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## State v. Moore Appellant's Brief Dckt. 44613

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 44613
	)	
v.	)	BLAINE COUNTY NO. CR 2015-612
	)	
ADRIENNE MOORE FKA ARNAIZ,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Following an evidentiary hearing, the district court found Adrienne Arnaiz violated the terms of her probation. The district court subsequently revoked her probation and executed her underlying sentence of ten years, with four years fixed, for grand theft. Ms. Arnaiz appeals.

Statement of Facts and Course of Proceedings

In December of 2015, Ms. Arnaiz pled guilty to one count of grand theft by embezzlement. (R., pp.106, 121.) Ms. Arnaiz was employed by a woman to care for the woman's dogs and perform other personal assistant tasks. (Presentence Investigation

Report (“PSI”),<sup>1</sup> pp.4–5.) Ms. Arnaiz used the woman’s credit card and pre-signed checks for personal purchases without the woman’s permission, such as buying items online and paying for car maintenance. (PSI, pp.4–5.) In February of 2016, the district court sentenced Ms. Arnaiz to ten years, with four years fixed, suspended her sentence, and placed her on probation. (R., pp.118–19, 121–24.) This was her first felony offense. (PSI, p.6.)

About six months later, in August of 2016, the State petitioned to revoke Ms. Arnaiz’s probation. (R., pp.133–34.) The State claimed Ms. Arnaiz violated her probation by failing to obey state law. (R., pp.140–41.) Ms. Arnaiz allegedly shoved her mother and pushed her step-father to the ground during an argument at her parents’ house. (R., pp.140–41.) She was arrested for a battery. (R., p.140.) The district court held an evidentiary hearing and found Ms. Arnaiz committed a willful probation violation. (R., pp.170–72; Tr., p.89, L.11–p.99, L.3 (district court’s findings).)

At the disposition hearing, the State recommended the district court retain jurisdiction (a “rider”). (Tr., p.111, Ls.23–25.) Ms. Arnaiz requested the district court reinstate her probation with additional local jail time. (Tr., p.117, Ls.10–13.) The district court rejected both recommendations. The district court revoked Ms. Arnaiz’s probation and executed her ten-year sentence. (Tr., p.126, Ls.13–19.) The district court also declined to reduce Ms. Arnaiz’s sentence sua sponte. (Tr., p.123, L.7–p.124, L.19.)

### ISSUE

Did the district court abuse its discretion when it revoked Ms. Arnaiz’s probation and executed her underlying sentence of ten years, with four years fixed?

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<sup>1</sup> Citations to the PSI refer to the fifty-seven page electronic document containing the confidential sentencing materials.

## ARGUMENT

### The District Court Abused Its Discretion When It Revoked Ms. Arnaiz's Probation And Executed Her Underlying Sentence Of Ten Years, With Four Years Fixed

The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines "whether the defendant violated the terms of his probation." *Id.* Second, "[i]f it is determined that the defendant has in fact violated the terms of his probation," the Court examines "what should be the consequences of that violation." *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

"After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court." *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). "A judge cannot revoke probation arbitrarily," however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). "The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision." *State v. Mummert*, 98 Idaho 452, 454 (1977). "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." *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant's conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

In this case, Ms. Arnaiz asserts the district court abused its discretion by revoking her probation. For her first probation violation on her first felony offense, the district court should have retained jurisdiction or imposed additional jail time. These alternative

sanctions would have provided adequate punishment for the violation while also allowing Ms. Arnaiz to continue her rehabilitative efforts.

Ms. Arnaiz has significant mental health issues and physical ailments that are best treated in the community, rather than in prison. She has been diagnosed with post-traumatic stress disorder (“PTSD”), borderline personality disorder, anxiety disorder, and bipolar disorder. (PSI, pp.13–15, 33.) At the time of the alleged violation, Ms. Arnaiz was being treated for PTSD, panic and anxiety, and premenstrual dysphoric syndrome at St. Luke’s Psychiatric Wellness Center. (Conf. Exs.,<sup>2</sup> pp.1–3.) Her nurse practitioner opined that Ms. Arnaiz’s interaction with her mother triggered some traumatic memories and feelings,<sup>3</sup> which led to her “strong physical reaction” in committing the battery. (Conf. Exs., p.2.) The nurse reported that Ms. Arnaiz’s symptoms have “significantly improved” through therapy and medication. (Conf. Exs., p.2.) Ms. Arnaiz also attended the SMART Recovery Groups at the PEER Wellness Center in Boise. (Conf. Exs., pp.4, 7; PSI, p.36.) She was an “active participant” and completed the online training course to become a facilitator of her support group. (Conf. Exs., p.4.) The executive director of the PEER Wellness Center described Ms. Arnaiz as motivated, determined, and an inspiration to others in the program. (Conf. Exs., p.4.) Similarly, a PEER Support Specialist wrote that Ms. Arnaiz worked to change her way of thinking and became a positive influence for others in the program. (Conf. Exs., p.7.) Ms. Arnaiz’s efforts to treat her mental health issues demonstrate that she could succeed in the community on probation.

