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State v. Scrivener Respondent's Brief Dckt. 43183

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43183
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2014-1033
)	
RODNEY DEAN SCRIVENER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Scrivener failed to establish that the district court abused its discretion by revoking his probation and ordering executed his underlying unified sentence of five years, with two years fixed, imposed upon his guilty plea to battery on a law enforcement officer?

Scrivener Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Scrivener pled guilty to battery on a law enforcement officer and the district court imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. (R., pp.87-92.) Following the period of retained jurisdiction, the district court suspended

Scrivener's sentence and placed him on supervised probation for five years. (R., pp.106-10.) Scrivener violated his probation approximately four months later, and the district court revoked his probation and ordered the underlying sentence executed. (R., pp.130-33.) Scrivener filed a notice of appeal timely only from the district court's order revoking probation. (R., pp.134-36.)

Scrivener asserts that the district court abused its discretion by revoking his probation and ordering his underlying sentence executed in light of his performance in the retained jurisdiction program, plans to open a food cart, support from friends, and because, he claims, he used marijuana "only one time" while on probation. (Appellant's brief, pp.4-7.) Scrivener has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Upon revoking a defendant's probation, a court may order the original sentence executed or reduce the sentence as authorized by Idaho Criminal Rule 35. State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009) (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992); State v. Marks, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989)). A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing

whether a sentence is excessive. Hanington, 148 Idaho at 28, 218 P.3d at 7. Those standards require an appellant to “establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment.” State v. Stover, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). Those objectives are: “(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong doing.” State v. Wolfe, 99 Idaho 382, 384, 582, P.2d 728, 730 (1978). The reviewing court “will examine the entire record encompassing events before and after the original judgment,” *i.e.*, “facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation.” Hanington, 148 Idaho at 29, 218 P.3d at 8.

At the disposition hearing for Scrivener’s probation violation, the district court set forth its reasons for revoking probation and ordering Scrivener’s underlying sentence executed. (Tr., p.23, L.8 – p.27, L.3.) The state submits that Scrivener has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking probation and ordering Scrivener's underlying sentence executed.

DATED this 16th day of October, 2015.

/s/ _____
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of October, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ _____
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

21	22
<p>1 situations who relapse in this way or use in this 2 way and I just think the sanction of having locked 3 him up for a bit is -- hopefully would have an 4 impact.</p> <p>5 I get that this was a serious case. 6 What happened to the cop -- the police officer was 7 not serious. He butted him with the shoulder and 8 then he apologized for that. I will not -- I will 9 not say that that part of this is aggravated. But 10 the rest it is horribly aggravated; running into 11 people, being addled on drugs, and, you know, that 12 is serious and there's been no repetition of that 13 kind of behavior.</p> <p>14 Again, he remains respectful, 15 appropriate in jail as he has for months and 16 months and months. I mean, as you can well 17 imagine, when a guy comes into the Ada County Jail 18 charged with battery on a police officer, they are 19 treated a certain way and he certainly was, but he 20 earned the ability to be in a less restrictive 21 environment by behaving himself.</p> <p>22 So I would ask you -- I know, again, 23 the Court has very strong feelings about the 24 matter and I accept the fact that you said 25 cause/effect, violate/prison. But I would ask you</p>	<p>1 to consider rethinking that or at the bare minimum 2 reducing the fixed time. I mean, it's -- I really 3 think this is -- I know you're going to be 4 leaving, I'm leaving, whatever, but I think this 5 is a case that it might be better for the Court to 6 monitor his performance than just to defer to the 7 Department of Correction and I say that without 8 meaning any disrespect.</p> <p>9 THE COURT: Mr. Scrivener, do you wish to 10 make a statement or present any information 11 regarding disposition this morning?</p> <p>12 THE DEFENDANT: Yes, ma'am. I just wanted 13 to let you know that I have been doing a lot of 14 positive things to improve my life and get 15 together financially. I'm disabled, but I'm 16 capable of doing some things. I wouldn't be 17 driving around the mobile food unit. It's a 18 trailer and it will be left at a certain area.</p> <p>19 Yeah, I did trip up, but it proves that 20 I did have clean UAs after that. I tripped up one 21 day and I've had a pit in my stomach ever since 22 because I knew this was going to be -- I knew I 23 was going to be right here in front of you.</p> <p>24 And I just -- I apologize to my son and 25 my mother and the courts and the community and I</p>
23	24
<p>1 just want to be able to go home and get my act 2 together. And my son's supposed to be coming home 3 this summer and that's all I dream about. And I 4 really messed up that day and I can't take it back 5 and I take full responsibility for it, but I just 6 sure want to go home and continue doing what I've 7 been doing.</p> <p>8 THE COURT: On the admissions that you 9 violated your probation, I do find that you 10 violated your probation and that the violations 11 are knowing and voluntary.</p> <p>12 In an exercise of discretion having 13 applied the Toohill factors, I've considered a 14 number of things. My main concern is protection 15 of the community, Mr. Scrivener. Quite frankly, 16 the crime itself deserved prison. This is a 17 prison type case. This is not a normal probation 18 case. You victimized a whole group of people.</p> <p>19 And with due respect to Mr. Cahill, 20 when a 6'2, over 200-pound man of your size who's 21 handcuffed decides to ram an officer to the point 22 where you and the officer go to the ground, it 23 isn't just a small thing. That's a big thing. 24 You could have hurt him very badly. You're lucky 25 you didn't. The only reason you didn't is not</p>	<p>1 because of anything you did.</p> <p>2 But more importantly during this spree, 3 you rammed your vehicle into other vehicles, you 4 broke into -- broke the window and screen door of 5 a -- kicked in the front door of a stranger's 6 house. You attacked that stranger. And that 7 wasn't the only one. You had three other victims. 8 You put everybody at risk with your driving.</p> <p>9 And this isn't your first run-in with 10 the police. You have the theft of personal 11 property back in 1985 at 20 years of age. 12 Prosecution was relinquished. Then you had your 13 -- and this is my concern, every single thing 14 after that is fighting, battery and assault. Get 15 charged with fighting and challenging, fighting in 16 public in '89, prosecution declined, a battery in 17 '96 with a withheld judgment.</p> <p>18 Now, you do have the possession of 19 marijuana, which was part of the problem. A 20 domestic use of a telephone to harass or make 21 obscene calls amended from a domestic assault in 22 '98. A battery, malicious injury to property in 23 '99. The battery was dismissed as part of a plea 24 agreement and you pled to the malicious injury to 25 property. A battery in 2012.</p>

