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State v. Sorrells Appellant's Brief Dckt. 43428

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43428
)	
v.)	KOOTENAI COUNTY NO. CR 2015-671
)	
ARNOLD GENE SORRELLS, JR.,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Arnold Gene Sorrells, Jr., appeals from the district court's judgment revoking his probation and executing his original sentence of three years, with one year fixed, for grand theft. He contends the district court abused its discretion by revoking his probation and executing his original sentence.

Statement of Facts and Course of Proceedings

On December 16, 2014, Mr. Sorrells stole, from his roommate, several items of personal property including a television, and sold them to a pawnshop. (R., pp.9-15.) The State alleged by criminal complaint that Mr. Sorrells committed one count of grand

theft and two counts of burglary. (R., pp.6-7.) Mr. Sorrells waived a preliminary hearing and was bound over to the district court. (R., p.30.) The State then filed an Information charging Mr. Sorrells with these same crimes. (R., pp.32-34.) Mr. Sorrells entered into a plea agreement with the State wherein he agreed to plead guilty to grand theft in exchange for dismissal of the remaining counts. (R., p.36.) The district court accepted Mr. Sorrells' guilty plea and sentenced him to a unified term of three years, with one year fixed. (R., p.45.) The district court suspended the sentence and placed Mr. Sorrells on supervised probation for a period of two years. (R., p.45.) The judgment was entered on April 13, 2015. (R., pp.44-49.)

On May 20, 2015, the State filed a Motion to Show Cause Why Probation Should Not Be Revoked based on a report of probation violation, dated May 18, 2015, which alleged that Mr. Sorrells violated probation by, among other things, using methamphetamine and absconding. (R., pp.58-62.) Mr. Sorrells admitted to the violations. (5/27/15 Tr., p.6, L.5 – p.7, L.2.) The district court revoked Mr. Sorrells' probation, executed his original sentence, and retained jurisdiction with the recommendation that Mr. Sorrells complete the 90-day Correctional Alternative Placement Program (CAPP). (5/27/15 Tr., p.12, Ls.18-24; R., pp.69-70.) The judgment on probation violation was entered on May 27, 2015. (R., pp.71-73.) Mr. Sorrells filed a timely notice of appeal on June 29, 2015. (R., pp.74-76.)

On October 14, 2015, the district court held a jurisdictional review hearing, and placed Mr. Sorrells back on supervised probation for a period of two years commencing October 14, 2015.¹ Mr. Sorrells did not file a notice of appeal from this judgment.

ISSUE

Did the district court abuse its discretion when it revoked Mr. Sorrells' probation and executed his original sentence?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Sorrells' Probation And Executed His Original Sentence

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 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.”).

¹ The Clerk’s Record does not contain any documents filed after August 14, 2015. Contemporaneously with the filing of this brief, Mr. Sorrells is filing a Motion to Augment the Record to include the following documents from the district court: (1) minutes from jurisdictional review hearing on October 14, 2015; and (2) Judgment on Retained Jurisdiction, filed October 15, 2015.

Mindful of the fact that Mr. Sorrells is currently on probation, he contends the district court abused its discretion when it revoked his probation in May 2105. It appears that Mr. Sorrells was not honest about his substance use during the presentence investigation. (Presentence Investigation Report (“PSI”), pp.18-19, 36.) It appears that, contrary to his denials, Mr. Sorrells was using methamphetamine around the time he committed the instant offense, and his drug use continued while he was on probation. (PSI, p.36.) At the probation violation hearing, Mr. Sorrells admitted to using a controlled substance. (5/27/15 Tr., p.6, Ls.5-11.) Mr. Sorrells’ counsel explained to the district court that Mr. Sorrells “understands he needs help” and has “never been on probation before” and “never received substance abuse treatment.” (5/27/15 Tr., p.9, Ls.14-17.) Counsel informed the district court that Mr. Sorrells had arranged for treatment that “would have started but for him being incarcerated.” (5/27/15 Tr., p.8, Ls.17-19.) Counsel also informed the district court that Mr. Sorrells had arranged for housing and had been offered employment at Pizza Hut. (5/27/15 Tr., p.8, Ls.3-6, 12-16.) In light of this information, the district court abused its discretion by revoking Mr. Sorrells probation in May 2015 and executing his original sentence.

CONCLUSION

Mr. Sorrells requests that this Court issue an opinion consistent with Mr. Sorrells’ brief on appeal.

DATED this 23rd day of December, 2015.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd 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:

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KOOTENAI COUNTY DISTRICT COURT
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas