, pp.54-57, 76-79, 86-89.) Rhoades timely appealed from the orders revoking probation in docket numbers 42724 and 42727. (R. Vol. I, pp.72-76, 155-59.) In docket number 42820, Rhoades timely appealed and timely filed a Rule 35 motion for sentence reduction, which the district court denied. (R. Vol. II, pp.60-61, 90-94.)

I.
Rhoades Has Failed To Establish That The District Court Abused Its Sentencing
Discretion In Docket Nos. 42724 And 42727

Rhoades asserts the district court abused its discretion when it revoked his probation in docket numbers 42724 and 42727 in light of his employment and in light of his "excellent rehabilitative progress." (Appellant's brief, p.6.) The record supports the district court's decision to revoke Rhoades' probation.

³ Citations to Volume II of the Record are to the Record served March 12, 2015 (R. Vol. II, p.107) containing pages 1-107.

“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.

Contrary to Rhoades’ claim on appeal, probation in this case was neither achieving the goal of rehabilitation nor protecting the community. In 2013 and again in 2014, the presentence investigator stated:

Mr. Rhoades has an extensive criminal history, and has spent a significant amount of time in jail and in prison. He has absconded multiple times, and twice was extradited from other states. The defendant has violated his parole and probation, and continues his criminal activity despite having numerous chances to change this behavior.

(2013 PSI, p.22; 2014 PSI, p.25.) Less than four months after topping out a seven-year prison sentence on June 15, 2012, for possession of a controlled substance, Rhoades committed the first of the offenses in these two cases. (2013 PSI, pp.3-4.) While that case was still pending, Rhoades stole items from a motel and incurred the new felony charge of burglary. (2013 PSI, p. 4.) In total, Rhoades accumulated nine new criminal charges between October 2012 and January 2013. (2013 PSI, pp.10, 12-13, 16.) Just over a month after completing a period of retained jurisdiction and being given another opportunity for probation in these cases, Rhoades once again violated the terms of his probation and incurred a new felony charge for possession of methamphetamine in docket number 42820. (R. Vol. I, pp.45-49, 114-18; R. Vol. II, pp.22-23.)

At the disposition hearing for Rhoades' probation violation, the state addressed Rhoades' continued criminal offending and "horrendous" criminal record, and noted, "He's on probation for two felonies when he commits this third one, all of the felonies occurring within a year of each other." (10/14/14 Tr., p.87, L.13 – p.89, L.8 (Appendix A).) The district court subsequently set forth its reasons for revoking Rhoades' probation and executing his sentences in both cases. (10/14/14 Tr., p.95, L.11 – p.97, L.4 (Appendix B).) The state submits that Rhoades has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

II.

Rhoades Has Failed To Establish That The District Court Abused Its Sentencing Discretion In Docket No. 42820

Rhoades next asserts his sentence in docket number 42820 is excessive in light of his family support, his purported remorse and his acceptance of responsibility. The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Oliver, 144 Idaho at 726, 170 P.3d at 391 (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it 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 demonstrate a clear abuse of discretion, 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, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id. The protection of society is, and must always be, the ultimate goal of any sentence. State v. Moore, 78 Idaho 359, 363, 304 P.2d 1101, 1103 (1956). Accordingly, appellate courts must take into account “the nature of the offense, the character of the offender, and the protection of the public interest.” State v. Hopper, 119 Idaho 606, 608, 809 P.2d 467, 469 (1991); see also I.C. §19-2521.

The maximum prison sentence for burglary, a second or subsequent offense, is 14 years. I.C. §§ 37-2732(c)(1) and 37-2739. The district court imposed a unified sentence of 13 years with three years fixed, to run concurrently with Rhoades’ sentences in docket numbers 42724 and 42727, which falls well within the statutory guidelines. (R. Vol. II, pp.54-57, 76-79, 86-89.) In recommending Rhoades be incarcerated, the presentence investigator stated:

The defendant appears to have minimal awareness into his level of addiction and criminal thinking. He stated he is ready to be clean and live a crime-free life, but does not seem to possess the necessary skills or coping strategies to be able to do so on his own.

(2014 PSI, p.25.) Despite having just completed a Rider and programming and being placed on probation in docket numbers 42724 and 42727, Rhoades almost immediately committed his ninth overall felony and third felony in just over a year. (2014 PSI, p.13.) In imposing Rhoades’ sentence in this case, the district court determined that there

needed to be consequences for his ongoing criminal behavior, was concerned for the protection of society and stated:

And so I have you on probation in two cases and then a new crime while you're on probation. Looking at the prior record and the number of felonies and convictions that have occurred before obviously there's a huge problem both in substance abuse as well as criminal thinking but I just don't see how probation could be an option at this point based upon what's gone on before. Not interested in doing another Rider program. We've been through that. So that's kind of how I look at that. I'd recommend the Therapeutic Community. You should probably have an option of doing that in the prison setting, but I'll leave that up to you.

(10/14/14 Tr., p.96, L.19 – p.97, L.4.) Rhoades has failed to show an abuse of discretion.

III.

Rhoades Has Failed To Show The District Court Abused Its Discretion By Denying His Rule 35 Motion for Sentence Reduction

Rhoades next asserts the district court abused its discretion when it denied his Rule 35 motion in docket number 42820. (Appellant's Brief, pp. 9-11.) 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, Rhoades 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. Rhoades has failed to satisfy his burden.

Rhoades presented no new information in support of his Rule 35 motion. At the hearing on his Rule 35 motion, Rhoades' counsel merely reiterated the same arguments made at sentencing and requested the district court reduce Rhoades' unified sentence to allow him to become eligible for work release more quickly. (12/08/14 Tr., p.46, L.17

– p.47, L.3.) Because Rhoades presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court’s order denying his Rule 35 motion.

Even if this Court addresses the merits of Rhoades’ claim, he has still failed to establish an abuse of discretion. At the hearing on Rhoades’ Rule 35 motion, the district court articulated its reasons for denying Rhoades’ motion for sentence reduction. (12/08/14 Tr., p.48, L.23 – p.49, L.14.) The state submits Rhoades has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the Rule 35 hearing transcript, which the state adopts as its argument on appeal. (Appendix C.)

Conclusion

The state respectfully requests this Court to affirm the district court’s order revoking Rhoades’ probation in docket numbers 42724 and 42727, and to affirm Rhoades’ conviction and sentence and the district court’s order denying Rhoades’ Rule 35 motion in docket number 42820.

DATED this 21st day of September, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of September, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 performed any field sobriety tests.
2 So although we understand what the track record
3 shows, what we're hoping is for the chance to do something a
4 little different, maybe a little out of the ordinary, that can
5 hopefully set Dee up for a situation where if the Court sends him
6 to prison at some point, he's going to get out. And what we're
7 afraid of is, we're going to get out into that same situation.
8 And so Dee -- I know that they reference in the
9 PSI a couple of times that -- the minimal awareness that Dee
10 apparently has into his level of addiction and criminal thinking.
11 I don't think that's what it is. What I think it is is a feeling
12 that it's difficult for him to have his feet underneath him and
13 not kind of revert back into a situation that places him in a bad
14 spot where bad things may happen. Dee indicated in the police
15 report that he requires a high level of structure and
16 accountability, which is essentially what we're asking the Court
17 to do for us.
18 The presentence investigator noted that Dee stated
19 he's ready to be clean and live a crime-free life but does not
20 seem to possess the necessary skills or coping strategies to be
21 able to do so on his own. And so sentencing Dee to prison and
22 revoking his probation, I think, just sets us back in motion on
23 that same situation.
24 What we'd ask the Court to do is give him a rather
25 lengthy term of local incarceration on Work Release. Dee's been

1 counseling or classes that his probation officer deems
2 appropriate while he's in that Work Release. That way we'll have
3 a close eye on Dee for a fairly significant period of time; and
4 the minute he uses, the minute he doesn't show up, the minute he
5 doesn't go to counseling, we'll know and we'll be back before the
6 Court for a violation and we'll know that the Court gave us this
7 opportunity and it won't be something that's on the table.
8 So given kind of the unique situation that Dee
9 found himself in, the situation with respect to the
10 problem-solving courts, we would ask the Court to fashion a
11 sentence as we've requested.
12 THE COURT: Thank you. Mr. Bevilacqua.
13 MR. BEVILACQUA: Your Honor, this is black and
14 white. This is why the public is so upset oftentimes with the
15 revolving door criminals. Just keep getting chance after chance
16 after chance. This is the point of ridiculousness, a probation
17 recommendation in this case.
18 We have a person with one of the most horrendous
19 criminal records that I've seen in a PSI. The PSI writer says
20 he's got 50 crimes on his record. Worst off is, he's on felony
21 probation for two separate felonies on cases dated 2012 and 2013,
22 felony probation, and then he commits another felony. Yes, he
23 was -- pled to possession of a controlled substance; but the
24 Court needs to note that he had three baggies of methamphetamine
25 on his person or in his presence at the time of this crime.

