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State v. Schmid Respondent's Brief Dckt. 44505

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44505
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2013-17847
)	
CHRISTOPHER LEE SCHMID,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Schmid failed to establish that the district court abused its discretion by revoking his probation?

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

On December 16, 2013, Officer Hart responded to a “Common Cents” gas station to serve “several Idaho Falls and Bonneville County warrants for [Schmid’s] arrest.” (R., pp.20-21.) When Officer Hart contacted Schmid, Schmid walked away, disregarding the officer’s instructions to stop. (R., p.21.) Officer Hart followed Schmid,

again “told him he needed to stop[,] and reached up to grab him by the shoulder. Schmid then aggressively turned and punched [Officer Hart] with a closed fist in the left side of the head ... as hard as he was able to.” (R., p.21.) Schmid subsequently fled, and a second officer (Officer Prince) stopped him and held him “at Tazer point.” (R., p.22.) Schmid initially complied with the officers’ commands and “laid on the ground[,] but then turned onto his back and tried to grab at [Officer Hart’s] jacket to start to fight again. At this point Officer Prince tased Schmid in the back. ... Although Schmid continued to pull and turn, [Officer Hart] was able to place Schmid into restraints.” (R., p.22.)

The state charged Schmid with battery on a law enforcement officer. (R., pp.39-40.) Pursuant to a plea agreement, Schmid pled guilty to battery on a law enforcement officer and the state dismissed a second case and agreed to recommend “probation with Mental Health Court.” (R., pp.93-96, 99-100.) The district court imposed a unified sentence of five years, with two years fixed, suspended Schmid’s sentence, and placed him on supervised probation for five years with the condition that he complete Mental Health Court. (R., pp.115-19.)

One week later, on August 28, 2014, Schmid was ordered to serve five days of discretionary jail time for failing to comply with Mental Health Court requirements. (R., pp.7, 121.) On September 11, 2014 – approximately 10 days after Schmid was released from the jail – he was again ordered to serve discretionary jail time for noncompliance with Mental Health Court. (R., pp.7, 122.) On September 25, 2014, Schmid was arrested on an agent’s warrant for missing UA testing in Mental Health Court. (R., p.123.) He was released on his own recognizance on October 8, 2014, and,

nine days later, the state filed a complaint of probation violation alleging that Schmid had violated his probation by willfully failing to appear at a court hearing and willfully failing to pay fines. (R., pp.8, 134.) Schmid admitted that he violated his probation by failing to appear for a hearing on an order to show cause, and the court ordered him to serve 21 days in the county jail. (R., p.136.)

Approximately one week after Schmid was released from the county jail, he again failed to appear at a hearing on an order to show cause, failed to report for probation supervision, and failed to report to Mental Health Court. (R., pp.8, 138-39.) Schmid's probation officer later filed a report of probation violation, alleging that Schmid had violated his probation by absconding supervision. (R., pp.139-40.) Schmid was at large for approximately one month before he was located and arrested. (R., pp.138-39.) His probation officer subsequently filed an addendum to the report of violation probation, alleging that Schmid had also violated his probation by being suspended from Mental Health Court for "failure to participate and comply with treatment." (R., pp.146-47.) Schmid admitted that he violated his probation by absconding supervision and being suspended from Mental Health Court, and, on June 3, 2015, the district court revoked Schmid's probation, ordered the underlying sentence executed, and retained jurisdiction. (R., pp.187-88, 194-95.)