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<sup>2</sup> Citations to the confidential exhibits refer to the eleven-page electronic document containing medical records and letters submitted by Ms. Arnaiz for disposition.

<sup>3</sup> Ms. Arnaiz was sexually abused as a child by her previous step-father. (PSI, p.8.)

In addition of Ms. Arnaiz's mental health issues, she has physical ailments that require medical attention and continued treatment. Ms. Arnaiz has a condition that causes painful blisters on her hands and feet as well as psoriatic arthritis. (PSI, p.15.) She obtained a grant for Stelara injections to help with the condition, but she had completed only two of the eight cycles of treatment at the time of the disposition hearing. (PSI, p.15; Tr., p.114, L.23–p.115, L.22.) The injections are akin to chemotherapy because they weaken the immune system for two to three weeks at a time. (Tr., p.115, Ls.4–11, p.117, L.20–p.118, L.6.) Due to the side effects, it is not advantageous to receive these injections in prison. (Tr., p.117, L.20–p.118, L.6.) Ms. Arnaiz also has hearing issues and possibly an undiagnosed brain tumor. (Tr., p.115, L.24–p.116, L.2; PSI, p.57.) In light of Ms. Arnaiz's mental health and physical issues, the district court should have imposed a lesser sanction to allow for Ms. Arnaiz to continue treatment with her current health providers. A lesser sanction such as additional jail time or a rider would serve as an appropriate deterrent and punishment without disrupting her treatment.

Further, Ms. Arnaiz's strong support system, new housing, and new employment show that she has the tools to succeed on probation. Ms. Arnaiz has a very supportive husband. (PSI, p.11; Conf. Exs., p.5.) He attended support groups and counseling sessions with her on a regular basis. (Conf. Exs., p.5.) He also stated that Ms. Arnaiz has dedicated herself to recovery and therapy over the last two years, (Conf. Exs., p.5.) In addition to the support of her husband, Ms. Arnaiz provided a letter of support from her former mother-in-law and a long-term friend. (Conf. Exs., pp.6, 8.) Her former mother-in-law stated that she had never seen Ms. Arnaiz angry or threaten others.

(Conf. Exs., p.6.) She wrote that Ms. Arnaiz had supported her during difficult times. (Conf. Exs., p.6.) Likewise, Ms. Arnaiz's friend described her as compassionate, patient, and having a positive impact on others. (Conf. Exs., p.8.) Her friend was confident Ms. Arnaiz would "take every experience as an opportunity to learn and grow." (Conf. Exs., p.8.) Along with her support system, Ms. Arnaiz and her husband recently obtained new housing and employment. They relocated to Mountain View RV Park and were hired as park managers. (Tr., p.113, L.21–p.114, L.19, p.120, L.21–p.121, L.16.) As managers, the RV park would cover their housing and utility costs and provide a salary. (Tr., p.121, L.23–p.121, L.8.) With that salary and her husband's income, Ms. Arnaiz would be able to pay for additional medical treatment and, most importantly, pay the costs of supervision and restitution. (Tr., p.121, Ls.1–8.)

In light of these facts, Ms. Arnaiz submits the district court's decision to sentence her to ten years in prison, with four years fixed, for her first probation violation (and first felony offense) was an abuse of discretion. The district court should have given her another opportunity to demonstrate her commitment to success on probation, with additional local jail time or a rider as a sanction for her violation. At this point, revocation was an unnecessarily harsh punishment that inhibited her mental health treatment and likely aggravated her physical condition while also preventing her from becoming a productive, contributing member of society.

CONCLUSION

Ms. Arnaiz respectfully requests that this Court vacate the district court's order revoking her probation and remand this case with instructions to reinstate probation or hold a new disposition hearing.

DATED this 28<sup>th</sup> day of March, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28<sup>th</sup> day of March, 2017, 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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DISTRICT COURT JUDGE  
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CHERI HICKS  
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KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
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\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

JCS/eas