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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 43139 & 43142
Plaintiff-Respondent,)	
)	Bonner Co. Case Nos.
vs.)	CR-2009-3186 & CR-2010-3292
)	
DAVID N. HYATT,)	
)	
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 BONNER**

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District Judge**

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STATEMENT OF THE CASE

Nature of the Case

David N. Hyatt appeals in these consolidated cases from the district court's orders revoking his probation, denying his Rule 35 motions for reduction of his sentences, and denying his motions for credit for time served. On appeal, Hyatt contends that, pursuant to I.C.R. 33(f), a district court cannot revoke probation unless it finds a willful probation violation. Hyatt further argues there was insufficient evidence that he willfully violated his probation and, even if the evidence was sufficient, the district court erred in revoking his probation. He also challenges the denial of his Rule 35 motions for reduction of his sentences and the denial of his Rule 35 motions seeking additional credit for time served.

Statement of Facts and Course of Proceedings

In Docket No. 43139 (Bonner Co. Case No. CR-2009-3186), the state charged Hyatt with failure to register as a sex offender. (#43139 R., vol. I, pp.69-70.) Hyatt pled guilty, and the district court imposed a unified sentence of four years, with two years fixed, but suspended the sentence and placed Hyatt on probation for two years. (#43139 R., vol. I, pp.84-96, 124-29.) Approximately five months later, Hyatt violated his probation by battering his wife and consuming alcohol. (#43139 R., vol. I, pp.146-55, 183-84.) Approximately one month after that, Hyatt violated his probation by unlawfully entering a residence, violating a civil protection order, driving under the influence of alcohol, driving without a license, driving without an ignition interlock device, and failing to provide proof of insurance. (#43139 R., vol. I, pp.196-204; #43139 R., vol. II, pp.269-70.) After Hyatt admitted the allegations, the district

court revoked his probation, ordered his sentence executed, and retained jurisdiction. (#43139 R., vol. I, pp.183-84; #43139 R., vol. II, pp.269-70, 285-88.)

While the probation violation allegations in the failure to register case were pending, the state charged Hyatt in Docket No. 43142 (Bonner Co. Case No. CR-2010-3292) with felony driving under the influence of alcohol. (#43142 R., vol. I, pp.70-71.) Hyatt pled guilty, and the district court imposed a unified sentence of three years, with one year fixed, and retained jurisdiction. (#43142 R., vol. I, pp.83-94, 98-102.) The court ordered the sentence to run concurrently with Hyatt's sentence in Docket No. 43139. (#43142 R., vol. I, pp.98-102.)

Following the period of retained jurisdiction, the district court suspended the balance of Hyatt's sentences and placed him on probation for five years in both cases. (#43139 R., vol. II, pp.294-99; #43142 R., vol. I, pp.112-17.) Approximately 18 months later, in September 2012, Hyatt violated his probation by providing shelter to a runaway child and associating with a person with whom his probation officer had ordered him to have no contact. (#43139 R., vol. II, pp.320-48; #43139 R., vol. III, pp.457-59; #43142 R., vol. I, pp.134-62; #43142 R., vol. II, pp.249-51.) Despite the seriousness of the violations, the district court gave Hyatt "one more chance" and continued him on probation in both cases. (#43139 R., vol. III, pp.459, 462-65; #43142 R., vol. II, pp.251, 254-57.)

Less than nine months later, in October 2014, Hyatt's probation officer filed a report alleging Hyatt had violated his probation by committing the crimes of battery, disturbing the peace and driving without privileges, and by being cited for speeding and failing to provide proof of insurance. (#43139 R., vol. III, pp.467-78; #43142 R.,

vol. II, pp.259-70.) While those allegations were pending, in January 2015, Hyatt's probation officer filed a second report alleging Hyatt had violated his probation by battering his wife twice in September 2014 and once in December 2014, and by consuming and/or possessing alcohol in December 2014. (#43139 R., vol. III, pp.515-24; #43142 R., vol. II, pp.304-13.) Following an evidentiary hearing, at which the state withdrew the allegations in the October 2014 Report of Violation (2/6/15 Tr., p.28, L.17 – p.29, L.6, p.31, Ls.16-23), the district court found Hyatt violated his probation as alleged in the January 2015 Report of Violation – *i.e.*, by battering his wife on three separate occasions and by consuming alcohol on at least one occasion (2/6/15 Tr., p.30, Ls.5-13). Concluding the violations were willful and that Hyatt was not “amenable to probation” (4/6/15 Tr., p.14 – p.15, L.13; see also #43139 R., vol. III, p.559 (Judgment on Probation Violation wherein court twice indicated its finding that Hyatt “willfully violated the terms and conditions” of his probation) and #43142 R., vol. II, p.346 (same)), the court revoked Hyatt's probations and ordered his sentences executed in both cases (4/6/15 Tr., p.15, Ls.14-15; #43139 R., vol. III, pp.559-61; #43142 R., vol. II, pp.346-48). The parties thereafter filed stipulated motions requesting that Hyatt be given 451 days credit for time served in Docket No. 43139 and 442 days credit for time served in Docket No. 43142, which the district court granted. (#43139 R., vol. III, pp.564-65; #43142 R., vol. II., pp.351-52.)

