

11-24-2015

## State v. Carr Appellant's Brief Dckt. 43093

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43093
	)	
v.	)	BANNOCK COUNTY
	)	NO. CR 2011-15552
	)	
JACQUE ZACHARY CARR,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Jacque Zachary Carr was on probation for aggravated battery. After Mr. Carr admitted to violating his probation, the district court revoked his probation and imposed the underlying sentence of six years, with three years fixed. Mr. Carr now appeals to this Court, contending the district court abused its discretion by revoking probation and imposing his sentence.

## Statement of the Facts and Course of Proceedings

In 2011, Mr. Carr pled guilty to aggravated battery. (R., pp.69–71, 81.) The district court sentenced Mr. Carr to six years, with three years fixed, suspended execution of his sentence, and placed him on probation for six years. (R., pp.81–85.)

In March of 2013, Mr. Carr admitted to a violation of his probation. (R., pp.93–94, 128–29.) The district court revoked probation, executed his underlying six-year sentence, and retained jurisdiction (“a rider”). (R., pp.131–36.) After a rider review hearing in August of 2013, the district court suspended Mr. Carr’s sentence for a second time and placed him on probation for five years. (R., pp.141, 142–44.)

On March 10, 2015, a Report of Probation Violation was filed alleging five violations for (1) loss of employment; (2) association with an individual on felony probation; (3) failure to attend treatment; (4) change of residence; and (5) failure to be truthful to his probation officer. (R., pp.154–57.) On March 19, 2015, Mr. Carr admitted to the violations. (R., p.163; Tr. Vol. I, p.4, L.7–p.8, L.12.)

The district court proceeded to disposition. (Tr. Vol. I, p.9, Ls.5–7.) The State recommended another period of retained jurisdiction, and Mr. Carr’s counsel requested local jail time and probation. (Tr. Vol. I, p.9, Ls.8–10, p.11, Ls.2–7.) Mr. Carr’s counsel also submitted Mr. Carr’s *pro se* recommendation to the district court. (Tr. Vol. I, p.9, Ls.14–25.) In the *pro se* motion, Mr. Carr requested that the district court “grant defendant an unsatisfactory completion of probation and/or grant defendant a sundowner allowing defendant to leave the State of Idaho unhindered by probation and parole in the agreement and the defendant will not return to Idaho.” (R., pp.170–71.) Mr. Carr also stated in a *pro se* affidavit: “I have know [sic] family or other support in

Idaho. I did 18 months of probation satisfactory. I do not plan to stay in Idaho past release from probation. I do have support outside of Idaho and once there I am certain I will be successful[.]” (R., pp.172–73.) The district court revoked probation and executed Mr. Carr’s underlying six-year sentence, with three years<sup>1</sup> fixed. (Tr. Vol. I, p.12, Ls.15–18.) The district court entered a Minute Entry and Order. (R., pp.163–67.) Mr. Carr filed a timely notice of appeal from the order revoking probation.<sup>2</sup> (R., pp.175–77.)

### ISSUE

Did the district court abuse its discretion when it revoked Mr. Carr’s probation and executed his underlying sentence of six years, with three years fixed?

### ARGUMENT

#### The District Court Abused Its Discretion When It Revoked Mr. Carr’s Probation And Executed His Underlying Sentence Of Six Years, With Three Years Fixed

The district court is empowered by statute to revoke a defendant’s probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines “whether the defendant violated the terms of his probation.” *Id.* Second, “[i]f it is determined that the defendant has in fact violated the terms of his probation,” the Court examines “what should be the consequences of

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<sup>1</sup> The written transcript provides that the district court executed an underlying sentence with “two determinate.” (Tr. Vol. I, p.12, Ls.15–18.) Counsel has listened to the audio recording of the hearing, and the “two determinate” provided in the transcript is a typographical error. The audio recording provides that the district court sentenced Mr. Carr to “three determinate,” which was the original sentence.

<sup>2</sup> Mr. Carr also moved for reconsideration of his sentence under Rule 35, which the district court denied after a hearing. Mr. Carr does not challenge the district court’s denial of this motion on appeal.

that violation.” *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Carr does not challenge his admissions to the probation violations. (R., p.163; Tr. Vol. I, p.4, L.7–p.8, L.12.) “When a probationer admits to a direct violation of her probation agreement, no further inquiry into the question is required.” *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Carr submits the district court abused its discretion by revoking his probation.

“After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court.” *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). “A judge cannot revoke probation arbitrarily,” however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). “The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision.” *State v. Mummert*, 98 Idaho 452, 454 (1977). “In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society.” *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant’s conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

In this case, Mr. Carr was reinstated on probation after successfully completing a rider. (R., pp.141, 142–44, 156.) On the rider, Mr. Carr completed the “Industry and Work Training” program, the cognitive behavioral intervention program “Thinking for a Change,” and an educational program “Career Bridge One.” (Presentence Investigation

Report (“PSI”),<sup>3</sup> pp.21–22.) Mr. Carr adequately completed all program material, did well in group discussion, made an effort to understand new concepts, was consistently honest, and maintained ideal behavior. (PSI, p.25.) Although the Department of Correction (“DOC”) noted that Mr. Carr’s attitude was a “concerning trait,” the DOC also noted that Mr. Carr was aware of this issue. (PSI, pp.25–26.) Mr. Carr “did well articulating his weaknesses and understanding helpful ways to work on them.” (PSI, p.25.) Further, Mr. Carr did not receive any formal disciplinary sanctions and received only three informal sanctions. (PSI, p.22.) Despite any attitude issue, the DOC recommended probation because Mr. Carr “will be able to follow rules and expectations on probation.” (PSI, p.26.)

Mr. Carr did well on probation for over a year. (R., pp.142–43, 154–57.) He obtained employment at the Clarion Inn. (R., p.156.) But, in October of 2014, it appears that things started to go downhill. Mr. Carr associated with an individual on felony probation and traveled outside of the district. (R., pp.154–55.) He lost his job with the Clarion Inn at some point, and then he lost two other jobs in early 2015. (R., p.154.) The additional probation violations followed. (R., pp.154–57.) These violations, however, do not indicate that Mr. Carr’s probation was not achieving its rehabilitative purpose. Moreover, the probation violations do not indicate that Mr. Carr was a danger to society or at risk to commit future crimes. Mr. Carr had success on probation before the violations, and he can be successful again. He has all the tools from his rider program to obtain employment, make positive changes in his life, and improve his outlook.

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<sup>3</sup> Citations to the PSI refer to the thirty-one page electronic file titled “CONFIDENTIAL CERTIFICATE OF EXHIBITS CARR 43093.”

Reinstating probation after local jail time would have allowed Mr. Carr to refocus his efforts on rehabilitation and get back on track to becoming a productive member of society. Local jail time also would have served as adequate punishment and deterrent. Based on the above, Mr. Carr submits that the district court abused its discretion by revoking probation.

CONCLUSION

Mr. Carr respectfully requests that this Court vacate the district court's order revoking probation and remand for further proceedings.

DATED this 24<sup>th</sup> day of November, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24<sup>th</sup> day of November, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JACQUE ZACHARY CARR  
INMATE #101839  
ISCC  
PO BOX 70010  
BOISE ID 83707

STEPHEN S DUNN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KENT V REYNOLDS  
BANNOCK COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

EAS/eas