11-12-2015

State v. Arvizu Appellant's Brief Dckt. 43182

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. VICTOR RENE ARVIZU, Defendant-Appellant.	)	NO. 43182 ADA COUNTY NO. CR 2012-11195 APPELLANT'S BRIEF

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE JASON D. SCOTT
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Victor Arvizu pled guilty to two counts of battery on jail staff. He received an aggregate unified sentence of five years, with one year fixed. The district court initially placed Mr. Arvizu on probation; however, after he was found to have violated his probation, the district court revoked his probation.

On appeal, Mr. Arvizu asserts that the district court erred in revoking his probation where the violation was not willful, and, assuming *arguendo* it was willful, it did not warrant revocation. Additionally, Mr. Arvizu asserts that the district court deprived him of his constitutional rights to due process and equal protection when it revoked his probation because the court believed Mr. Arvizu was mentally ill and was not taking mental health medications.

Statement of the Facts and Course of Proceedings

On June 1, 2012, Vincent Arvizu was being housed in jail due to a pending stalking charge.[1] (PSI, pp.3, 6-7.) When additional jail staff (in the form of a Special Response Team) arrived to secure Mr. Arvizu, who was hiding from corrections officers in his shower, Mr. Arvizu threw some red liquid at the staff members.[2] (PSI, p.3.)

The district court ordered a mental evaluation pursuant to I.C. § 18-211 and thereafter ordered Mr. Arvizu committed to the custody of the Idaho Department of Health & Welfare pursuant to I.C. § 18-212. (R., pp.31, 44-45.) Mr. Arvizu was

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[1] Although he was initially charged with felony stalking, the charge was reduced to misdemeanor stalking. (PSI, pp.6-7.)

[2] The red liquid was a mixture of fruit punch and mouthwash. (PSI, p.3.)

committed for several months.[3] (PSI, p.19.) After his competency was restored, Mr. Arvizu waived his preliminary hearing. (R., p.62.) Mr. Arvizu was charged by information with four counts of battery on jail staff. (R., pp.63-65.)

Pursuant to a plea agreement, Mr. Arvizu pled guilty to two counts of battery on jail staff. (R., pp.68-75.) As part of the plea agreement, the State agreed to dismiss the remaining charges, and to recommend a suspended sentence of five years, with one year fixed, on each count, to be served concurrently. (R., pp.68-75.) The district court accepted the plea and set the matter for sentencing. (R., p.68.)

At the sentencing hearing, the district court sentenced Mr. Arvizu to an aggregate unified term of five years, with one year fixed, but suspended the sentence and placed Mr. Arvizu on probation for five years. (R., pp.80-85.) Mr. Arvizu timely appealed from the Judgment of Conviction.[4] (R., pp.87-89.)

On October 30, 2013, Mr. Arvizu filed a *pro se* motion for correction or reduction of sentence pursuant to I.C.R. 35. (Supplemental Record ("Supp. R.")[5], pp.13-21.) On November 5, 2013, the district court denied the motion without a hearing. (Supp. R., pp.41-42.)

On August 8, 2014, the State filed a report of probation violation in which it asserted that Mr. Arivizu violated his probation by failing to get a mental health

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[3] Upon his release on April 4, 2013, his discharge summary indicated Mr. Arvizu "has no known history of assault, was not assaultive at SHS, and is considered a low risk for future assaultive behaviors." (PSI, p.24.)

[4] A brief was never filed in Supreme Court No. 41245, the appeal was dismissed on January 7, 2015 and a remittitur was issued. (Idaho Supreme Court Data Repository).

[5] On June 30, 2015, the Idaho Supreme Court ordered the record on appeal to be augmented to include the Supreme Court file, Clerk's Record, and Reporter's Transcripts filed electronically in prior appeal No. 41245, and further ordered a limited clerk's record to be prepared in appeal No. 43182. (Supp. R., p.2.) Mr. Arvizu shall refer herein to the Limited Clerk's Record as the Supplemental Record.

evaluation and by failing to take his prescribed mental health medication. (Supp. R., pp.84-89.) After a hearing, the district court found Mr. Arvizu violated one of the conditions of his probation and revoked his probation. (Supp. R., pp.169-172.) On April 16, 2015, Mr. Arvizu filed a timely notice of appeal. (Supp. R., pp.173-175.)