While on his rider, Schmid "consistently threaten[ed] staff that he [would] become violent with them," refused to leave his cell or to "participate with any mental health groups, taking of medications, and any individual meetings with the clinical staff," repeatedly "verbalized that he would not do his programming and he wanted to serve his full time," and threatened "to 'kill anyone' that tries to medicate him." (2/10/16 Letter

from Karin Magnelli; 2/10/16 Letter from Lucia Venegas, LCPC; 12/30/15 Letter from Jeremy Clark, LCPC; 1/14/16 Letter from Jeremy Clark, LCPC.) On February 23, 2016, the district court filed an Order Regarding Rider and Medical Override, authorizing the Idaho Department of Correction to involuntarily medicate Schmid should he continue to refuse mental health treatment. (R., pp.210-11.) On June 8, 2016 – 371 days after the district court retained jurisdiction – the court held a jurisdictional review hearing, after which it entered an order purporting to suspend Schmid’s sentence and place him on supervised probation with the conditions that he successfully complete the Wood Pilot Project Court and remain in custody until released by the Wood Pilot Project Court. (R., pp.222-27.)

Schmid was “accepted into the Wood Pilot Project Court to begin In-Custody treatment” on July 5, 2016. (R., p.228.) Two weeks later, Schmid “requested to ‘opt out’ of the program and serve out his sentence.” (R., pp.235-36.) The court entered an order terminating Schmid from the Wood Pilot Project Court, and Schmid’s probation officer subsequently filed a report of violation, alleging that Schmid had violated the conditions of his probation – a third time – by failing to successfully complete the Wood Pilot Project Court. (R., pp.236-37.) Schmid admitted the allegation and, on August 10, 2016, the district court entered an order revoking Schmid’s probation and executing the underlying sentence. (R., pp.248-49.) Schmid filed a Rule 35 motion for a reduction of sentence, which the district court denied on August 31, 2016. (R., pp.244-45, 254.) Schmid filed a notice of appeal on September 6, 2016. (R., pp.260-63.)

Schmid asserts that the district court abused its discretion by revoking his probation and ordering his underlying sentence executed in light of his mental health

issues, his claim that he voluntarily withdrew from the Wood Pilot Project Court because of his anxiety, and because he “was continuing to rebuild his relationship with his children” and was “working to secure employment and housing such that he would be able to engage in” AA and “some anger management counseling” in the community. (Appellant’s brief, pp.5-7; 8/3/16 Tr., p.7, Ls.21-25.) Because the district court had no jurisdiction after the 365-day period of retained jurisdiction expired to place Schmid on probation in the first place, the court’s order revoking that probation and “re-executing” the previously imposed sentence must be affirmed.

A defendant's sentence begins when it is imposed by the court. I.C. § 20–209A; State v. Petersen, 149 Idaho 808, 813, 241 P.3d 981, 986 (2010). The time for the period of retained jurisdiction begins to run once the sentence is *pronounced*. *Id.* Additionally, although the decision is not yet final, in State v. Thomas, 2017 WL 526532 *3 (Idaho App. February 9, 2017), the Idaho Court of Appeals declined to overrule Petersen, holding that “the plain language of I.C. § 19–2601(4) necessarily requires a period of retained jurisdiction to run from the pronouncement of sentence not from the date the judgment of conviction is entered.” As such, Schmid’s period of retained jurisdiction in this case began to run on June 3, 2015 – the date that the district court orally pronounced its decision to revoke Schmid’s probation, order his underlying sentence executed, and retain jurisdiction. (R., pp.192-93.) Thus, the 365-day period of retained jurisdiction expired on June 2, 2016. The district court did not hold the jurisdictional review hearing – at which it purported to place Schmid on probation – until June 8, 2016, and it did not enter its order purporting to suspend Schmid’s sentence and place him on supervised probation until July 1, 2016. (R., pp.222-27.)

It is a well-settled principle of Idaho law that, absent some specific grant of authority, a district court's jurisdiction to alter an otherwise lawful sentence terminates upon execution of the sentence by transfer of the defendant to the custody of the board of correction. E.g., State v. Johnson, 75 Idaho 157, 161, 269 P.2d 769, 771 (1954); State v. Knutsen, 138 Idaho 918, 922, 71 P.3d 1065, 1069 (Ct. App. 2003); State v. Williams, 126 Idaho 39, 43, 878 P.2d 213, 217 (Ct. App. 1994). The authority of a sentencing court to retain jurisdiction over a defendant committed to the custody of the board of correction stems from Idaho Code § 19-2601(4), which, at the time the district court retained jurisdiction in this case, provided, in relevant part:

Whenever any person shall have been convicted, or enter a plea of guilty, in any district court of the state of Idaho, of or to any crime against the laws of the state, except those of treason or murder, the court in its discretion, may:

....