1 in custody now almost five months on this particular offense, so
2 he's had a significant period of time in custody. Before that,
3 he had his retained jurisdiction. We'd ask the Court to give us
4 a fairly significant period of Work Release. Unfortunately,
5 specialty courts aren't an option. So what we're trying to do is
6 fashion a sentence that's similar to that at least initially.
7 Work Release would allow -- or would require Dee to check in
8 daily. We would know -- the day that Dee doesn't check back in
9 we would know. Work Release would be able to test or Breathalyze
10 Dee daily if they wanted to. We would know as soon as he used.
11 What Work Release would allow Dee to do on the
12 positive side of things would be become employed, begin saving
13 money to facilitate a better housing situation, to facilitate a
14 situation where he doesn't have to rely on others for
15 transportation and those kind of things. It would allow him to
16 begin to engage in counseling and treatment with Probation prior
17 to being released straight out to the community and basically
18 leaves him no room for error while giving him the opportunity to
19 build a foundation so he doesn't find himself in a situation that
20 he found himself in back in May.
21 So we would ask the Court to grant Dee probation
22 in the 2014 case, to continue probation in the other cases with
23 the requirement that he do 90 to 180 days in Work Release, that
24 he be strictly required to follow the rules of Work Release, that
25 he be required to engage in and actively participate in any

1 This is a man who is 51 years old. I don't care
2 what kind of treatment we throw at him. The treatment's not
3 going to hold. He is just -- I don't know how else to put it.
4 He's a career criminal. He needs to go to prison, and that way
5 we can protect society. He needs to -- well, I don't want to
6 make it sound like we've given up hope completely on him; but the
7 older he gets, the more crimes he commits, the less likely that
8 rehabilitation is going to be a significant factor in his life.
9 So we need to lock him up and keep society safe from him. His
10 underlying crimes, particularly the burglary and the facts
11 surrounding it -- and that's on the PV's -- are just those that
12 present a danger to the community.
13 We have someone here who is basically -- and I'm
14 not saying this is what he's doing, but it seems that he's going
15 to see how many felonies can I get away with before the judge
16 finally sends me to prison. Again, his record is horrendous.
17 He's on probation for two felonies when he commits this third
18 one, all of the felonies occurring within a year of each other.
19 There is no other response than the black and white response of
20 prison.
21 And the State is recommending a prison sentence of
22 four years determinate followed by 10 years indeterminate
23 concurrent with the other two felonies. And again, although it
24 doesn't appear likely because he's had so many opportunities at
25 treatment, it is hoped that he does get the necessary treatment

1 at prison and that it does take hold. And maybe the fact that
2 he's getting older will be a factor in having him learn that he
3 can either spend the rest of his life in prison or he can behave
4 when he gets out of prison. And that's why we have the lengthy
5 parole time is, after he does his determinate time, if he makes
6 parole, then that will be an incentive for him to stay out of
7 prison as opposed to going to prison for the rest of his life if
8 he commits another felony. Thank you, Your Honor.
9 THE COURT: Thank you.
10 MR. BEVILACQUA: Oh. Restitution is in the amount
11 of \$421.59 per a motion that's been filed. And if I may submit
12 the order.
13 THE COURT: Mr. Crane, your position on the motion
14 for restitution?
15 MR. CRANE: No objection to that, Your Honor.
16 THE COURT: All right. Mr. Rhoades, you have the
17 right to make a statement. Is there anything you would like to
18 say?
19 THE DEFENDANT: I would, Your Honor. In 2013 --
20 it was November, Your Honor -- you gave me an opportunity to do a
21 Rider, an Nontraditional Rider, and I done the New Directions
22 program in Cottonwood. I've learned a lot from that, Your Honor.
23 I done a good Rider, and I'm proud of it.
24 When I got back here, in my Rule 35 hearing in
25 November we discussed at length about the Wood Pilot project and