Hyatt filed timely Rule 35 motions requesting reduction of his sentences. (#43139 R., vol. III, pp.566-70; #43142 R., vol. II, pp.353-57.) He also filed “amended” Rule 35 motions seeking additional credit for time served in both cases.

(#43139 R., vol. III, pp.576-79; #43142 R., vol. II, pp.364-75.) The district court denied Hyatt's requests for leniency, concluding Hyatt's sentences were not excessive and, in fact, were "necessary" "in order to protect society, as well as [to] achieve a measure of retribution and serve as a deterrent to other probationers in the community." (#43139 R., vol. III, pp.588-94; #43142 R., vol. II, pp.384-90.) The court also denied Hyatt's requests for additional credit for time served because defense counsel had previously "stipulated ... to the amount of credit for time served in both cases." (#43139 R., vol. III, p.593; #43142 R., vol. II, p.389.)

Hyatt filed a notice of appeal in each case, timely from both the orders revoking his probation and the orders denying his Rule 35 motions for leniency and for additional credit for time served. (#43139 R., vol. III, pp.571-73; #43142 R., vol. II, pp.358-60.)

ISSUES

Hyatt states the issues on appeal as:

- I. Did the district court abuse its discretion when it found Mr. Hyatt violated his probation without determining whether that violation was willful?
- II. Did the district court abuse its discretion when it revoked Mr. Hyatt's probation?
- III. Did the district court abuse its discretion when it denied Mr. Hyatt's Rule 35 motions requesting leniency?
- IV. Did the district court abuse its discretion when it denied Mr. Hyatt's Rule 35 motions requesting credit for the time he actually served in these cases?

(Appellant's brief, p.5.)

The state rephrases the issues on appeal as:

1. Should the Idaho Supreme Court retain this case to decide whether I.C.R. 33(f) supplants the standards for revoking probation set forth in I.C. §§ 20-222, 19-2602, and 19-2603 such that a defendant's probation may only be revoked if the district court finds a willful probation violation?¹
2. Even assuming the district court's authority to revoke Hyatt's probation was conditioned on a finding that Hyatt's probation violations were willful, has Hyatt failed to show that the district court abused its discretion by revoking his probation where (1) the record shows the district court expressly found Hyatt's violations were willful; (2) substantial, competent evidence supports the court's finding that Hyatt's probation violations were willful; and (3) the record supports the court's finding that probation was neither serving its rehabilitative purpose nor consistent with the protection of society?
3. Has Hyatt failed to show that the district court abused its discretion by denying his I.C.R. 35 motion for reduction of sentence?
4. Should this case be remanded to the district court for the limited purpose of considering the merits of Hyatt's Rule 35 motions for additional credit for time served?

¹ This same issue is also raised in State v. Garner, Docket Nos. 43493 and 43494.

ARGUMENT

I.

I.C.R. 33(f) Does Not Control A District Court's Authority To Revoke Probation

A. Introduction

The district court revoked Hyatt's probation after finding that Hyatt battered his wife on three separate occasions and consumed alcohol on at least one occasion. (2/6/15 Tr., p.30, Ls.5-13; 4/6/15 Tr., p.15, Ls.14-15; #43139 R., vol. III, pp.559-61; #43142 R., vol. II, pp.346-48.) On appeal, Hyatt does not contest either the court's finding that he consumed alcohol and repeatedly battered his wife or its finding that, by doing so, Hyatt violated the terms and conditions of his probation. Instead, Hyatt argues that, pursuant to I.C.R. 33(f), the district court lacked authority to revoke his probation because, according to Hyatt, the violations were not willful. (Appellant's brief, pp.5-7.) Hyatt's argument fails. The district court had authority under a number of relevant statutes to revoke Hyatt's probation upon finding him in violation thereof, regardless of whether his violations were willful. To the extent I.C.R. 33(f) conflicts with the statutes that govern a court's authority to revoke probation, the statutes – not the procedural rule – prevail.

B. Standard Of Review

"The construction and application of legislative enactments and, by analogy, court rules are questions of law over which [this Court] exercise[s] free review." Hansen v. State, 138 Idaho 865, 868, 71 P.3d 464, 467 (Ct. App. 2003).

C. I.C.R. 33(f) Does Not Control A District Court's Authority To Revoke Probation; Rather, The Applicable Statutes Allow A District Court To Revoke Probation Even If The Violation That Forms The Basis Of The Revocation Decision Is Not Willful

Relying on I.C.R. 33(f), Hyatt argues a district court may not revoke probation unless the violation or violations upon which the revocation decision is based are willful. (Appellant's brief, pp.5-7.) This argument is contrary to the applicable statutes that govern the revocation of probation. The authority of a trial court to revoke probation is governed by several statutes. Among them, Idaho Code § 20-222 provides:

At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Thereupon, the court, after summary hearing may revoke the probation and suspension of sentence and cause the sentence imposed to be executed, or may cause the defendant to be brought before it and may continue or revoke the probation, or may impose any sentence which originally might have been imposed at the time of conviction. In making a determination to continue or revoke probation and suspension of sentence, the court shall consider the defendant's risks and needs and options for treatment in the community.