4. Suspend the execution of the judgment at any time during the first three hundred sixty-five (365) days of a sentence to the custody of the state board of correction. The court shall retain jurisdiction over the prisoner for a period of up to the first three hundred sixty-five (365) days or, if the prisoner is a juvenile, until the juvenile reaches twenty-one (21) years of age. ... The prisoner will remain committed to the board of correction if not affirmatively placed on probation by the court. In extraordinary circumstances, where the court concludes that it is unable to obtain and evaluate the relevant information within the period of retained jurisdiction, or where the court concludes that a hearing is required and is unable to obtain the defendant's presence for such a hearing within such period, the court may decide whether to place the defendant on probation or release jurisdiction within a reasonable time, not to exceed thirty (30) days, after the period of retained jurisdiction has expired. Placement on probation shall be under such terms and conditions as the court deems necessary and expedient. The court in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case. ...

I.C. § 19-2601(4) (2014).

As explained by the Idaho Court of Appeals, the authority granted by I.C. § 19-2601(4) is unique, in that it essentially enables the district court and the board of correction to exercise concurrent jurisdiction over a defendant who has been committed to the custody of the board. State v. Diggie, 140 Idaho 238, 240, 91 P.3d 1142, 1144 (Ct. App. 2004); Williams, 126 Idaho at 44, 878 P.2d at 218. Pursuant to the plain language of the statute, however, the court's jurisdiction is limited to the "first three hundred sixty-five (365) days of a sentence." I.C. § 19-2601(4); State v. Taylor, 142 Idaho 30, 31, 121 P.3d 961, 962 (2005); Diggie, 140 Idaho at 240, 91 P.3d at 1144. Although the court's jurisdiction may be extended for up to an additional 30 days under "extraordinary circumstances," the district court may do so *only* if it issues an order extending its jurisdiction *before* the 365-day period of retained jurisdiction expires. I.C. § 19-2601(4); Taylor, 142 Idaho at 31, 121 P.3d at 962; Petersen, 149 Idaho at 812, 241 P.3d at 985.

Because the district court in the instant case did not extend its jurisdiction before the expiration of the 365 days, it was without jurisdiction, six days after its jurisdiction had expired, to do so. If, as here, the court does not affirmatively place the defendant on probation within the first 365 days, the court's jurisdiction expires, and the defendant will remain committed to the board of correction. Taylor, 142 Idaho at 31, 121 P.3d at 962. At that point, jurisdiction over the inmate, including all matters regarding the execution of his sentence, is vested exclusively in the executive branch. Idaho Const., art. X, § 5 (board of correction granted "control, direction and management" of penitentiaries and "adult probation and parole"); I.C. § 20-223 (commission of pardons

and parole empowered to regulate parole). Any attempt to place a defendant on probation after expiration of the statutorily authorized review period is void. Taylor, 142 Idaho at 32, 121 P.3d at 963 (“Because the 180-day review period of retained jurisdiction expired without the district court affirmatively placing the Defendant on probation, the Defendant remained committed to the custody of the Idaho Board of Correction. The district court’s judgment placing the Defendant on probation was therefore void because the court no longer had jurisdiction.”).¹

The district court neither extended its jurisdiction, nor did it place Schmid on probation before the 365-day period of retained jurisdiction had expired. As such, both the district court’s order placing Schmid on probation and its subsequent order revoking his probation are void. The district court’s August 10, 2016 order revoking probation and executing Schmid’s underlying sentence effectively remedied the court’s earlier error in granting probation (on June 8, 2016) after the first period of retained jurisdiction had expired (on June 2, 2016). Because the district court lacked jurisdiction to place Schmid on probation in the first instance, the court’s August 10, 2016 order revoking probation and executing Schmid’s original sentence must be affirmed.

