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## State v. Sanchez Appellant's Brief Dckt. 44618

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44618
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR 2011-30108
v.	)	
	)	
WILLIAM JOEL SANCHEZ,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

Nature of the Case

Following an evidentiary hearing, the district court found William Sanchez violated the terms of his probation. The district court subsequently revoked his probation and executed his underlying sentence of seven (7) years in prison, with three (3) years fixed, for burglary. Mr. Sanchez appeals, asserting that the district court abused its discretion revoking probation.

Statement of the Facts & Course of Proceedings

In the late night hours of October 28, 2011, and early morning hours of October 29, 2011, William Sanchez entered into a Nampa Idaho, private residence to

take personal items. (R., p.13.)<sup>1</sup> Mr. Sanchez admitted to his role in the burglary and helped the police recover some of the remaining property so it could be returned to the homeowners. (R., p.13.) During his interview with the Nampa police department, he told the police about the planning involved and intent of the theft prior to entering the house, including the two other trips he and his co-defendants made that night to take items from the house. (R., p.13.)

On January 12, 2012, an Information was filed against Mr. Sanchez in Canyon County district court. (R., pp.24-25.) The Information charged Mr. Sanchez with one count of burglary in violation of Idaho Code section 18-1401 and grand theft in violation of Idaho Code sections 18-2403(1); 18-2407(1)(b). (R., pp.24-25.) On March 26, 2012, Mr. Sanchez pled guilty to one count of burglary, and upon that plea the state agreed to dismiss grand theft, Count Two of the Information. (R., pp.30-34.) Mr. Sanchez was sentenced on June 6, 2012. (R., pp.35-41.) The district court sentenced him to a unified term of seven (7) years with three (3) years fixed, and a period of probation of four (4) years. (R., p.38.) Mr. Sanchez was also given a fine of \$750.00, \$350 for his court appointed attorney, restitution of \$7,536.97 and court costs. (R., pp.38-39.)

On October 16, 2013, Mr. Sanchez admitted to multiple violations of his probation which included possessing controlled substances, failing to submit to random drug tests, failing to complete all drug rehabilitation programs, failing to report for office appointments without notifying his officer why he cannot attend and failing to pay court costs, fees and restitution. (R., pp.94-96.) At the disposition hearing, the district court

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<sup>1</sup> The record does not have consistently paginated bates number. Therefore all citations to the record will be the page number in the PDF.

revoked Mr. Sanchez's probation, imposed the original unified seven (7) year sentence, with three (3) years fixed and retained jurisdiction for three hundred sixty-five (365) days with the recommendation that he be placed in the CAPP program. (R., pp.148-150.) On March 12, 2014, at the rider review hearing, the district court placed Mr. Sanchez back on probation. (R., pp.161-163.) On September 30, 2015, Mr. Sanchez admitted to various violations of his probation, which included being charged with driving under the influence in Boise, ID; leaving the Third Judicial District without permission from his supervising officer, and being terminated by CAPP aftercare. (R., pp.218-220.) On November 30, 2015, at his disposition hearing, his probation was reinstated on the condition he enroll and graduate from the Canyon County Drug Court ("Drug Court"). (R., p.234.)

On July 27, 2016, an arrest warrant was issued for Mr. Sanchez based on allegations he again violated his probation. (R., pp.259-262.) Mr. Sanchez admitted to failing to attend random drug testing, smoking marijuana laced with cocaine, consuming alcohol and termination from Drug Court. (9/28/16 Tr., p.7, L.5 – p.8, L.9.) On October 31, 2016, at the disposition hearing, Mr. Sanchez asked for another opportunity at probation or an additional rider. (10/31/16 Tr., p.13, Ls.14-18.) The district court revoked Mr. Sanchez's probation and imposed the original unified seven (7) year sentence, with three (3) years fixed. (R., pp.271-273.) A Notice of Appeal was timely filed and Mr. Sanchez did not file a Rule 35 motion. (R., pp.275-278.)

### ISSUE

Did the district court abuse its discretion when it revoked Mr. Sanchez's probation and executed his underlying sentence of seven (7) years, with three (3) years fixed?