Pursuant to the plain language of this statute, a court may revoke a defendant's probation when the defendant has violated "**any** of the conditions of probation." I.C. § 20-222 (emphasis added). Nowhere in this statute is there a requirement that the violation be "willful." Rather, the only limitation on the court's authority to revoke probation imposed by this statute is that there actually be a violation of one or more conditions of probation and the court must "consider the defendant's risks and needs and options for treatment in the community."

Idaho Code §§ 19-2602 and 19-2603 similarly grant trial courts broad authority to revoke probation. In fact, pursuant to those statutes, a court's "authority

to revoke the probation does not even depend upon [a] violation of any of the terms or conditions of the order.” Ex parte Medley, 73 Idaho 474, 482, 253 P.2d 794, 798 (1953), quoted in Franklin v. State, 87 Idaho 291, 297, 392 P.2d 552, 554 (1964). Idaho Code § 19-2602 authorizes a district court to “issue a bench warrant for the rearrest of the defendant” either where “it is proved to the satisfaction of the court that the terms and conditions upon which the defendant was placed on probation by the court or any of them have been violated **or** for any other cause satisfactory to the court.” (Emphasis added.) “When the defendant is brought before the court in such case,” Idaho Code § 19-2603 provides that the court “may, if judgment has been withheld, pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, the original judgment shall be in full force and effect and may be executed according to law.”²

Consistent with the plain language of I.C. §§ 19-2602, 19-2603 and 20-222, Idaho’s appellate courts have recognized that the trial courts of this state have statutory authority to revoke probation in two circumstances: “(1) [upon] satisfactory proof of a violation of a probation condition, or (2) [for] ‘any other cause satisfactory to the court.’” State v. Kelsey, 115 Idaho 311, 314, 766 P.2d 781, 784 (1988) (citing

² The quoted language appears in the version of I.C. § 19-2603 that existed in April 2015, when the district court revoked Hyatt’s probation. Effective July 1, 2015, the statute was amended, in relevant part, to provide as follows:

When the court finds that the defendant has violated the terms and conditions of probation, it may, if judgment has been withheld, pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, revoke probation. ...

I.C. § 19-2603 (as amended by 2015 Idaho Sess. Laws, ch. 99, § 2, p.240).

I.C. §§ 19-2602 and 20-222), quoted in State v. Buzo, 121 Idaho 324, 326, 824 P.2d 899, 900 (Ct. App. 1991); see also Franklin, 87 Idaho at 297, 392 P.2d at 554; Ex parte Medley, 73 Idaho at 482, 253 P.2d at 798-99; State v. Hancock, 111 Idaho 835, 727 P.2d 1263 (Ct. App. 1986). It is true that Idaho's appellate courts have held that a trial court must consider alternatives to imprisonment before revoking a defendant's probation based on a violation that was "not willful, or was beyond the probationer's control." State v. Sanchez, 149 Idaho 102, 106, 233 P.3d 33, 37 (2009). However, nothing in the relevant statutes (or in the case law to this point) actually *prevents* a trial court from revoking probation where the violation or other "cause satisfactory to the court" was not willful.

Without even mentioning the statutes that govern a trial court's authority to revoke probation, Hyatt argues on appeal that the district court lacked authority to revoke his probation because Rule 33(f) of the Idaho Criminal Rules states that a "court shall not revoke probation unless there is an admission by the defendant or a finding by the court, following a hearing, that the defendant willfully violated a condition of probation." (Appellant's brief, p.5.) The state acknowledges that the plain language of this rule purports to divest trial courts of authority to revoke probation unless the defendant admits, or the court finds, that the defendant "willfully violated a condition of probation." I.C.R. 33(f). The requirement of the rule that there be a willful probation violation before a court may revoke probation is of no effect, however, because it directly conflicts with the broad authority to revoke probation granted by I.C. §§ 19-2602, 19-2603 and 20-222, and because a court's authority to revoke probation is a matter of substantive, not procedural, law.

“When a statute and rule can be reasonably interpreted so that there is no conflict between them, they should be so interpreted rather than interpreted in a way that results in a conflict.” State v. Two Jinn, Inc., 148 Idaho 706, 709, 228 P.3d 387, 390 (Ct. App. 2010) (citing State v. Johnson, 145 Idaho 970, 974, 188 P.3d 912, 916 (2008)). In this case, it simply is not possible to reasonably interpret I.C.R. 33(f) in a way that does not conflict with I.C. §§ 19-2602, 19-2603 and 20-222. Pursuant to the rule, a trial court “shall not revoke probation unless ... the defendant willfully violated a condition of probation.” I.C.R. 33(f). The statutes, on the other hand, give the court broad authority to revoke probation upon proof of a violation of “any” of the probation conditions or “for any other cause satisfactory to the court.” I.C. §§ 19-2602, 19-2603, 20-222.