Even if this Court considers the merits of Schmid’s claim, Schmid has still failed to establish an abuse of discretion in the district court’s decision to revoke his probation and order the underlying sentence executed. “Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision to revoke probation lies within

¹ At the time the district court sentenced Taylor, I.C. § 19–2601(4) provided that a district court could retain jurisdiction over a defendant for the first 180 days of a sentence. I.C. § 19–2601(4) (2004). In 2010, the legislature amended I.C. § 19-2601(4) to increase the retained jurisdiction period from 180 days to 365 days. (2010 Sess. Laws, ch. 350, § 1, p.913.)

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.

At the August 3, 2016 disposition hearing for Schmid’s third probation violation, the state addressed Schmid’s unwillingness to comply with the level of services and supervision in the community that were necessary to protect society and to achieve the goal of rehabilitation. (8/3/16 Tr., p.9, L.11 – p.10, L.4.) The district court subsequently articulated its reasons for revoking Schmid’s probation and ordering the underlying sentence executed. (8/3/16 Tr., p.11, L.16 – p.13, L.7.) The state submits that Schmid has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts 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 Schmid's probation and ordering his underlying sentence executed.

DATED this 9th day of March, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of March, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 He believes he has a job doing tile
 2 work. I think that's what he was doing before.
 3 THE DEFENDANT: I do.
 4 MR. CRANE: And he was even sending out
 5 some feelers for a possible job at Smitty's here in
 6 town, so he's got plans to be productive, not only in
 7 therapy and aftercare, but also working.
 8 He's looked into transitional housing
 9 but needs to be out of custody to apply for that. He
 10 has a brother in the area who would be supportive of
 11 Mr. Schmid and his efforts to be compliant with
 12 probation.
 13 We just kind of feel that the history of
 14 this particular case, I think, is somewhat unique.
 15 Usually we wouldn't be here arguing when someone
 16 quits Wood Court, asking the Court to continue
 17 probation. But I think Mr. Schmid's case is somewhat
 18 unique, given the length of time he's been
 19 inconsistently -- the mental health court, the rider
 20 issue we had -- and notwithstanding all that,
 21 Mr. Schmid did well towards the end of his rider and
 22 has been cooperative while in custody and I don't
 23 believe there's been any issues that I'm aware of.
 24 And so we just feel like, perhaps given
 25 his specific circumstances, that he deserves a chance

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1 appropriate. IDOC will have the programming.
 2 They'll be able to provide him the proper exit
 3 strategy, and so I would be recommending revocation
 4 at this point, Your Honor.
 5 THE COURT: Mr. Schmid, do you wish to
 6 make any statement on your own behalf before I
 7 determine what to do?
 8 THE DEFENDANT: Well, if I could, Your
 9 Honor.
 10 THE COURT: Speak up for me.
 11 THE DEFENDANT: If I could, yes, sir.
 12 THE COURT: Yes.
 13 THE DEFENDANT: I've been going through
 14 a lot. I went through a divorce, mid-life crisis, I
 15 had everything fall apart on me. Some of the things
 16 the doctor said is to wean the stress out. I haven't
 17 really been able to do that.
 18 I finally got back into my son's life
 19 since I've been placed in custody. Also, my daughter
 20 has just turned 12, and she's in a situation where
 21 it's not the best at home. It's one of the things
 22 that she's requesting, to live with me.
 23 I have a job lined up. I really, I
 24 haven't had, in the last five years, I haven't had a
 25 good run at anything just because my mental health