ISSUES

1. Did the district court abuse its discretion in revoking Mr. Arvizu's probation?

2. In revoking Mr. Arvizu's probation, did the district court violate Mr. Arvizu's constitutional rights to due process and equal protection?

ARGUMENT

I.

The District Court Abused Its Discretion By Revoking Mr. Arvizu's Probation

A. Introduction

Mr. Arvizu asserts that the district court abused its discretion when it revoked his probation, because the probation violation did not warrant revocation, and the district court did not act consistently with the applicable legal standards where, pursuant to Idaho Criminal Rule 33(f), a district court may revoke probation only for a willful violation of a condition of probation.

The district court found Mr. Arvizu violated a term or condition of his probation by not obtaining a mental health evaluation when told to do so by his probation officer. However, the probation violation at issue was non-willful as whether a mental health professional refused to assess Mr. Arivizu's mental health was beyond his control. Further, failing to obtain an evaluation did not warrant revocation of Mr. Arvizu's probation when the record was clear that Mr. Arvizu was otherwise compliant and doing well on his probation. Thus, the order revoking his probation must be vacated, with the case remanded for a new hearing.

B. Applicable Standards Of Review

Appellate courts use a two-step analysis in reviewing a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the appellate court determines "whether the defendant violated the terms of his probation." *Id.* "If it is determined that the defendant has in fact violated the terms of his probation, the second question is what should be the consequences of that violation." *Id.*

"A district court's decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion." *Sanchez*, 149 Idaho at 105. In reviewing a district court's discretionary decision, appellate courts conduct an inquiry "to determine whether the court correctly perceived the issue as one of discretion, acted within the boundaries of such discretion and consistently with the applicable legal standards, and reached its standards by an exercise of reason." *Id.*

C. The District Court Abused Its Discretion By Revoking Mr. Arvizu's Probation, Because It Did Not Act Consistently With The Applicable Legal Standards Where It Revoked Mr. Arvizu's Probation For A Non-Willful Violation

Mr. Arvizu did not admit to violating his probation. The district court found, after a hearing, that Mr. Arvizu had violated his probation by failing to obtain a mental health evaluation as lawfully instructed by his probation officer. (4/3/15 Tr., p.40, Ls.15-19.)

A probationer is entitled to due process throughout probation revocation proceedings. *State v. Kelsey,* 115 Idaho 311, 314 (1988); *State v. Done*, 139 Idaho 635, 637 (Ct. App. 2004). A probationer must be given a due process hearing before probation can be revoked. *Kelsey*, 115 Idaho at 314. At the hearing, satisfactory proof of a violation of a probation condition or "any other cause satisfactory to the court" must be proven. *Id.* (citing I.C. §§ 19-2602, 20-222).

The applicable legal standard the district court must use to determine whether to revoke probation depends on whether the violation was willful or non-willful. *Id.* "If a knowing and intentional probation violation has been proved, a district court's decision to revoke probation will be reviewed for an abuse of discretion." *Id.* (quoting *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001)). In deciding whether revocation of probation is the appropriate response to a violation, the court considers whether the probation is achieving the goal of rehabilitation and whether continued probation is

consistent with the protection of society. *State v. Jones*, 123 Idaho 315, 318 (Ct. App. 1993).

The State has the burden of showing that a probation violation was willful. *See State v. Lafferty*, 125 Idaho 378, 382 (Ct. App. 1994). Pursuant to Idaho Criminal Rule 33(f), a district court may revoke probation only for a willful violation of a condition of probation. I.C.R. 33(f). I.C.R. 33(f)[6] states, in pertinent part: "[t]he 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." I.C.R. 33(f) (emphasis added). Because I.C.R. 33(f) uses the language "shall not," the restriction it imposes is mandatory. *See, e.g.*, *Doe v. State*, 137 Idaho 758, 760 (2002) (quoting *Rife v. Long*, 127 Idaho 841, 848 (1995)). Thus, if a violation of a condition of probation is non-willful, a district court may not revoke probation. *See* I.C.R. 33(f).

Idaho case law prior the effective date of the amendment to I.C.R. 33(f) indicates that a probation violation is non-willful where the probationer was not at fault or had no control over the violation. *See, e.g.*, *Lafferty*, 125 Idaho at 380, 382 (holding that the record was insufficient to show that a probationer willfully violated his probation, where the probationer, who was certified as one-hundred percent disabled, was involuntarily terminated from a halfway house program because he was unable to perform the carpentry work required as part of the program).