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1 I absconded. I never -- I never held myself accountable. I was
2 never responsible. And that's not where I am at today, Your
3 Honor. The first drinking episode was in the evening. It was
4 one of the Idaho Falls police officers that I know that had
5 chased me before, Your Honor, in resisting arrest when I was on
6 the bridge over Science Center Drive, Your Honor. I wasn't the
7 same person. He even explained that to me. We sat and we
8 talked. We called my parole officer, my probation officer, we
9 sat up an appointment, and I reported, Your Honor. Even knowing
10 full well that Gordon had the opportunity to throw me in jail, I
11 still reported, Your Honor. Running from this problem is not
12 getting me anywhere. It's not.
13 Rex Thornley says I was offered Wood Court after
14 my Rider. My understanding was, when I talked to my old
15 attorney, was that you would have to court-order that. And I
16 said, "Well, didn't anybody say anything to Judge Tingey that
17 I've completed my Rider and, you know, I'd like to do Wood
18 Pilot?" Well, I was released from jail. I filled out an
19 application for Wood Pilot. There was people at The Ark with me
20 that went -- that were released and then went -- we went to our
21 orientation, and they were taken to Wood Pilot because they were
22 court-ordered. My only question is, you know, why didn't anybody
23 follow through with their end? I can only do so much from
24 Cottonwood, Your Honor. And I really feel like I've been in that
25 program and gotten around some people, got some structure under

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1 possibly getting me into that. I was to work my way out is my
2 understanding. When I got back from my Rider, Your Honor, I had
3 spoken with my counselor, Ms. Rae Mackle (phonetic spelling). In
4 the Rider program she explained to me that where I had not been
5 court-ordered into the program, that she could not transition me
6 straight back to Wood Court. I'd have to come back to the jail
7 and then transition from there. I didn't inquire about it. As
8 we've talked about it, Your Honor -- and in the court minutes
9 even at that time, the transcripts, Your Honor, we talked about
10 the possibilities of me coming back and doing the Wood Pilot
11 Program; and that's what I was really hoping for, Your Honor.
12 I am 51 years old, Your Honor, and I am beginning
13 to understand things a lot better than what I used to. And I'm
14 not here to -- I didn't bring a speech, Your Honor. I didn't
15 rehearse this. What I'm bringing to the Court today is, throwing
16 me back in prison's not helping me. I believe on what my son had
17 said. That's why I tried for nine months, Your Honor, to get
18 into the Wood Pilot Program is, I -- when I left the jail, I left
19 with nothing. I didn't even have clothes on my back, sir. I had
20 nothing. And even at that, I at least got a full-time job. I
21 borrowed some clothes. I was walking to and from work. I was
22 reporting to my PO.
23 Your Honor, these are things I've never done in
24 the past. When I made a mistake -- and whether it was a mistake
25 or just my own will, when I used or something, I just took off.

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1 me.
2 If you build a foundation on sand, Your Honor, and
3 the beach comes up and the water comes up, it'll wash it away. I
4 need some kind of structure. I need a job. I need to start
5 paying on my fines. These are things that when you got out
6 there -- I didn't have a driver's license because I owe a \$245
7 reinstatement fee that I don't want to sound like I'm complaining
8 to people, but the State was supposed to take it off my record.
9 I had to get dentures. I now have new teeth. It's not like I
10 was out there just screwing my money away and not taking care of
11 responsibilities, Your Honor. I was trying and I'd like to
12 continue trying. But I need some structure. I need to build a
13 foundation.
14 I can't get into Wood Pilot. I can't get into
15 Drug Court. I've spoke with some treatment facilities in Lava
16 Hot Springs called Motion in -- Therapy in Motion. They were
17 supposed to send a letter to my probation officer. I don't know
18 as that's what I need more than just structure, to be able to
19 save some money, get caught up on my fines, get my driver's
20 license back, take care of some of the wreckage in my past that
21 I've created.
22 And I understand this looks bad, coming here with
23 another felony. But at the same time, Your Honor, it's
24 progression. I mean, it's positive progression for me because
25 the things I've done in the past I'm not doing anymore. I'm