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1 out on probation. There will be requirements as far
 2 as counseling and work go, that probation would
 3 continue to impose on him, but he'll have a little
 4 bit more, a little less anxiety than perhaps Wood
 5 Court would place on someone in Mr. Schmid's position
 6 with his mental health issues and those things.
 7 So we would ask the Court to continue
 8 him on probation and we would comply with whatever
 9 terms, as far as counseling and treatment go.
 10 THE COURT: All right, Mr. Winchester.
 11 MR. WINCHESTER: Thank you, Your Honor.
 12 In this case, we're going to ask for
 13 revocation. I believe the underlying sentence is two
 14 plus three. Where he has 21 months completed, he's
 15 nearing the end of his fixed time requirement. He's
 16 been given two shots at problem solving courts and a
 17 period of retained jurisdiction.
 18 I understand this wasn't a violation
 19 based on failure to comply with the rules, but where
 20 he's admitting that he cannot comply with the most,
 21 with the best level of services and supervision that
 22 we have to offer, I don't know that there's any other
 23 option we have but to put him on IDOC custody.
 24 Where he's so close to the end of his
 25 sentence, I do believe that revocation is

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1 issues, and with this shot, it has made the world of
 2 difference. And I know I've actually done my fixed
 3 and I could go to the revocation, but what I would
 4 like is one last chance to show the community,
 5 because I really haven't had a chance on probation at
 6 all, and when it comes to stress, I crumble, and I've
 7 been put on specialty courts and it's just high
 8 stress and high intensity, and I fold, I hate to say
 9 it.
 10 And I just didn't want to do that again.
 11 I would rather not do the, not waste your guys' time
 12 and endanger myself and the others in the program and
 13 be a cancer to the actual program.
 14 THE COURT: All right. Anything else?
 15 THE DEFENDANT: No, Your Honor.
 16 THE COURT: All right. Well, Mr. Schmid, I
 17 wish I could express to you how disappointed I am
 18 that we're here. I don't recall, in my 20-plus years
 19 of, 22 years working directly with the criminal
 20 justice system, I don't think I've ever put my own
 21 self and reputation on the line as much as I did with
 22 you to get things in place so that we could get you
 23 into a situation that I felt was productive.
 24 I went to the top of the tree and shook
 25 it to get you the help you needed, and I'm concerned

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1 that you're just saying, well, it's just too hard.
2 Well, it's hard for a reason; you need structured
3 help, and that requires the interface that Wood Court
4 gives or mental health court gives.
5 And given the nature of the charge here,
6 and the history that we've had prior to just
7 persistent and disruption until we got this
8 injectable medication going, I'm just very concerned
9 that you gave us so little time to work.
10 But that's your choice. My only option,
11 frankly, at this point is to revoke. I cannot count
12 on, given my duty to the community, having you on
13 probation without structure, and there's just not
14 anything out there, other than the direction we've
15 kind of built for you to give that structure.
16 So based upon that, your admission, I
17 shall find that you are in violation of your
18 probation. Given the particular circumstances of
19 this case and the community concerns and needs, I
20 shall revoke your probation and order execution of
21 the sentence. Give you credit for time served. Hope
22 that the department can find some way to get through
23 to it, but I can't here.
24 I've done everything I could, probably
25 done more than I should. It's going to take awhile

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1 for some of the wounds I caused to heal in order to
2 get you where you are, and I just, I'm very
3 disappointed that you gave it so little chance.
4 So you are hereby remanded to the
5 custody of the sheriff of Bonneville County for
6 delivery to the proper agency of the Idaho Department
7 of Corrections for execution of sentence.
8 Is there anything else at this time?
9 MR. CRANE: No, Your Honor.
10 THE COURT: You have 42 days from today's
11 date to file a notice of appeal. If you cannot
12 afford an attorney on appeal, the Court will appoint
13 an attorney to represent you, but you only have, in
14 the exercise of that right of appeal, you only have
15 42 days in which to file any notice.
16 If you wish to file anything under Rule
17 35 you have 14 days to do that, and any
18 post-conviction relief matters have to be raised
19 within one year. I hope you do better there because
20 I don't have anything left here. Thank you. You may
21 be excused.
22 (Whereupon, the proceedings concluded.)
23
24
25

13