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# State v. Rodriguez Respondent's Brief Dckt. 43246

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43246
Plaintiff-Respondent,	)	
	)	Minidoka County Case No.
v.	)	CR-2013-398
	)	
MATEO FLORES RODRIGUEZ,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Rodriguez failed to establish that the district court abused its discretion by revoking his probation and ordering executed, without reduction, his underlying unified sentence of nine and one-half years, with four and one-half years fixed, imposed upon his guilty plea to felony DUI?

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

Rodriguez pled guilty to felony DUI (two prior DUI convictions within 10 years) and, in May 2013, the district court imposed a unified sentence of nine and one-half years, with four and one-half years fixed, suspended the sentence, and placed

Rodriguez on supervised probation for 10 years. (R., pp.21-23, 26-35, 45-53.) In January 2015, Rodriguez's probation officer filed a report of violation alleging that Rodriguez had violated the conditions of his probation by failing to ever report for supervision, changing residence without permission, absconding supervision, and committing the new crimes of DUI (excessive), DWP, and failure to report an accident. (R., p-p.58-59.) Rodriguez admitted that he had violated the conditions of his probation by committing new crimes and the state withdrew the remaining allegations. (R., pp.70-71.) At the disposition hearing, Rodriguez's counsel requested that the district court reduce Rodriguez's sentence. (Tr., p.7, Ls.14-17.) The district court revoked Rodriguez's probation and ordered his underlying sentence executed without reduction. (R., pp.77-80.) Rodriguez filed a notice of appeal timely from the district court's order revoking probation. (R., pp.81-83.)

Rodriguez asserts that the district court abused its discretion by revoking his probation and ordering his underlying sentence executed without reduction in light of his recognition that he has an alcohol problem and his purported desire for treatment. (Appellant's brief, pp.4-6.) Rodriguez 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 Rodriguez's probation violation, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for revoking Rodriguez's probation and ordering his underlying sentence executed without reduction. (Tr., p.8, L.8 – p.10, L.17.) The state submits that Rodriguez 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 Rodriguez's probation and ordering his underlying sentence executed without reduction.

DATED this 5<sup>th</sup> day of January, 2016.

\_\_\_\_\_  
/s/  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5<sup>th</sup> day of January, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/  
LORI A. FLEMING  
Deputy Attorney General

# APPENDIX A

1 If I'm reading the information correctly retained  
 2 jurisdiction has a fairly large difference of recidivism  
 3 compared to actually just serving out the time, compared to  
 4 the two, so I think the fact he hasn't been on a retained  
 5 jurisdiction and that retained jurisdiction seems to have  
 6 better results in this circumstance, I think it would be  
 7 appropriate to give him that opportunity to participate in  
 8 retained jurisdiction, see how he does with that, and if he  
 9 does well, be able to come back and be placed on probation.  
 10 If he is unsuccessful at it then he basically finishes  
 11 serving out the sentence.

12 If the court is inclined to impose a time I  
 13 believe a five fixed with five indeterminate for a total of  
 14 10 years. I would ask the court to possibly commute that  
 15 down to a lesser amount of two to three years, let him  
 16 serve that out, be eligible for parole and possibly take  
 17 advantage of that opportunity if he's given it in this.  
 18 But five years is a significant period of time.

19 He's still working on his immigration status. I  
 20 believe the PSI indicated he's has a immigration hearing  
 21 set for later this year. I'm not -- my understanding of  
 22 immigration law, which this would not have an adverse  
 23 affect on his ability to get his residency or some type of  
 24 status possibly, I don't think it rises to moral turpitude  
 25 level, itself, but it sounds like he's in the process of

7

1 checking in: You drank. And you didn't just drink -- you  
 2 didn't sit at home and get drunk, you drove a car.

3 And then you come in here and say, Well, I didn't  
 4 hurt anybody. You ran over a mailbox, which is fortunate  
 5 for you and for the people who weren't hurt, but  
 6 not because -- that's really no credit to you. I mean, it  
 7 benefits you in the sense that you're not subject to a more  
 8 serious penalty, but it's not like when you're drinking and  
 9 driving you have real control over who you hurt and who you  
 10 don't.

11 So the question the court has to ask on probation  
 12 is whether probation is protecting the community and  
 13 whether it's serving rehabilitation. Here the obvious and  
 14 clear answer to both of those questions is no. You knew  
 15 what your sentence was, you knew what the suspended  
 16 sentence was, you knew your history of DUIs, and you did it  
 17 again.

18 And just ignoring for a minute you're not doing  
 19 what you were supposed to do on felony probation, which  
 20 might have gotten you some treatment, but you want to do it  
 21 your way. Okay, your way failed and you endangered the  
 22 community. You weren't being supervised and you commit  
 23 another offense. So to allow you another chance would  
 24 gravely ignore the sentencing considerations the court has  
 25 to consider. It would be reckless and it would endanger

9

1 working on that. Thank you.

2 THE COURT: Anything you wish to say on your  
 3 behalf?

4 MR. FLORES: I'd like to thank you and I'd like  
 5 to have another -- a new opportunity. I did commit an  
 6 error by not completing or abiding by the rules, but I did  
 7 not hurt anyone. That is all, thank you.

8 THE COURT: Okay. Well, I find your attitude  
 9 troubling. I think this case is just extremely clear as to  
 10 what the right decision to do is. At your sentencing we  
 11 had a discussion about the immigration status, what to do.  
 12 It was extensive.

13 And probation and parole had to get you signed  
 14 up, and whether you were in the U.S. legally, illegally,  
 15 you had to report within 72 hours. I was looking at that,  
 16 you didn't do it.

17 Now maybe more -- maybe that could be chalked up  
 18 to a confusion excuse, the bureaucracy between misdemeanor  
 19 probation and the felony probation, but if your only  
 20 violation were not checking in, that might get you another  
 21 chance.

22 But you got another DUI and DUIs are  
 23 extraordinarily dangerous. You endangered the community on  
 24 multiple occasions just to get to the felony level. You  
 25 did not do what you had to do on probation. And not just

8

1 any community you are in.

2 I also am looking at the old PSI on page eight  
 3 where it said: He admits alcohol has caused him legal  
 4 problems and that he drinks due to being stressed about  
 5 being in the United States illegally and separated from his  
 6 family who needs his financial support. Well, there's a  
 7 couple ways to handle that: One, don't drink. You'll  
 8 probably make more money, because how much money that could  
 9 have gone to support your family went to alcohol; number  
 10 two, using stress about an activity you knew was illegal is  
 11 extraordinarily unpersuasive as an excuse. I mean, it's --  
 12 just that thinking is, of its own, an indication that  
 13 rehabilitation is going to be extremely difficult here.

14 I have considered reducing the sentence sua  
 15 sponte and I have considered the request for reduction  
 16 under Rule 35 made today. I will deny the request for  
 17 reduction, I will not reduce your sentence sua sponte.

18 Oh, just one thing I should mention about the new  
 19 DUI. When you said today, I didn't hurt anybody, that's  
 20 true. But let's say you injured somebody badly or killed  
 21 somebody in this county while you are on probation for  
 22 this, it's hard to say exactly what I would do or another  
 23 sentencing judge would do for sure, but you should think  
 24 about it in terms of getting the absolute maximum for  
 25 aggravated DUI or vehicular manslaughter, every day of it

10