

12-22-2015

## State v. Talley Appellant's Brief Dckt. 43349

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43349
	)	
v.	)	BONNER COUNTY NO. CR 2010-721
	)	
ROBERT TALLEY,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Robert Talley was sentenced to a five year fixed term of imprisonment after he pled guilty to being an accessory to burglary. Following the revocation of his probation, the district court executed the original sentence. Mr. Talley contends the district court abused its discretion by revoking his probation and executing the original sentence.

Statement of the Facts and Course of Proceedings

Mr. Talley pled guilty to being an accessory to burglary, and was sentenced to a term of five years fixed. (R. Vol. I, pp.192-195; R. Vol. II, pp.253-59.) The district court

suspended execution of the sentence and placed Mr. Talley on probation for a period of three years, commencing on August 31, 2010. (R. Vol. II, pp.253-59.)

In December 2010, Mr. Talley's supervision was transferred to Washington. (R. Vol. II, p.268.) Mr. Talley was alleged to have violated probation in Washington on October 20, 2011, by absconding supervision, failing to make payments toward his court-ordered financial obligations, and committing the offenses of driving with a suspended license, interlock ignition violation, and possession of brass knuckles and burglary tools. (R. Vol. II, pp.302-04.) He admitted to these violations and was placed back on probation on July 13, 2012. (R. Vol. II, pp.360-63.)

Mr. Talley was alleged to have violated probation for a second time on October 31, 2012, by absconding supervision and committing the offense of money laundering.<sup>1</sup> (R. Vol. II, pp.365-66; R. Vol. III, pp.455-56.) Mr. Talley admitted to the violations and, on April 22, 2013, the district court entered an order revoking Mr. Talley's probation, executing the original sentence and retaining jurisdiction for a period of 365 days. (R. Vol. III, pp.459-61, 463.) In its order revoking probation, the district court stated it was executing the original sentence of three years, with one year fixed. (R. Vol. III, p.460.) This was not the original sentence. Before the district court noticed its error, Mr. Talley came before the court and requested that it relinquish jurisdiction. (R. Vol. III, p.541.) The court granted this request. (R. Vol. III, p.541.) The court subsequently noticed its error and changed the order revoking probation to reflect that it

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<sup>1</sup> The amended probation violation report originally alleged that Mr. Talley violated probation by committing the offense of burglary, but the offense was changed to money laundering by handwritten notation. (R. Vol. III, pp.233-34.)

was executing the original sentence of five years.<sup>2</sup> (See R. Vol. III, pp.540-45.) The court held a hearing on August 20, 2013, and allowed Mr. Talley to reconsider his request to relinquish jurisdiction in light of its mistake. (See R. Vol. III, pp.540-45.) Mr. Talley requested that the court retain jurisdiction and the court allowed him to participate in a rider.<sup>3</sup> (R. Vol. III, pp.479-82.)

On December 19, 2013, the district court entered a judgment and disposition on jurisdictional review following Mr. Talley's successful completion of his rider.<sup>4</sup> (R. Vol. III, pp.551-53.) This judgment reflects that the district court relinquished jurisdiction over Mr. Talley, executed the original sentence of five years, suspended that sentence and placed Mr. Talley on probation for a period of three years. (R. Vol. III, pp.551-53.)

A probation violation report was filed on January 16, 2015, alleging that Mr. Talley violated his probation by committing theft of a motor vehicle, driving with a suspended/revoked license and failing to make payments toward his court-ordered financial obligations. (R. Vol. III, pp.568-69.) The offender violation report reflects that Mr. Talley absconded supervision in Washington on July 11, 2014, and stole his foster-father's car. (R. Vol. III, p.572.) A hearing was held on June 1, 2015, and Mr. Talley

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<sup>2</sup> Mr. Talley filed a motion pursuant to Idaho Criminal Rule 35 ("Rule 35") for reconsideration of sentence, arguing that the district court's order executing the three year sentence became final 42 days after it was filed and could not subsequently be changed. (R. Vol. III, pp.505-06.) The court rejected this argument and denied Mr. Talley's Rule 35 motion in an order dated November 21, 2013. (R. Vol. III, pp.540-45.)

<sup>3</sup> Mr. Talley filed a timely notice of appeal from the judgment on probation violation retaining jurisdiction, but subsequently dismissed his appeal. (R. Vol. III, pp.485-87, 499-504, 559-63.)