Because it is not possible to reconcile the rule and the statutes, “this Court must determine whether the conflict is one of procedure or one of substance.” Johnson, 145 Idaho at 974, 188 P.3d at 916; see also State v. Currington, 108 Idaho 539, 540-41, 700 P.2d 942, 943-44 (1985); Two Jinn, 148 Idaho at 709, 228 P.3d at 391. “Substantive law issues are the province of the legislature, while matters of rulemaking and procedure are generally the province of the judiciary.” Two Jinn, 148 Idaho at 709, 228 P.3d at 390 (citing Johnson, 145 Idaho at 974, 188 P.3d at 916; State v. Yoder, 96 Idaho 651, 654, 534 P.2d 771, 774 (1975)). Thus, if the conflict between a statute and a criminal rule relates to matters of procedure, the criminal rule will prevail. Johnson, 145 Idaho at 974, 188 P.3d at 916 (citing State v. Beam, 121 Idaho 862, 863, 828 P.2d 891, 892 (1992)); Two Jinn, 148 Idaho at 709, 228 P.3d at 390. “Conversely, in matters of substantive law, the statute applies.” Two

Jinn, 148 Idaho at 709-10, 228 P.3d at 390-91 (citing Beam, 121 Idaho at 864, 828 P.2d at 893).

In determining whether a conflict relates to matters of substantive law or, instead, to matters of procedure, the Idaho Supreme Court has adopted the following general guidelines:

Substantive law prescribes norms for societal conduct and punishments for violations thereof. It thus creates, defines, and regulates primary rights. In contrast, practice and procedure pertain to the essentially mechanical operations of the courts by which substantive law, rights, and remedies are effectuated.

Currington, 108 Idaho at 541, 700 P.2d at 944 (quoting State v. Smith, 527 P.2d 674, 676-77 (Wash. 1974)); accord Beam, 121 Idaho at 863-64, 828 P.2d at 892-93; Johnson, 145 Idaho at 974, 188 P.3d at 916; Two Jinn, 148 Idaho at 710, 228 P.3d at 391.

Applying these guidelines in Johnson, the Idaho Supreme Court determined that any conflict between I.C.R. 7(b) – which requires a charging document to allege the “essential facts constituting the offense charged” – and I.C. § 19-1430 – which abolished the distinction between accessories and principals such that “no other facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal” – was a matter of substantive law. Johnson, 145 Idaho at 974-75, 188 P.3d at 916-17. Specifically, the Court explained:

The Legislature’s definition of principal and abolishment of the distinction between principal and accessories does not pertain to mechanical operations of the courts; the Legislature is creating, defining, and regulating primary rights. Thus, I.C. § 19-1430 is substantive and does not overlap with this Court’s power to create procedural rules. Therefore, even if I.C. § 19-1430 and I.C.R. 7(b) were in conflict, the statute would prevail.

Johnson, 145 Idaho at 974-75, 188 P.3d at 916-17.

Similarly, in Beam, supra, the Court held that a statute requiring a defendant in a death penalty case to file a challenge to his or sentence within 42 days prevailed over I.C.R. 35, which permits a challenge to an illegal sentence at any time. Beam, 121 Idaho at 864, 828 P.2d at 893. The Court reasoned that, given the unique nature of the death penalty, the statute “creates, defines, and regulates primary rights” and, as such, was a matter of substantive law. Id.

Like the statutes at issue in Johnson and Beam, the statutes granting a trial court’s authority to revoke probation upon proof of a violation of any of the conditions of probation or “for any other cause satisfactory to the court” are substantive in nature. It is well-settled that probation, itself, “is not a matter of right; it may be granted the defendant through exercise of sound discretion by the trial court within the ambit of authority conferred by the legislature.” Franklin, 87 Idaho at 297, 392 P.2d at 554. Because a trial court’s power to place a defendant on probation only exists as a function of the legislature’s power to enact substantive law, it follows that a court’s authority to revoke probation is likewise a matter exclusively within the province of the legislature. See id. at 300-01, 392 P.2d at 557 (citations omitted) (“The legislatures of the several states have the exclusive and inherent power to define, prohibit and punish any act as a crime within the limits of the federal and respective state constitutions.”). Indeed, a review of Idaho Code §§ 19-2602, 19-2603 and 20-222 shows they do not merely prescribe the mechanical procedure a court must follow in revoking probation. Instead, they actually define and regulate

the circumstances under which a legislatively authorized grant of probation may be revoked.

Because the authority of a court to revoke probation is a matter of substantive law, the statutes granting the trial courts of this state that authority must “be given due deference and respect.” Johnson, 145 Idaho at 974, 188 P.3d at 916 (quoting In re SRBA Case No. 39576, 128 Idaho 246, 255, 912 P.2d 614, 623 (1995)). Accordingly, to the extent I.C.R. 33(f) purports to divest trial courts of the authority granted to them by the legislature to revoke probation upon proof of a violation of any probation condition or for “any other cause satisfactory to the court,” the rule is of no effect. Hyatt’s argument that the district court could not revoke his probation unless his violations were willful is without merit.