Conversely, Idaho's appellate courts have held that a probation violation is willful where the probationer is responsible or at fault for the violation. *See, e.g.*, *State v.*

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[6] Effective July 31, 2015, Idaho Criminal Rule 33(e) was renumbered as I.C.R. 33(f). This amendment did not change the language of the subsection, which was substantively amended in 2012. *See* 4/23/14 Order "In Re: Amendment of Idaho Criminal Rule (I.C.R.) 33."

Knutsen, 138 Idaho 918, 923 (Ct. App. 2003) (holding that substantial evidence existed to show that a probationer willfully violated his probation conditions, where the probationer missed a meeting with his probation officer, failed to contact the officer for several days because he was staying with friends and using drugs and alcohol at the time, and failed to attend a substance abuse program); *State v. Fife*, 114 Idaho 103, 104-06 (Ct. App. 1988) (holding that the record supported the district court's finding of a willful probation violation, where firearms were found at a probationer's home after the probationer was informed he could not possess firearms and he indicated that he understood that condition).

The State filed a probation violation which alleged that Mr. Arvizu violated his probation by failing to obtain a mental health evaluation. (Supp. R., pp.84-90.) Although Mr. Arvizu had just been released from State Hospital South on March 17, 2014, his probation officer believed that Mr. Arvizu should be on medication for his mental health condition. (4/3/15 Tr., p.19, L.20 – p.20, L.5; Supp. R., pp.87-89.) The Report of Probation Violation provided, *inter alia*:

> On May 22, 2014, Mr. Arvizu was instructed, by his supervising probation officer, to complete a mental health assessment. Mr. Arvizu was provided information to obtain a free mental health assessment through the Department of Veteran's Affairs. Upon attending his scheduled appointment with the Department of Veteran's Affairs, he stated that he told them "I don't want to do this and my P.O. is making me." Because of these statements, the Department of Veteran's Affairs did not complete the mental health assessment.

(Supp. R., pp.87-88.)

At the evidentiary hearing, Mr. Arvizu's probation officer testified that he ordered Mr. Arvizu to obtain a mental health evaluation at the Department of Veteran's Affairs

("the VA")[7]. (4/3/15 Tr., p.20, Ls.3-4.) Mr. Arvizu did go to the VA for an evaluation; however, apparently when Mr. Arvizu told the VA that his probation officer was making him obtain a mental health evaluation, the VA professional refused to evaluate Mr. Arvizu. (4/3/15 Tr., p.20, Ls.11-12, p.21, Ls.2-5.) The district court found that the probation officer reasonably instructed Mr. Arvizu to obtain a mental health evaluation, but that Mr. Arvizu, by telling the VA that he was there against his will or was being told to do it, blocked the evaluation from happening.[8] (4/10/15 Tr., p.15, L.22 - p.16, L.24.) The district court subsequently revoked Mr. Arvizu's probation. (4/3/15 Tr., p.40, Ls.15-19; 4/10/15 Tr., p.18, Ls.13-18; Supp. R., pp.169-172.) When the district court revoked Mr. Arvizu's probation, the applicable legal standard from I.C.R. 33(f) permitted the district court to revoke probation only for a willful violation of a condition of probation. However, the alleged violation was not willful.

Mr. Arvizu complied with his probation officer's directive and went to the VA but was denied a mental health evaluation. Such was a condition beyond his control—he was not responsible or at fault for being denied an evaluation. Presumably the evaluator found Mr. Arvizu could not provide informed consent to perform the evaluation because he was not there of his own free will, but was being ordered to go by his probation officer. Such a conclusion by the evaluator was not unreasonable and was based on the truthful statements of Mr. Arvizu; however, a mental health care provider's professional judgment is not something within the control of Mr. Arvizu. He had no ability to force the provider to administer the evaluation. The district court erred when it determined that Mr. Arvizu violated his probation by failing to get a mental health

[7] Sixty-four year old Victor Arvizu served in the military for 21 years, in the Air Force. (PSI, pp.1, 8.)

evaluation, because this was not a willful violation and, pursuant to I.C.R. 33(f), the district court could not have revoked Mr. Arvizu's probation unless the violation was willful.[9]

D. The District Court Abused Its Discretion In Revoking Mr. Arvizu's Probation As His Probation Violation Did Not Warrant Revocation

The district court found Mr. Arvizu violated a condition of his probation by not obtaining a mental health evaluation when told to do so by his probation officer. As a result of this violation, the district court revoked his probation. However, failing to obtain an evaluation did not warrant revocation of Mr. Arvizu's probation when the record was clear that Mr. Arvizu was otherwise compliant and doing well on his probation. Thus, the order revoking his probation must be vacated, with the case remanded for a new hearing.