<sup>4</sup> This judgment states that Mr. Talley was originally convicted of being an accessory to willfully withholding, concealing or harboring a felony. (R. Vol. III, p.551.) This is incorrect. Mr. Talley was originally convicted of being an accessory to burglary. (R. Vol. I, pp.253-59; Tr. p.10 Ls.15-18.)

admitted to driving with a suspended license and failing to make payments toward his financial obligations. (R. Vol. III, p.643.) He did not admit to theft of a motor vehicle, but admitted that he had pled guilty to money laundering in Washington. (R. Vol. III, p.643; Tr. p.5, L.20 – p.6, L.21.) The district court continued the disposition hearing because it needed time to review the case. (Tr. p.11, Ls.10-19.) At the continued disposition hearing, the district court executed the original sentence of five years.<sup>5</sup> (R. Vol. III, pp.648-49, 653.) Mr. Talley filed a timely notice of appeal. (R. Vol. III, pp.654-56, 662-65.)

### ISSUE

Did the district court abuse its discretion when it revoked Mr. Talley's probation and executed the original sentence of five years?

### ARGUMENT

#### The District Court Abused Its Discretion When It Revoked Mr. Talley's Probation And Executed The Original Sentence Of Five Years

The district court has discretion to revoke probation after a violation has been proven. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). However, “[a] judge cannot revoke probation arbitrarily.” *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). “In determining whether to revoke probation, evidence of the defendant’s conduct before and during probation may be considered.” *Roy*, 113 Idaho at 392. “[P]robation may be revoked if the judge reasonably concludes from the defendant’s conduct that probation

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<sup>5</sup> This judgment states that Mr. Talley was originally convicted of being an accessory to willfully withholding, concealing or harboring a felony. (R. Vol. III, p.551.) This is incorrect. Mr. Talley was originally convicted of being an accessory to burglary. (R. Vol. I, pp.253-59; Tr. p.10 Ls.15-18.)

is not achieving its rehabilitative purpose.” *Lee*, 116 Idaho at 40; *see also State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995) (“In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society.”).

Here, the district court abused its discretion when it revoked Mr. Talley’s probation because it was meeting the objective of rehabilitation while providing adequate protection for society. The district court revoked Mr. Talley’s probation and executed a sentence of five years fixed after Mr. Talley pled guilty to money laundering. (State’s Ex. 3.) It does not appear that there was a factual basis for this plea and the district court did not inquire into the matter at the revocation hearing. Mr. Talley was originally charged with stealing a vehicle—specifically, his foster father’s car—but he consistently denied committing a crime and stated he had permission to use the vehicle. (R. Vol. III, p.577; Tr. p.22, Ls.14-21.) Mr. Talley informed the court at the revocation hearing that he did not challenge the charge of theft because of his criminal history, but instead agreed to plead guilty to money laundering. (Tr. p.23, Ls.3-8.) He explained that his foster dad “did finally come to court and tell the truth [that he had given Mr. Talley permission to use his car].” (Tr. p.24, Ls.1-3.) On these facts, Mr. Talley’s plea to money laundering does not warrant the revocation of his probation.

The district court did not need to revoke Mr. Talley’s probation and execute the original sentence in order to provide adequate protection for society. Mr. Talley explained at the revocation hearing that he wanted to participate in a year-long, faith-based “teen challenge” program in Washington. (Tr. p.24, L.14 – p.25, L.20.) He also explained that he had been seeing a psychologist to help with mental health issues.

(Tr. p.26, L.24 – p.27, L.2.) In light of these facts, and the circumstances surrounding his probation violation, the district court abused its discretion by revoking Mr. Talley's probation and executing the original sentence.

CONCLUSION

Mr. Talley respectfully requests that the Court vacate the district court's order revoking his probation and place him back on probation. Alternatively, he requests that the Court remand this case to the district court for a new disposition hearing.

DATED this 22<sup>nd</sup> day of December, 2015.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of December, 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:

ROBERT TALLEY  
INMATE #97839  
ISCI  
PO BOX 14  
BOISE ID 83707

BARBARA BUCHANAN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

DANIEL D TAYLOR  
BONNER COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

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

AWR/eas