II.

Even Assuming The District Court’s Authority To Revoke Hyatt’s Probation Was Conditioned On A Finding That Hyatt’s Probation Violations Were Willful, Hyatt Has Failed To Show That The District Court Abused Its Discretion By Revoking His Probation

A. Introduction

Hyatt challenges the revocation of his probation on several bases. First, he argues the district court abused its discretion by revoking his probation without first determining his violations were willful. (Appellant’s brief, pp.5-6.) Second, he contends there is insufficient evidence to support a finding that his probation violations were willful. (Id., pp.6-7.) Finally, he “contends that executing his sentence was not necessary to further the goals of sentencing.” (Id., p.8.) All of Hyatt’s arguments fail. Even assuming the court was required to find Hyatt’s probation violations were willful, the record shows the court expressly made such a

finding and, contrary to Hyatt's assertions, that finding is supported by substantial evidence. Moreover, the record supports the court's determination, based on Hyatt's criminal history and the frequency and nature of his probation violations, that probation was not achieving its rehabilitative purpose.

B. Standard Of Review

The decision to revoke probation is reviewed for an abuse of discretion. State v. Roy, 113 Idaho 388, 392, 744 P.2d 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 1021, 842 P.2d 698, 700 (Ct. App. 1992). "When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason." State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

C. The District Court Expressly Found That Hyatt's Probation Violations Were Willful And That Finding Is Supported By Substantial Evidence

Hyatt argues the district court failed to act consistently with applicable legal standards when it revoked his probation because, according to Hyatt, the court "did not explicitly find that [his] violation was willful." (Appellant's brief, p.6.) For the reasons set forth in Section I, supra, the district court was not required to find Hyatt's probation violations were willful before exercising its statutorily vested discretion to revoke Hyatt's probation. However, even assuming for purposes of argument that

I.C.R. 33(f) divested the court of its authority to revoke Hyatt's probation absent the finding of a willful violation, Hyatt's assertion that the district court violated that rule by not expressly finding a willful violation is patently incorrect. In its orders revoking Hyatt's probation and executing his underlying sentences, the district court twice expressly stated that it found Hyatt's probation violations were willful. (See #43139 R., vol. III, p.559 (Judgment on Probation Violation wherein court twice indicated its finding that Hyatt "willfully violated the terms and conditions" of his probation) and #43142 R., vol. II, p.346 (same).) Because the district court did "explicitly find"³ Hyatt's violations were willful, Hyatt's claim that the court erred by not doing so necessarily fails. Hyatt's related argument – that there was insufficient evidence to support a finding of willfulness, at least as to the battery allegations (see Appellant's brief, pp.6-7) – also fails because substantial evidence in the record indicates that Hyatt's violations were willful. See, e.g., State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003) (finding that probation violation was willful will be

³ Although the district court *did* explicitly find Hyatt's probation violations were willful, the state submits that, to the extent I.C.R. 33(f) applies, it does not require an express finding of willfulness. Moreover, when a district court finds a defendant violated his probation, unless the district court finds otherwise, the presumption is that the violation was willful. See State v. Peterson, 123 Idaho 49, 844 P.2d 31 (Ct. App. 1992) (noting the district court "implicitly determined that Peterson's disregard of the reporting obligation was willful"). Application of this standard is consistent with the general principle that even in the absence of express factual findings, the appellate court will uphold any implicit findings by the district court that are supported by substantial evidence. See State v. Kirkwood, 111 Idaho 623, 625, 726 P.2d 735, 737 (1986) ("The implicit findings of the trial court, (i.e., that statements of the defendant made to the police were voluntary and should not be suppressed) should be overturned only if not supported by substantial evidence."); State v. DuValt, 131 Idaho 550, 553, 961 P.2d 641, 644 (Ct. App. 1998) ("[A]ny implicit findings of the trial court supported by substantial evidence should be given due deference.").

upheld if supported by substantial evidence); State v. Leach, 135 Idaho 525, 530-31, 20 P.3d 709, 714-15 (Ct. App. 2001) (same).

The state alleged Hyatt violated his probation by battering his wife on three separate occasions between September 4, 2014 and December 18, 2014, and by possessing or consuming alcohol on December 18, 2014. (#43139 R., vol. III, pp.515-16; #43142 R., vol. II, pp.304-05.) At the evidentiary hearing, Hyatt's wife, Wendy, testified that, on the evening of September 3, 2014, Hyatt "went into one of his rages and ended up throwin' me and in the process I separated my shoulder." (2/6/15 Tr., p.15, Ls.9-17.) She explained:

[H]e was havin' issues with medication to where he would go into these rages and it was his seizure medicine that I believe was causin' him to go into these rages that me, property around our house, things just got hurled and exactly how I don't remember. He just threw me.