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APPENDIX B

1 trying to report. I'm trying to do the right thing. I made a
2 bad decision, and that bad decision is what a lot of people make.
3 I relapsed, Your Honor. In treatment, you know, in the first
4 60 -- 30 to 60, 90 days most people do relapse. My thing is, I
5 got another charge. It was just a dirty UA, which I'll bring to
6 your attention, Your Honor, I tested with my probation officer
7 and I was clean. I reported and told him that I drank. And
8 Gordon and I were going to try to work things out. I believe we
9 could have. I made the mistake. It's not Gordon's fault. I got
10 around the wrong people. We were going to step up my UA's. We
11 were -- Gordon and I were working at this, Your Honor; and I
12 believe he'll -- he will even testify to that today.

13 I don't want to continue this, Judge. I don't. I
14 have a sincere desire today to do something different with my
15 life. The desire is there. I surrender. It's like it's no
16 longer the police, Judge, that are arresting me. It's like the
17 man upstairs is saying, "Hey, you ain't getting it." So I don't
18 even get a chance to screw around much anymore. And I've got an
19 officer standing there. And it's a good thing for me, Judge.

20 Like I said, I really -- I don't have anyplace to
21 go. I can't go to Wood Pilot, which is something I really wanted
22 to go to to build some friends that aren't drinking and using.
23 That's all I have here, Judge, is old friends that drink and use;
24 and I need some new ones, some that don't use. And the ones that
25 are in recovery. I was working with Mike Dodge at the

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1 2013 PV case. It was the bridge incident I was referring to that
2 Mr. Rhoades talked about that was a note in the file that I
3 thought was part of that burglary, but apparently it's not. So
4 in any event, the burglary is not as horrendous as I thought it
5 might have been. It was simply a burglary of a hotel room or
6 something to that effect. And, of course, the Court has that
7 information --

8 THE COURT: Right.

9 MR. BEVILACQUA: -- anyways. That's all I have,
10 Your Honor. Thank you.

11 THE COURT: All right. Well, again, I appreciate
12 the comments, the argument on this. Again, I've reviewed the
13 presentence reports. I'm familiar with the files, of course, of
14 2012 and 2013. I consider the factors involved in a
15 sentencing -- protection of society, deterrence, punishment, and
16 rehabilitation. I look at the prior record, which really is a
17 driving factor, Mr. Rhoades. A lot of what we're doing today is
18 going to be based upon the prior record, what's gone on before,
19 what happened during probation on the other cases. So those are
20 a lot of the things that I look at as I consider what might be an
21 appropriate sentence.

22 I, again, do find you guilty of possession of a
23 controlled substance. There was also a guilty plea to the
24 enhancement. The sentence on this will be 13 years, three years
25 fixed, 10 years indeterminate for a total of 13. I'm going to

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1 Christian Chapel. I was going to Pure Word and Broken Chains.
2 It's progress for me, Judge. And I don't -- you know, I don't
3 want my past to run my future.

4 And if you look back over my record, even from
5 there, I know I screwed up and I made a felony, I got another
6 felony charge. But, Your Honor, I wasn't out running into
7 people's vehicles. I wasn't intoxicated. I wasn't out there
8 creating chaos. I wasn't making the Idaho Falls Police
9 Department chase me around. I wasn't jeopardizing people's
10 lives. I was asleep. I'd worked 14 hours that day. I made a
11 bad decision because I hadn't been with a female for almost 18
12 months. It was my bad choice.

13 But I really, Judge Tingey, I want to get this
14 straightened out. If I didn't, I could have just ran off. I
15 have plenty of places to run away to. But wherever I go, there I
16 am. I want to start my life over. I have grandchildren. My
17 children are here today. This has to stop, and that's why I want
18 to see stop it. It's up to me. I've got to make those choices.
19 But if given the opportunity to build a foundation, I think I
20 can -- you can bet the house on that. I think I'll be okay.
21 That's all I have, Your Honor. Thank you.

