11-30-2015

State v. Standley Appellant's Reply Brief Dckt. 43024

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff/Respondent, vs. WESLY STANDLEY, Defendant/Appellant.	)	S.Ct. Docket No. 43024 Twin Falls Co. CR-2014-1232

REPLY BRIEF OF APPELLANT

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho In and For the County of Twin Falls

HONORABLE RANDY J. STOKER
District Judge

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II. ARGUMENT IN REPLY

A. *There was not sufficient evidence to prove that Mr. Standley violated the special term of probation that he not quit the Suboxone treatment or the general term of probation that he meaningfully participate in his Suboxone treatment program.*

1. Mr. Standley did not violate Special Condition of Probation (e)

The state asserts there was sufficient evidence to show Mr. Standley violated Special Condition of Probation (e)[1] because he "quit the Suboxone program when he took it upon himself to stop taking the Suboxone." State's Brief, pg. 4. However, Mr. Standley did not stop taking the Suboxone. He had 34 extra strips out of the approximately 600 strips he was prescribed during the ten months he was in the program. T pg. 73, ln. 24-25. Thus, it appears that Mr. Standley took 566 of the 600 strips, *i.e.*, 94.3% of the total. While he was taking less than the recommended dose, it cannot be said that he had stopped taking Suboxone. "To stop," it seems almost too obvious to note, means to "discontinue."[2] It does not mean to "slightly decrease" or to "be compliant nearly 100% of the time." Thus, the state's assertion that Mr. Standley stopped taking the Suboxone grossly overstates the facts.

Nor can it be said that Mr. Standley "quit" the program, in violation of Special Condition (e) by missing 5.4% of the Suboxone doses. It is worth noting

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[1] That special condition provided: "The defendant shall complete the Suboxone program that he is currently enrolled in through Dr. David R. Hadlock's office. If the defendant quits the program prior to the completion date as recommended by Dr. Hadlock, such conduct shall constitute a probation violation."

[2] www.merriam-webster.com/dictionary/stop

there were no ill effects of the missed doses, as Mr. Standley's UAs were all clean and he was otherwise fully engaged in Dr. Hadlock's treatment program.

Finally, even if Mr. Standley had truly stopped taking the Suboxone, it still wouldn't mean that he had "quit" the program. "To quit," means "to stop doing (an action or activity)"[3] To the contrary, Dr. Hadlock testified that Mr. Standley was still in the program and that special arrangements had been made for him since he was in jail. T pg. 90, ln. 23-25. The doctor also noted that, in addition to the clean twice weekly urine tests, Mr. Standley was attending IOP aftercare, relapse prevention, and community support meetings. T pg. 100, ln. 12-19.

The state seeks to avoid the meaning of the word "quit" by pointing to Dr. Hadlock's treatment agreement, wherein Mr. Standley promised Dr. Hadlock that he would "totally comply with all aspects and conditions of this agreement contract." Exhibits pg. 42 (underlining and bold omitted). But again, not being fully in compliance with the agreement does not mean Mr. Standley quit the program in violation of Special Condition (e). That special condition doesn't require total compliance with the treatment program. It just requires that Mr. Standley not quit the program and eventually complete it.

Dr. Hadlock wouldn't even say that Mr. Standley was noncompliant with the program. He explained that the treatment agreement is "not a legal document," that it is not unusual for patients to be noncompliant and that he gives his patients

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[3] www.merriam-webster.com/dictionary/quit

"some latitude" when they violate the strict terms of the agreement. T pg. 88, ln. 19-20; pg. 89, ln. 4-11.

In short, the state's argument that Mr. Standley violated Special Condition (e) because he quit the program is totally disproved by the record.

2. The court did not find Mr. Standley violated General Condition #15, nor does the record support such a finding.

As predicted, the state could not resist arguing that Mr. Standley violated General Condition of Probation #15, notwithstanding the fact that the trial court did not make a finding that he had. See, T pg. 113, ln. 11 - pg. 114, ln. 3. Of course, since the court did not find he violated General Condition #15, that could not have been part of the reason it revoked probation and imposed the sentence. Thus, the state's argument that there was sufficient evidence to support a finding the court didn't make and didn't rely upon in its decision doesn't make any difference here. What's more, it's wrong.