Once a probation violation has been found, the district court must determine whether it is of such seriousness as to warrant revoking probation. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). The district court must decide whether probation is achieving the goal of rehabilitation and whether probation is consistent with the protection of society. *State v. Leach,* 135 Idaho 525, 529 (Ct. App.

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[8] Implicitly, the district court found the probation officer had lawful authority to order Mr. Arvizu to obtain a mental health evaluation. (4/3/15 Tr., p.40, Ls.9-19.)

[9] Alternatively, even if the district court had discretion to revoke probation for non-willful violations, the district court still abused its discretion when it revoked Mr. Arvizu's probation, because it did not adequately consider alternative methods to address the violation as required by *Sanchez*, 149 Idaho at 105 (holding that "if a probationer's violation of a probation condition was not willful, or was beyond the probationer's control, a court may not revoke probation and order imprisonment without first considering alternative methods to address the violation"). For example, one option would be to civilly commit Mr. Arvizu pursuant to I.C. § 66-329, so he could be evaluated and medicated.

2001). If a knowing and intentional probation violation has been proved, a district court's decision to revoke probation will be reviewed for an abuse of discretion. I.C. § 20-222; *Leach*, 135 Idaho at 529.

Only if the trial court determines that alternatives to imprisonment are not adequate in a particular situation to meet the state's legitimate interest in punishment, deterrence, or the protection of society, may the court imprison a probationer who has made sufficient, genuine efforts to obey the terms of the probation order. *State v. Lafferty,* 125 Idaho 378, 382 (Ct. App. 1994).

Here, Mr. Arvizu was doing exceptionally well on probation. His probation officer acknowledged that, "[i]n general, Mr. Arvizu is compliant with the terms and conditions of his probation, he reports in a timely manner to his supervising probation officer when instructed to do so and he maintains an open line of communication with his supervising probation officer." (Supp. R., p.89.) Despite this information, and the fact that, "Mr. Arvizu maintains a current balance with his fines, fees, restitution, and cost of supervision," the probation officer filed a probation violation report, based on what he perceived to be a "potential threat" posed by Mr. Arvizu because he has been diagnosed with mental illness and he was not presently taking medications. (Supp. R., p.89.) Specifically, the probation officer's report noted, "[w]hile Mr. Arvizu is generally compliant with the terms and conditions of his probation, he poses a potential threat to himself and to the community in general. Mr. Arvizu has been diagnosed with a serious mental illness and refuses to take his medication as prescribed. Although he has not exhibited any violent behavior since his instant offense, his current behavior (not taking his prescribed medication) poses a risk for potential violent behavior without notice." (Supp. R., p.89.)

Substantial information regarding Mr. Arvizu's mental health was known by the district court at Mr. Arvizu's initial sentencing hearing on July 2, 2013 (*see* PSI, pp.11-34, 94-135, 142-174), yet the court still opted to place Mr. Arvizu on probation. (R., pp.80-85.) At the time of sentencing, the district court was even aware that Mr. Arvizu had been released from a mental commitment (I.C. § 18-212) at State Hospital South just three months prior. (R., pp.53-54.) Thus, there were no changed circumstances which would justify revocation.

Further, Mr. Arvizu does not have any prior felony convictions. (PSI, pp.6-7.) The Idaho Supreme Court has "recognized that the first offender should be accorded more lenient treatment than the habitual criminal." *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998) (quoting *State v. Owen*, 73 Idaho 394, 402 (1953), *overruled on other grounds by State v. Shepherd*, 94 Idaho 227 (1971)); *see also State v. Nice*, 103 Idaho 89, 91 (1982).

Finally, Mr. Arvizu served in the military many years ago. (PSI, p.8.) In *State v. Nice*, 103 Idaho 89, 90 (1982), the court found the defendant's honorable discharge from the military to be a factor in mitigation of sentence. Mr. Arvizu was honorably discharged after serving in the Air Force for 21 years. (PSI, p.8.)

In making the decision to revoke Mr. Arvizu's probation, the district court said:

> And, as I sit here in light of the, you know, the nature of the violation at issue and what went on between you and your probation officer and the VA, with respect to that situation, in light of your comments here today that you don't believe you have any mental-health condition that needs to be addressed, I just don't see how I can conclude that you don't present a risk to the community presently.