22 THE COURT: All right. Well, I appreciate the
23 comments. Mr. Bevilacqua.

24 MR. BEVILACQUA: Your Honor, I may have
25 inadvertently mischaracterized the prior burglary charge, the

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1 run that concurrent with the sentencings in the 2012 and 2013
2 case. You'll receive credit for time served. There'll be a fine
3 of \$750 on this. Restitution is ordered in the amount of
4 \$421.59, court costs and Victims' Relief Fund at the standard
5 amount, reimbursement --

6 You're here as a Public Defender, Mr. Crane?

7 MR. CRANE: I am, Your Honor.

8 THE COURT: Reimbursement of the Public Defender
9 in the amount of \$500.

10 I don't necessarily disagree with you and your
11 son, Mr. Rhoades. I don't know -- I mean, there's programs in
12 the prison setting. Whether that's going to be helpful to you,
13 it's impossible for me to tell. It might, it might not. I would
14 like to see better options. The cold hard fact is, there aren't
15 any infinite number of options available. And so we've tried the
16 Rider program. You're not accepted into a problem-solving court.
17 That's simply not an option. As much as we may want it to be an
18 option, it's not. It's simply not an option.

19 And so I have you on probation in two cases and
20 then a new crime while you're on probation. Looking at the prior
21 record and the number of felonies and convictions that have
22 occurred before, obviously there's a huge problem both in
23 substance abuse as well as criminal thinking; but I just don't
24 see how probation could be an option at this point based upon
25 what's gone on before. Not interested in doing another Rider

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1 program. We've been through that. So that's kind of how I look
2 at that. I'd recommend the Therapeutic Community. You should
3 probably have an option of doing that in the prison setting, but
4 I'll leave that up to you.

5 Any questions on that, Mr. Crane?

6 MR. CRANE: I don't have any questions, Your
7 Honor.

8 THE COURT: Mr. Bevilacqua?

9 MR. BEVILACQUA: No, Your Honor.

10 THE COURT: All right. This is -- sentencing -- I
11 should indicate also, on 2012 and 2003 (sic), based on the
12 admissions to the probation violations, the Court did find
13 willful violations of probation. Probation is revoked on those
14 two cases as well.

15 So these are all decisions you can appeal,
16 Mr. Rhoades. If you want to appeal, you should do that within 42
17 days. You have the right to an attorney on appeal. If you
18 cannot afford an attorney, one would be appointed for you.

19 MR. BEVILACQUA: Your Honor, may I be excused?

20 THE COURT: Yes. Thank you.

21 (Proceedings concluded)

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APPENDIX C

1 **RULE 35 HEARING**
2 **DECEMBER 8, 2014**

3 THE COURT: On the record, Case 2014-6756, State
4 vs. Dee Rhoades. We're here on a motion under Rule 35. Tanner
5 Crowther for the State. Jordan Crane for the Defense.

6 Your motion, Mr. Crane. Go ahead.

7 MR. CRANE: Thank you, Your Honor. Your Honor,
8 can I have a brief sidebar with the Court?

9 THE COURT: Yeah. Just a second. We'll go
10 outside. Let me just check one thing.

11 (Sidebar conference off the record)

12 THE COURT: All right. Go ahead, Mr. Crane.

13 MR. CRANE: Thank you, Your Honor. As the Court
14 indicated earlier, we're here on Mr. Rhoades' Rule 35 motion.
15 We're requesting leniency, and we would ask the Court to consider
16 a reduction in Dee's sentence in this case.

17 He was sentenced to a 13-year sentence with three
18 fixed and 10 indeterminate, so he's got a fairly lengthy sentence
19 in this case. We'd ask the Court to consider reducing it from
20 that sentence to a two-year fixed with a six-year indeterminate.

21 Dee is currently being held on two other cases in
22 which his probation was revoked. Those sentences were seven
23 years each, two and a half fixed and four and a half
24 indeterminate on those probation violations. So he has to serve
25 those sentences.

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1 And then his goal is to file for Interstate compact that he can
2 leave the area and hopefully sever all ties and have a chance to
3 become more successful.

4 Dee throughout this case has been cooperative with
5 law enforcement. He's based in the jail. I think Dee's looking
6 for a chance kind of to start over. We know that we're going to
7 have to serve the probation violation cases, but we're hoping
8 that the Court would grant our request for a two-year fixed with
9 a six-year indeterminate in this case rather than a three plus 10
10 for a 13-year sentence.