(2/6/15 Tr., p.15, Ls.19-24.) Wendy sought medical attention for her injuries the next day and, while she was in the emergency room, Hyatt "went over to Tosoro's and proceeded to get more charges" by "[p]ickin' a fight with someone else." (2/6/15 Tr., p.16, Ls.9-19.) When asked whether there was a dispute that prompted Hyatt to batter her on September 3rd, Wendy testified, "[w]hen he'd go into these rages, it wasn't so much as a dispute, he would erupt." (2/6/15 Tr., p.16, Ls.20-23.) She explained that, at the time, she had inadvertently been giving Hyatt a double dosage of an anti-seizure medication that she claimed "was known to cause violent outbursts" and other adverse side effects. (2/6/15 Tr., p.16, L.23 – p.19, L.8.)

Wendy testified that, within a week of the September 3rd battery, Hyatt had "another temper tantrum" and "threw" her "into the couch," causing the dislocation of

her shoulder. (2/6/15 Tr., p.19, L.17 – p.20, L.3.) According to Wendy, Hyatt was still taking his anti-seizure medication at the time. (2/6/15 Tr., p.20, L.4 – p.21, L.7.)

Regarding the allegations that Hyatt battered Wendy for a third time and consumed alcohol on December 18, 2014, Wendy testified:

For whatever reason, I don't know, he went into a rage that I've never seen. I mean – and he was from one end of the house to the other, windows – we have – in our living room there are four windows. None of 'em are not broken. He is [sic] broke out every window.

(2/6/15 Tr., p.21, Ls.8-18.) Wendy was pregnant at the time and, she testified, Hyatt “knew that night that his actions caused me to cramp up and I ended up losin’ the baby.” (2/6/15 Tr., p.22, Ls.1-9.) Hyatt was still taking his anti-seizure medicine on December 18th and, according to Wendy, he was also drinking alcohol “all day long.” (2/6/15 Tr., p.20, Ls.6-16, p.22, L.10 – p.23, L.13.) In fact, Wendy testified that, “from the first moment [she] saw him,” Hyatt regularly consumed alcohol. (2/6/15 Tr., p.26, Ls.1-5.) Although Hyatt promised Wendy after one of their fights that he would stop drinking, that promise only “lasted a day.” (2/6/15 Tr., p.26, Ls.5-10.)

Following the presentation of Wendy's testimony, the district court found Hyatt violated his probation “by committing unlawful acts with three different incidents of domestic battery and at least one incident of drinking on December 18th.” (2/6/15 Tr., p.30, Ls.5-10.) The court found the evidence that Hyatt may have been overmedicated constituted “some mitigation” (2/6/15 Tr., p.30, Ls.10-11) but, ultimately, the court concluded Hyatt's violations were willful (see #43139 R., vol. III, p.559; #43142 R., vol. II, p.346). In fact, after reviewing Hyatt's criminal history and the frequency and nature of his probation violations, the court determined that Hyatt's acts of battering Wendy were entirely consistent with his violent character

and that his attempt to excuse his behavior because he had been taking too much medication was just that – an excuse. (4/6/15 Tr., p.13, L.16 – p.14, L.18.)

Specifically, the court reasoned:

I went back and reviewed both of these files to get a handle on your record, what had happened. As you're aware, you have a number of prior felonies. And the failure to register as a sex offender was filed in January of 2010 and initially you just got credit for 14 days served and got a 60 day sentence with two years of probation. And then very shortly after that, you got the felony DUI charge. And you also had – about the time you were getting the felony DUI, you had a domestic battery charge on a different woman. You were drinking. You violated a No Contact Order. Judge Verby sent you on a retain[ed] jurisdiction on both cases; the new DUI and the failure to register case.

You came out on probation in February of 2011. By – in September, you had a probation violation involved harboring a runaway child. I was looking at the report, talking about being involved with a woman with children, and you served 137 days in custody for that in January of 2013. And then these probation violations, third set on the failure to register case. You've got three different allegations of domestic violence.

So I – I hear all the excuses about being on medication and – but I looked back at your history and you've got charge after charge of battery, domestic battery, failure to comply with probation, malicious mischief. Charge after charge of violence.

(4/6/15 Tr., p.13, L.16 – p.14, L.18; compare, e.g., 3/19/15 PSI, pp.3-20.) In light of Hyatt's prior history of violence, the district court's finding that Hyatt's acts of battering Wendy were willful, and not the result of being overmedicated on a drug that allegedly caused adverse side effects, is amply supported by the record.

Even without considering Hyatt's prior history, the district court had substantial evidence upon which to base its finding that Hyatt's probation violations were willful. Wendy testified that Hyatt battered her on three separate occasions, and Hyatt has never disputed that testimony. Although Wendy also testified she believed Hyatt

may have been suffering from the adverse side effects of being inadvertently overmedicated on an anti-seizure drug that Wendy claimed caused violent outbursts and other adverse side effects, that testimony was not supported by any evidence that violent outbursts truly were an adverse side effect of the anti-seizure medication in question, much less that Hyatt was actually suffering from that side effect and was unable to control his actions on the three occasions he battered Wendy.⁴ Absent such evidence, and in the face of Wendy's undisputed testimony that Hyatt physically injured her three times in less than three months, the district court could only reasonably conclude that Hyatt's acts of battery, at least one of which was fueled by alcohol, were willful. Accordingly, even assuming that I.C.R. 33(f) divested the district court of its authority to revoke Hyatt's probation absent a finding that Hyatt's violations were willful, Hyatt has failed to show error because the record supports the court's findings that his violations were, in fact, willful.