General Condition of Probation #15 requires, in relevant part, that "[t]he Defendant shall meaningfully participate in and successfully complete any treatment, counseling or other programs deemed beneficial to the Defendant and as directed by the Court or any agent of the IDOC." R 174. As noted above, Dr. Hadlock testified that Mr. Standley had "participated fully in all components of the program" and was making "phenomenal" progress. T pg. 82, ln. 21-22. The doctor also testified that is not uncommon for patients to forget to take all their Suboxone, that missing a dose is not necessarily a problem, and perfect compliance with the

treatment agreement is not expected. T pg. 88, ln. 19-20; pg. 89, ln. 4-11. Mr. Standley had completed most of the educational components of the program, but was still attending community support meetings and actually leading some of the meetings. T pg. 100, ln. 12-19. Finally, there was no indication that Mr. Standley was using illegal drugs and the court found there was no evidence that he was selling controlled substances. T pg. 178, ln. 22 - pg 179, ln. 2.[4]

The state emphasizes the court's comment that "Mr. Standley has not followed that program like he was directed." State's Brief, pg. 5, citing T pg. 113, ln. 14-15. But it ignores that Mr. Standley's conditions of probation did not require him to "follow the program like he was directed." Special condition (e) only required him to not "quit" the program and someday complete it. General Condition # 15 only required that he "meaningfully particulate in the program."

There is no evidence in the record to suggest he didn't meaningfully participate in Dr. Hadlock's program, nor did the court make such a finding. Even if Mr. Standley did not participate in the treatment program 100% as "directed," his 94.3% compliance rate with the Suboxone, along with his clean UAs and his completion of most of the education components of the treatment prove that he meaningfully participated in treatment as required by General Condition #15. The state's argument to the contrary is meritless.

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[4] The court stated: "I don't have any evidence before me today that Mr. Standley's still in the drug business. I don't know that. In fact, I'd have to say there is no evidence of that. I have no evidence that he's continued to use while he was out of jail. And that certainly is to his credit."

B. ***The district court abused its discretion in revoking probation and imposing sentence.***

Defense counsel conceded and the court found that Mr. Standley had prohibited contact with Ms. Schriener. It did not find, however, that he had prohibited contact with Mr. Lewis. T pg. 157, ln. 19 - pg. 159, ln. 20.

Since the court found a knowing and intentional probation violation, this Court reviews the decision to revoke probation for an abuse of discretion. I.C. § 20–222; *State v. Corder*, 115 Idaho 1137, 1138, 772 P.2d 1231, 1232 (Ct. App.1989). In this case, an independent review of the record shows the court abused its discretion because it did not act consistently with the applicable legal standards nor did it reached its decision by an exercise of reason. *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992).

The state does not specifically argue in support of the court. Instead, it merely "submits that Standley has failed to establish an abuse of discretion, for reasons more fully set out in the attached excerpt of the disposition hearing transcript." State's Brief, pg. 8. In fact, however, that record shows that the court abused its discretion in revoking probation and executing the sentence. Mr. Standley set out those reasons in his Opening Brief, pg. 15-16.

Suffice it to say here that the court did not act consistently with the applicable legal standards because it disregarded both Mr. Standley's rehabilitation and the protection of society when it revoked probation, especially in light of its findings that Ms. Standley was neither using nor selling drugs. Moreover, the

court's belief that Mr. Standley "was trying to manipulate someone in the drug court system," T pg. 180, ln. 15-19, was not supported by the record. If anything, the record shows Ms. Schreiner's goal was to manipulate Mr. Standley into giving her drugs when she initiated the text message exchange.

Second, the court's decisions were not made by the exercise of reason. The imposition of a life sentence with fifteen years fixed is a very serious matter, especially so when the state only recommended a twelve-year maximum sentence and conceded that a life sentence was not appropriate. T pg. 40, ln. 4-23. It was not a rational decision to impose such a unduly harsh sentence due to the text messages or even the ten minute conversation with a drug user. The manifest inappropriateness of such a sentence makes one wonder if the court wasn't telling Mr. Standley the absolute, unvarnished truth when it told him, "I set you up to fail." T pg. 178, ln. 22 - pg. 179, ln. 13. T pg. 180, ln. 6. If it did, it would be an abuse of discretion to impose the life sentence neither party sought.

But even if the court didn't intend Mr. Standley to fail, it was still an abuse of discretion to impose the life sentence especially since the court did so in part because of the mistaken finding that Mr. Standley was guilty of Count II by violating Special Condition (e). (As noted above, the court did not find that Mr. Standley violated General Condition #15.) There was not sufficient evidence to support that finding. It is certainly possible that the court would not have imposed the original sentence had it not found a violation of Count II. Even if this Court

gives full credit to the court's statement about one violation "and you're gone," the court did not say it would unvariably impose the life sentence and it might have exercised its discretion and reduced the sentence to the state's original recommendation of fourteen years with four fixed. See ICR 35(b).

III. CONCLUSION

For the reasons set forth above, Wesly Standley asks this Court to vacate the order revoking his probation and imposing the sentence without reduction, and remand to the district court for further proceedings.

Respectfully submitted this 30th day of November, 2015.

Dennis Benjamin
Attorney for Wesly Standley

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have on this 30th day of November, 2015, caused two true and correct copies of the foregoing document to be placed in the United States mail, postage prepaid, addressed to:

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