11 THE COURT: Mr. Crowther.

12 MR. CROWTHER: Judge, in reviewing the sentence,
13 we're asking the Court to deny this. There was a written
14 objection that was filed. I'll just summarize a few of the
15 things that I think would give the Court a background of what
16 would have been looked at and I think we brought up in sentencing
17 as far as the criminal history in this case. It think the PSI
18 writer noted that it was almost 50 misdemeanor and felony cases.
19 Extensive history at both a misdemeanor and felony level. Based
20 on our count, this was a seventh felony conviction.

21 Just to name a few of the things that have been
22 tried, he's done a TC Rider and a Traditional Rider in 2013. A
23 month after he comes out of that Traditional Rider in 2013, he
24 was caught with several baggies of meth. He's tried -- or he's
25 been denied specialty courts twice because of the high

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1 Dee has been in custody for almost the last 22
2 months. There was a 30-day period or so where he was out, but
3 he's been in custody for almost two years straight. So he has
4 served a fairly significant period of time here recently.

5 He has about eight months left fixed on his two
6 probation violation cases. So if the Court were to reduce the
7 sentence from a three-year fixed to a two-year fixed, he would
8 still be forced to serve some additional time. He would still
9 have, by my count, about 17 months left to serve if the Court
10 were to reduce the fixed sentence in this case to two years.

11 If the Court reduced his sentence, the
12 indeterminate portion, to a six-year sentence, that still adds a
13 year and a half to the indeterminate time that he would be
14 required to serve on his probation violations. So the Court
15 would be adding not only the 17 months up front but also a year
16 and a half to the tail.

17 Part of the reason we're asking for this is, Dee
18 would become eligible more quickly for the work camp in
19 St. Anthony. One of the things we tried to hit on in sentencing
20 and tried to focus on is, when Dee was released from his retained
21 jurisdiction, he was kind of left out in the community with no
22 income and no resources; and that kind of in a way contributed to
23 the probation and the new offense. If Dee were to become
24 eligible for the work camp, then he would be able to become
25 employed and work and start to build up some financial resources.

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1 criminality that they have seen in him, and it's their belief at
2 least that he's not amenable to that type of treatment at that
3 particular level.

4 The PSI recommended Level III inpatient treatment.
5 And also the risk that he presents to our community during the
6 fall of 2013, he runs from law enforcement, hits two separate
7 cars, totals his car, jumps over a bridge and on the support
8 structure of the bridge before he's actually apprehended.

9 There's been numerous attempts over the years
10 basically at all levels of supervision to rehabilitate. There's
11 also the fact he was on felony supervision at the time of this
12 new charge. I think with that as a background, the sentence is
13 certainly appropriate here.

14 I would note, the Court also gave what I think is
15 an indication that there was some leniency that the Court
16 considered in the fact that the Court ran this concurrent with
17 cases that he was already sentenced on prior to being sentenced
18 in this case.

19 So we would ask the Court to deny the Rule 35 for
20 those reasons.

21 THE COURT: All right. Anything else, Mr. Crane?
22 MR. CRANE: No, Your Honor.

23 THE COURT: I look at that. I mean, I look at
24 what's gone on before and I look at the prior convictions for
25 which he was on probation and I look at the fixed portion, which

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1 was two and a half on both those cases, and then begin a new
2 felony. And I'm thinking, okay, what -- does it make any sense
3 to do a fixed portion of two or two and a half again? It seems
4 to me if we're committing new felonies, then the fixed portion of
5 any sentence ought to be adjusted upwards, not downwards. So
6 that's kind of my thought process on the fixed portion. I did
7 give a long tail on the determinate portion, thinking that if he
8 qualifies for parole, he needs to be supervised. I mean, his
9 record would bear that out, that he warrants supervision and
10 supervision for a long period of time.

11 I'm not inclined to grant the motion as to the
12 fixed portion. I might consider reducing the indeterminate
13 portion. I guess I want to think about that. So I'll take this
14 under advisement. I'll make a decision in the next day or so.

15 Anything else, Mr. Crane?

16 MR. CRANE: No. No, Your Honor.

17 (Proceedings concluded)

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