25

1 And then this one where you were
 2 originally charged with six counts, aggravated
 3 assault and battery on the law enforcement,
 4 malicious injury to property, leaving the scene of
 5 an accident. You didn't even care. You left the
 6 scene. And two unlawful entries and a battery.
 7 That's the reason that the Court very
 8 reasonably required you to not use any substances
 9 at all. None. And I even went so far as to talk
 10 about marijuana and put it in there and I told
 11 you, Mr. Scrivener, that if you did, you were
 12 going to prison. This isn't a mess-up. It was
 13 also the fact that you met with somebody that you
 14 knew was going to offer you marijuana. You know
 15 who these people are.
 16 You chose that over being able to see
 17 your son in the summer. Those are your choices,
 18 Mr. Scrivener, and, trust me, I made it painfully
 19 clear. Painfully clear.
 20 The supervision the Department of
 21 Correction is doing is not adequate at this time
 22 for people like you, Mr. Scrivener. It is not
 23 adequate. That's the reason I wanted you to test.
 24 One simple, little thing. You're not here because
 25 of failure to pay fine, fees or costs or anything


27

1 I am recommending placement at the
 2 therapeutic community. I think that's what you
 3 need. It is further treatment.
 4 It is further ordered that the court
 5 costs will remain as earlier imposed, the fine of
 6 \$2,000 is imposed and any restitution will remain
 7 the same.
 8 Now, you have the right to appeal and
 9 if you cannot afford an attorney, you can request
 10 to have one appointed at public expense. Any
 11 appeal has to be filed within 42 days of the date
 12 judgment is made and filed.
 13 In making that appeal you may be
 14 represented by an attorney, and, again, if you
 15 can't afford one, one will appointed to represent
 16 you. And I would ask that the presentence
 17 materials be returned and sealed.
 18 MR. CAHILL: Judge, for the record we didn't
 19 have any of those. There is no updated PSI.
 20 THE COURT: Correct. We'll stand in recess.
 21
 22
 23
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26

1 like that. You're here because you violated a
 2 fundamental condition of probation. That's why
 3 you're here.
 4 Now, I took a chance putting you on
 5 probation at all. This was not in my opinion a
 6 probation case. This was a prison case. From the
 7 out go -- from the beginning it was a prison case.
 8 You had multiple victims.
 9 So in an exercise of discretion I'm
 10 revoking the probation that this Court granted you
 11 and I hereby reimpose the original sentence on
 12 Count One and sentence you to the custody of the
 13 Idaho State Board of Correction under the Unified
 14 Sentence Law of the State of Idaho for an
 15 aggregate of five years with two fixed followed by
 16 three indeterminate. The others were credit --
 17 I'll give you credit for time served on Counts Two
 18 and Six.
 19 I remand you to the custody of the
 20 sheriff of this county to be delivered to the
 21 proper agent of the State Board of Correction in
 22 execution of sentence. Any bail is exonerated
 23 and credit will be given for the time served
 24 except any time that was served as a condition of
 25 probation.

28

1 REPORTER'S CERTIFICATE
 2
 3
 4 I, KIM I. MADSEN, Official Court
 5 Reporter, County of Ada, State of Idaho, hereby
 6 certify:
 7 That I am the reporter who took the
 8 proceedings had in the above-entitled action in
 9 machine shorthand and thereafter the same was
 10 reduced into typewriting under my direct
 11 supervision; and
 12 That the foregoing transcript contains
 13 a full, true, and accurate record of the
 14 proceedings had in the above and foregoing cause,
 15 which was heard at Boise, Idaho.
 16 IN WITNESS WHEREOF, I have hereunto set
 17 my hand this ___ day of _____, 2015.
 18
 19
 20
 21 
 22 KIM I. MADSEN, Official Court Reporter
 23 CSR No. 428
 24
 25