D. The Record Supports The District Court's Decision To Revoke Hyatt's Probation Because The Probation Was Neither Consistent With The Protection Of Society Nor Achieving Its Rehabilitative Purpose

"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

⁴ In an apparent attempt to substantiate Wendy's testimony regarding the side effects of Hyatt's anti-seizure medication, Hyatt relies on a U.S. National Library of Medicine webpage. (See Appellant's brief, p.6 n.2.) Hyatt did not proffer this webpage as evidence below, however. His attempt on appeal to show a lack of willfulness by presenting evidence never offered or considered below is improper, and the new evidence he cites must be disregarded. Nelson v. Nelson, 144 Idaho 710, 714, 170 P.3d 375, 379 (2007).

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 Hyatt’s assertions on appeal, application of these legal standards to the facts of this case shows the district court acted well within its discretion when it revoked Hyatt’s probation.

54-year-old Hyatt is not a suitable candidate for probation. (See 3/19/15 PSI, p.1 (showing Hyatt’s “DOB” as [REDACTED]).) His criminal record occupies almost 15 pages of the most recent presentence report and includes felony convictions for burglary, lewd conduct, possession of a controlled substance, failure to register as a sex offender, and driving under the influence of alcohol. (3/19/15 PSI, pp.5-19.) He has also been convicted of 37 misdemeanors, including three counts of disturbing the peace (one amended from unlawful entry and one amended from telephone harassment), riot (amended from battery), two counts of battery (one amended from aggravated battery), domestic battery, and multiple driving, alcohol and drug related offenses. (3/19/15 PSI, pp.5-19.)

Between his first adult conviction in 1984 and his convictions in these cases, Hyatt had already served countless periods of probation – many of which he violated. (3/19/15 PSI, pp.5-19; see also 8/17/09 PSI, pp.2-11, 16.) He had also served county jail time and had been imprisoned in relation to two separate felony convictions for a total of seven years. (3/19/15 PSI, pp.5-19; see also 8/17/09 PSI, pp.2-11, 16-17.) Despite Hyatt’s 25-year history of demonstrating an inability or unwillingness to rehabilitate or be deterred by a wide range of legal sanctions, the

district court placed Hyatt on probation for his failure to register conviction in Docket No. 43139 (#43139 R., vol. I, pp.124-29), a probation which Hyatt promptly violated by, among other things, battering his wife (the woman to whom he was married before he married Wendy) and driving under the influence of alcohol (#43139 R., vol. I, pp.146-55, 183-84). Hyatt thereafter successfully completed a period of retained jurisdiction in both Docket Nos. 43139 and 43142 (#43139 R., vol. II, pp.294-99; #43142 R., vol. I, pp.112-17) but, true to form, he failed to take advantage of that programming and, within 18 months of his release, violated his probation by sheltering a runaway child and associating with a woman with whom he was instructed to have no contact (#43139 R., vol. II, pp.320-48; #43139 R., vol. III, pp.457-59; #43142 R., vol. I, pp.134-62; #43142 R., vol. II, pp.249-51). In what can only be characterized as an extreme show of leniency, the district court gave Hyatt “one more chance” and continued him on probation. (#43139 R., vol. III, pp.459, 462-65; #43142 R., vol. II, pp.251, 254-57.) Unsurprisingly, Hyatt was unable to abide by the terms of his probation or the law and, within a year, he committed the batteries and alcohol consumption that ultimately led to the revocation of his probation in these cases. (#43139 R., vol. III, pp.515-24; #43142 R., vol. II, pp.304-13; see generally 2/6/15 Tr.)

In deciding to revoke Hyatt’s probation, the district court considered Hyatt’s prior criminal history and the frequency and nature of his probation violations in these cases. (4/6/15 Tr., p.13, L.16 – p.15, L.15.) Having reviewed that information, the court understandably reached the conclusion – shared by the presentence investigator and Hyatt’s probation officer – that Hyatt was “not amenable to

probation.” (4/6/15 Tr., p.14, L.19 – p.15, L.13; see also 3/19/15 PSI, pp.20, 31-32.) The district court acted well within its discretion in making that determination, especially since, as the district court noted, Hyatt denied that he had an alcohol problem for which he needed treatment and “continue[d] to get involved in acts of violence where [he was] a risk.” (4/6/15 Tr., p.14, L.21 – p.15, L.5.) Hyatt’s arguments on appeal regarding his purported remorse, his claims that he had never been violent before, and his supportive family ignore the district court’s findings, which are based on substantial evidence in the record, and do not demonstrate the court abused its discretion in revoking his probation.