(4/10/15 Tr., p.17, Ls.13-20.) Mr. Arvizu pointed out to the court that he didn't commit any crimes or cause any problems when he was out on probation. (4/10/15 Tr., p.17,

L.21 – p.18, L.4.) Nevertheless, the district court revoked Mr. Arvizu's probation. (4/10/15 Tr., p.18, Ls.13-18.)

Mr. Arvizu's purported violation did not justify revoking probation in light of the goals of rehabilitation and the fact that the protection of society could be best served by his continued supervision under the probation department.

II.

The District Court Violated Mr. Arvizu's Equal Protection And Due Process Rights Under The Idaho And U.S. Constitutions When It Revoked His Probation Simply Because It Believed Mr. Arvizu Was Mentally Ill And Should Be Taking Medication For The Condition

A. Introduction

Although the district court recognized that Mr. Arvizu was doing well on probation, the court found that Mr. Arvizu was potentially a risk to the community because he was not acknowledging that he had a mental health condition and was not taking mental health medication. Therefore, the district court revoked Mr. Arvizu's probation. This decision violated Mr. Arvizu's rights to equal protection and due process under the Fourteenth Amendment and Article I, Sections 2 and 13 because, had Mr. Arvizu not been diagnosed with a mental health condition, he would have remained on probation.

B. The District Court Committed Fundamental Error By Revoking Mr. Arvizu's Probation Because It Believed Mr. Arvizu Was Mentally Ill And Should Be Taking Medication

The appellate courts will only review errors that were not objected to below if the error was fundamental. *State v. Perry*, 150 Idaho 209, 228 (2010). An error is fundamental if it:

> (1) violates one or more of the defendant's unwaived constitutional rights; (2) plainly exists (without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision); and (3) was not harmless. If the defendant persuades the appellate court that the complained of error satisfies this three-prong inquiry, then the appellate court shall vacate and remand.

Id.

Preliminarily, the district court's decision to revoke probation was fundamental error. First, the district court violated Mr. Arvizu's unwaived equal protection and due process rights by revoking probation, after previously determining that probation was an appropriate sentence, simply because it believed Mr. Arvizu was mentally ill and was not taking medication for his diagnosed condition. (4/10/15 Tr., p.14, L.24 – p.15, L.3, p.15, L.19 – p.16, L.21, p.17, Ls.13-20.) Second, that violation plainly exists on the record. (*See* 4/3/15, Tr.; 4/10/15 Tr.) Finally, that violation was not harmless because, absent that violation, Mr. Arvizu would be on probation rather than serving a prison sentence.

C. The District Court Denied Mr. Arvizu Equal Protection And Due Process By Incarcerating Him Simply Because It Believed Mr. Arvizu Was Mentally Ill And Should Be Taking Mental Health Medications

The Equal Protection Clause guarantees "equal protection of the laws," U.S. Const., amend. XIV, while Article I, Section 2 provides that the "[g]overnment is instituted for [the people's] equal protection and benefit." The Due Process Clause and Article I, Section 13 prohibit the state from depriving any person of "life, liberty, or property, without due process of law." Courts "generally analyze the fairness of relationships between the criminal defendant and the State under the Due Process Clause, while [courts] approach the question whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants

under the Equal Protection Clause." *State v. Braaten*, 144 Idaho 606, 609 (Ct. App. 2007) (quoting *Bearden v. Georgia*, 461 U.S. 660, 665 (1983).)

However, in this context, the analysis is the same:

> Whether analyzed in terms of equal protection or due process, the issue cannot be resolved by resort to easy slogans or pigeonhole analysis, but rather requires a careful inquiry into such factors as "the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose . . .."

Braaten, 144 Idaho at 609 (citing *Bearden*, 461 U.S. at 666–667).

Probationers have a protected liberty interest in continuing probation, and so, retain some level of right to due process. *See e.g., Morrissey v. Brewer*, 408 U.S. 471, 480-481 (1972); *State v. Rose*, 144 Idaho 762, 766 (2007). Probationers have an obvious interest in retaining their conditional liberty, and the State also has an interest in assuring that revocation proceedings are based on accurate findings of fact and, where appropriate, the informed exercise of discretion." *Black v. Romano*, 471 U.S. 606, 611 (1985).