## ARGUMENT

### The District Court Abused Its Discretion When It Revoked Mr. Sanchez's Probation And Executed His Underlying Sentence Of Seven (7) Years, With Three (3) 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, Mr. Sanchez asserts the district court abused its discretion by revoking his probation. Although the court gave Mr. Sanchez opportunities to address his substance abuse throughout his period of probation, it did not properly take into

account how bad his drug and alcohol addiction was and the difficulty Mr. Sanchez would endure in his attempts to overcome it. The evidence available to the district court when Mr. Sanchez's probation was revoked shows that Mr. Sanchez continued to battle his substance abuse issues, despite his best efforts to control it. At the time his PSI was created, Mr. Sanchez had just turned twenty years old. (PSI, p.1.) Mr. Sanchez did not understand how bad his substance abuse problems were, telling the writer of the PSI that he "denied having a problem with alcohol or illegal drugs", and that he becomes intoxicated "[o]nce every six months." (PSI, p.8.) Nearly a year later, Mr. Sanchez acknowledged his substance abuse problem was effecting his everyday life. During the Moral Reconciliation Therapy ("MRT") program, Mr. Sanchez told about his drug use, disclosing he used marijuana almost every day for the past two-and-half years. (PSI, p.48.) During the MRT "Mr. Sanchez reported that working on his fifth step was an eye-opener for him as he was forced to examine relationships he had damaged, specifically the relationship with his children." (PSI, p.49.)

This realization also made Mr. Sanchez acknowledge that even though his substance abuse issues damaged his relationship with his children, it was his role as a parent that ultimately was a factor to his addiction as he felt he was unable to handle responsibility of being a parental figure which made him grow up too fast. (PSI, p.49.) His counselor even noted that once Mr. Sanchez completed this step his attitude changed and he became more involved in group activities, had a more serious attitude and was willing to learn about his addiction in order to make serious changes in his life. (PSI, p.49.) It was during this program that Mr. Sanchez acknowledged that "[a]bstinence will help me regain my life in order." (PSI, p.49.) Because of Mr. Sanchez's

realization, the addendum to the PSI acknowledged “Mr. Sanchez is in the contemplative stage of change as evidence by his reevaluation of how his substance use and criminality were detrimental to his life.” (PSI, p.51.) The PSI determined that Mr. Sanchez “will need to continue working on setting boundaries with women, using his refusal skills, and utilizing thoughts stoppers to help maintain sobriety.” (PSI, p.51.)

After this report, Mr. Sanchez continued to struggle with his drug and alcohol problem. As stated above, at his probation violation evidentiary hearing on September 30, 2015, Mr. Sanchez admitted to driving under the influence in Boise. (R., p.218.) Moreover, during his probation violation evidentiary hearing on September 28, 2016, Mr. Sanchez admitted to smoking marijuana laced with cocaine and consuming alcohol on February 27, 2016. (9/28/16 Tr., p.7, L. 21 – p.8, L.2.)

As stated earlier the district court gave Mr. Sanchez chances to address his substance abuse issues. However, Mr. Sanchez was still realizing the scope of his substance abuse problem and did not know how bad it was and how it negatively affected his life. It took Mr. Sanchez attending MRT to realize that the only way to regain order in his life was abstinence from drugs and alcohol. His continued difficulty on probation only evidences his realization that he must live a life free of drugs and alcohol. In light of Mr. Sanchez’s substance abuse problem, the district court should have imposed a lesser sanction to allow for Mr. Sanchez to continue treatment under probation supervision. A lesser sanction such as additional jail time or a rider would serve as an appropriate deterrent and punishment without disrupting his continued attempt at abstinence and sobriety.

In light of these facts, Ms. Sanchez submits the district court's decision to sentence him to seven (7) years in prison, with three (3) years fixed was an abuse of discretion. The district court should have given him another opportunity to demonstrate his commitment to success on probation, with additional local jail time or a rider as a sanction for his violation. At this point, revocation was an unnecessarily harsh punishment that inhibited his continued desire to remain free of drugs and alcohol while staying in the community, with the goal of becoming a productive, contributing member of society.

#### CONCLUSION

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

DATED this 17<sup>th</sup> day of April, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
AARON J. CURRIN  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17<sup>th</sup> day of April, 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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C/O OWYHEE COUNTY SHERIFF'S OFFICE  
20381 STATE  
HIGHWAY 78  
MURPHY ID 83650

BRADLY S FORD  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KRISTA HOWARD  
CANYON COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

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

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

AJC/eas