III.

Hyatt Has Failed To Show That The District Court Erred In Denying His Rule 35 Motions For Reduction Of His Sentences

A. Introduction

Hyatt contends that the district court erred in denying his Rule 35 motions for reduction of his sentences. (Appellant’s brief, pp.9-10.) A review of the record shows that the district court acted well within its discretion in denying Hyatt’s requests for leniency.

B. Standard Of Review

A motion for reduction of sentence under Rule 35 is a plea for leniency, and the 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).

C. The District Court Acted Well Within Its Sentencing Discretion By Denying Hyatt's Rule 35 Motions For Leniency

To prevail on appeal from the denial of a Rule 35 motion for leniency, the defendant 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.” Huffman, 144 Idaho at 203, 159 P.3d at 840. In support of his Rule 35 requests for leniency, Hyatt advised the court that, since the court had executed his sentences, his wife’s health had deteriorated and she was struggling financially. (#43139 R., vol. III, pp.566-70; #43142 R., vol. II, pp.353-57.) To the extent this information was “new,” the district court correctly exercised its discretion in rejecting it as a basis for reducing Hyatt’s sentences.

In denying Hyatt’s motion, the district court indicated it had “reviewed and considered Hyatt’s Rule 35 motion, the State’s Objection thereto, and the court record, including the presentence report.” (#43139 R., vol. III, p.592; #43142 R., vol. II, p.388.) Noting Hyatt’s “very lengthy criminal history,” and recognizing “it is painfully evident from his repeated probation violations that he is either unable or unwilling to adhere to the terms and conditions of probation or to the laws of this State,” the court found the sentences imposed were “necessary” both “to protect society, as well as [to] achieve a measure of retribution and serve as a deterrent to other probationers in the community.” (#43139 R., vol. III, p.592; #43142 R., vol. II, p.388.)

The record shows that the district court properly considered all of the information presented to it and reasonably concluded that Hyatt’s sentences were not excessive, either as originally pronounced or in light of the information Hyatt

presented with his motions. That Hyatt believes the district court should have reduced his sentences based on his expressions of concern for the health and financial situation of the woman he battered on at least three prior occasions – ultimately leading to the execution of his sentences – does not establish an abuse of discretion.

IV.

This Case Should Be Remanded To The District Court For Consideration Of The Merits Of Hyatt's Rule 35 Motions For Additional Credit For Time Served

Pursuant to stipulated motions filed by the parties after the court entered its orders revoking Hyatt's probation, the district court ordered that Hyatt be given 451 days credit for time served in Docket No. 43139 and for 442 days credit for time served in Docket No. 43142. (#43139 R., vol. III, pp.564-65; #43142 R., vol. II, pp.351-52.) Hyatt subsequently filed "amended" Rule 35 motions seeking additional credit for time served in both cases. (#43139 R., vol. III, pp.576-79; #43142 R., vol. II, pp.364-75.) The district court denied the motions without considering the merits, stating as the basis for its decision that defense counsel had previously "stipulated ... to the amount of credit for time served in both cases." (#43139 R, vol. III, p.593; #43142 R., vol. II, p.389.)

On appeal, Hyatt argues the "district court erred by rejecting Mr. Hyatt's motion simply because defense counsel mistakenly stipulated to the incorrect amount of credit for time served." (Appellant's brief, p.11.) The state does not concede that Hyatt is entitled to any credit in addition to that awarded pursuant to the parties' stipulation. However, the state does acknowledge that Hyatt is entitled, as a matter of law, to credit for every day he actually served before his sentences

were finally executed. See I.C. §§ 18-309,19-2603. The state also acknowledges that, in State v. Moore, 156 Idaho 17, 21, 319 P.3d 501, 505 (Ct. App. 2014), the Court of Appeals expressly held that “a district court may only give credit for the correct amount of time actually served by the defendant prior to imposition of judgment in the case; the district court does not have discretion to award credit for time served that is either more or less than that.” Moreover, “[t]he district court is not bound to accept either party’s calculations of the appropriate credit for time served in a Rule 35(c) motion. Instead, it is the district court’s duty to determine the accurate credit for time served as reflected by the record and award that time accordingly.” Id.

In light of Moore and the statutes that govern a defendant’s entitlement to credit for time served, the state concedes the district court erred by not considering the merits of Hyatt’s “amended” Rule 35 motions seeking additional credit for time served. Although the state does not concede Hyatt is actually entitled to more credit than has already been awarded, the state submits this case should be remanded to the district court for the limited purpose of considering and ruling on the merits of Hyatt’s motions for additional credit.

CONCLUSION

The state respectfully requests that this Court affirm the district court's orders revoking Hyatt's probation and denying his Rule 35 motions for leniency. The state further respectfully requests that the case be remanded to the district court for the limited purpose of considering the merits of Hyatt's Rule 35 motions seeking additional credit for time served.

DATED this 16th day of June, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of June 2016, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

MAYA P. WALDRON
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.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

LAF/vr