The status of being mentally ill cannot be made a criminal offense for which a person can be prosecuted and imprisoned. *See Robinson v. California*, 370 U.S. 660, 666 (1962) (holding that a statute which imprisons a person who is addicted to narcotics, even though he has never touched any narcotic within the state, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment). "Mental illness is simply that, an illness, and should be treated no differently than other illnesses and with due respect for personal liberties." *In re Blodgett*, 510 N.W.2d 910, 914 (Minn. 1994). However, a state may, in a civil proceeding, adjudicate the status of mental

illness and require involuntary confinement of the mentally ill person for treatment and for the protection of society. *Lynch v. Overholser*, 369 U.S. 705 (1962).

The district court violated Mr. Arvizu's due process right by incarcerating him simply because he had been diagnosed with a mental health condition which the court believed he should acknowledge and medicate. First, Mr. Arvizu had a constitutionally-protected interest in remaining on probation. "[T]o obtain a protectable right 'a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead have a legitimate claim to entitlement to it.'". *State v. Coassolo*, 136 Idaho 138, 143 (2001) (quoting *Greenholtz v. Inmate of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). Idaho courts have recognized a due process right in probation revocation proceedings:

> Upon the valid conviction and sentencing of a defendant, due process having been provided, the state may deprive the defendant of his liberty for the term of the sentence pronounced by the district judge. If the state chooses to give a prisoner back some of his liberty or a right to his liberty by granting him parole, probation, good time credits, or an expectation of parole, the state must once again provide the prisoner with due process before removing the liberty.

Coassolo, 136 Idaho at 143 (internal citations omitted).

Here, Mr. Arvizu did have a due process right at his probation violation hearing and at the disposition hearing. The only probation condition Mr. Arvizu was found to have violated was not obtaining a mental health evaluation. (4/3/15 Tr., p.40, Ls.15-19.) At disposition, the district court recognized that Mr. Arvizu was doing well on probation, but found that Mr. Arvizu was potentially a risk to the community because he was not acknowledging his previous diagnosis and taking medication for it. (4/10/15 Tr., p.17, L.13 – p.17, L.20.) Mr. Arvizu then pointed out to the court that he did nott commit any crimes or cause any problems when he was out on probation. (4/10/15 Tr., p.14, L.13 –

p.18, L.4.) Notwithstanding, the district court revoked Mr. Arvizu's probation. (4/10/15 Tr., p.18, Ls.13-18.)

Thus, Mr. Arvizu did have a legitimate claim to continue on probation, and the Fourteenth Amendment's due process protections applied to the district court's decision to revoke probation. *See Coassolo*, 136 Idaho at 143.

Second, the court's decision to revoke probation was not rationally related to the various legitimate government interests at play in this case. Idaho's interests at sentencing are ensuring public safety, followed by rehabilitation, deterrence, and retribution. *State v. Miller*, 151 Idaho 828, 834 (2011). Idaho also has an interest in treating mentally ill defendants, rather than incarcerating such defendants for a substantial period of time. *State v. Durham*, 146 Idaho 364, 369-370 (Ct. App. 2008). But the classification drawn here—probation-worthy defendants with a mental health diagnosis versus probation-worthy defendants without a mental diagnosis—is not rationally related to any of those interests. That distinction in fact undermines the state's interest in rehabilitating and providing for individuals with mental illness.

Ultimately, the district court treated Mr. Arvizu, as a probation-worthy defendant with a diagnosed mental health condition, differently than probation-worthy defendants without a mental health condition. The district court inserted its own belief that Mr. Arvizu must acknowledge and medicate his condition in order to be successful on probation. Yet, Mr. Arvizu was having a successful probation. Notably, Mr. Arvizu had not shown himself as dangerous or unwell during his time on probation—in fact, his probation officer reported that Mr. Arvizu was compliant on probation. (Supp. R., p.89.) Therefore, the district court violated Mr. Arvizu's equal protection and due process rights

by incarcerating him simply because he had been diagnosed with a mental health condition.

CONCLUSION

Mr. Arvizu respectfully requests that this Court remand this case with an order that he be placed back on probation. Alternatively, Mr. Arvizu asks this Court to vacate the order revoking his probation and remand the case for a new hearing.

DATED this 12th day of November, 2015.

SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th 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:

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INMATE #108116
ISCI
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BOISE ID 83707

JASON D SCOTT
DISTRICT COURT JUDGE
E-MAILED BRIEF

DAVID LORELLO
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