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State v. Matthews Appellant's Brief Dckt. 44666

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44666
Plaintiff-Respondent,)	
)	BINGHAM COUNTY NO. CR 2015-4709
v.)	
)	
PAULINE REBECCA MATTHEWS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, forty-six-year-old Pauline Rebecca Matthews pleaded guilty to felony possession of a controlled substance, methamphetamine. The district court imposed a unified sentence of seven years, with three years fixed. Ms. Matthews filed an Idaho Criminal Rule 35 (Rule 35) motion for a reduction of sentence, which the district court denied. On appeal, Ms. Matthews asserts the district court abused its discretion when it ordered her sentence into execution rather than retain jurisdiction.

Statement of the Facts & Course of Proceedings

Law enforcement officers, including Detective Herbert of the Bingham County Sheriff's Office, conducted a non-tribal search warrant for a residence in Fort Hall. (*See Presentence*

Report (*hereinafter*, PSI), p.3.)¹ The male in question produced two baggies of methamphetamine and told the officers they came from a house owned by James Whitmire. (PSI, p.3.) The following day, Bonneville County narcotics officers told Detective Herbert that Mr. Whitmire needed to be interviewed for drug activity. (PSI, p.3.) Mr. Whitmire reportedly had drugs delivered within the past week and commonly had drugs coming in and out of the RV on his property. (*See* PSI, p.3.) Mr. Whitmire's felony probation officer told Detective Herbert an agent's warrant had been issued for noncompliance with Mr. Whitmire's supervision. (*See* PSI, p.3.)

After requesting FBI assistance and obtaining a search warrant for Mr. Whitmire's property, officers served the search warrant on the motor home on the property. (*See* PSI, p.3.) At the motor home, officers contacted Ms. Matthews, who stated she had been living there for over a year. (PSI, p.3.) Ms. Matthews stated there was a pipe on the bedside table, but no drugs in the home. (*See* PSI, p.3.) A K9 hit on several spots inside and outside the RV. (PSI, p.3.) Ms. Matthews showed an officer the location of the methamphetamine pipe, which had residue inside. (*See* PSI, p.3.) Officers also found a marijuana cigarette and a blue bag containing rubber tubing, scales, a pipe, and needle caps. (*See* PSI, p.3.) Ms. Matthews was arrested and taken to the Bingham County Jail. (PSI, p.3.)

The State charged Ms. Matthews by Prosecuting Attorney's Information with one count of possession of a controlled substance, methamphetamine, felony, I.C. § 37-2732(c)(1), and one count of unlawfully possessing drug paraphernalia, misdemeanor, I.C. § 37-2734A. (R., pp.62-63.) The State also filed a Prosecuting Attorney's Information Part II charging Ms. Matthews

¹ All citations to the PSI refer to the 60-page PDF version of the presentence report and attachments.

with a persistent violator sentencing enhancement under I.C. § 19-2514. (R., pp.64-65.) Ms. Matthews entered a not guilty plea. (R., pp.79-81.)

Pursuant to a plea agreement, Ms. Matthews agreed to plead guilty to possession of a controlled substance, methamphetamine. (R., pp.104-14.) The State agreed to dismiss the drug paraphernalia count and to not pursue the persistent violator sentencing enhancement. (R., p.112; Tr., p.5, L.4 – p.6, L.7.) The State would follow the recommendations made at the time of sentencing in the presentence investigation report. (Tr., p.5, Ls.10-12.) If Ms. Matthews were accepted into a problem-solving court and agreed to complete such a program, the State would recommend probation at sentencing. (Tr., p.5, Ls.13-16.) The district court accepted Ms. Matthews' guilty plea. (Tr., p.14, L.25 – p.15, L.6.)

The presentence investigation report recommended “Ms. Matthews be sentenced to a period of incarceration with the Idaho Department of Correction.” (PSI, p.18.) At the sentencing hearing, the State recommended the district court impose a unified sentence of seven years, with three years fixed. (*See* Tr., p.28, L.24 – p.29, L.9.) Ms. Matthews recommended the district court retain jurisdiction. (Tr., p.25, L.1 – p.27, L.9.) The district court imposed a unified sentence of seven years, with three years fixed. (R., pp.133-35.)

Ms. Matthews filed a Rule 35 Motion for Reconsideration of Sentence within fourteen days from the date of the district court's judgment. (*See* R., pp.136-37.) The district court denied the Rule 35 motion. (R., pp.140-44.) On appeal, Ms. Matthews does not challenge the district court's denial of the Rule 35 motion.²

² The Idaho Supreme Court has held that “[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” *Id.*

Ms. Matthews then filed a Notice of Appeal timely from the district court's Order Denying Defendant's Motion for Rule 35 Relief (R., pp.145-47; *see* R., pp.154-57 (Amended Notice of Appeal).)

ISSUES

Did the district court abuse its discretion when it ordered Ms. Matthews' sentence into execution rather than retain jurisdiction?

ARGUMENT

Ms. Matthews asserts that the district court abused its discretion when it ordered her sentence into execution, rather than retain jurisdiction, because there is insufficient information in the record to determine that a suspended sentence and probation would be inappropriate. The district court should have instead followed Ms. Matthews' recommendation by placing her on a period of retained jurisdiction.

As the Idaho Court of Appeals has explained, retained jurisdiction is designed "to allow the trial court additional time to evaluate the defendant's rehabilitation potential and suitability for probation." *State v. Chapel*, 107 Idaho 193, 194 (Ct. App. 1984). "Probation is the ultimate objective sought by a defendant who asks a court to retain jurisdiction." *Id.* (citing *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982)). Whether to place a defendant on probation is a choice "committed to the sound discretion of the trial court." *Id.* Because probation is at issue, the standard of review for a district court decision on whether to retain jurisdiction is the "clear abuse of discretion" standard, with a focus on the criteria set forth in I.C. § 19-2521. *Id.* "Refusal to retain jurisdiction will not be deemed a 'clear abuse of discretion' if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521." *Id.*

Section 19-2521 provides that a sentencing court,

shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

- (a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
- (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- (c) A lesser sentence will depreciate the seriousness of the defendant's crime; or
- (d) Imprisonment will provide appropriate punishment and deterrent to the defendant; or
- (e) Imprisonment will provide an appropriate deterrent for other persons in the community; or
- (f) The defendant is a multiple offender or professional criminal.

I.C. § 19-2521(1). Additionally, while not controlling the discretion of the court, the following grounds,

shall be accorded weight in favor of avoiding a sentence of imprisonment:

- (a) The defendant's criminal conduct neither caused nor threatened harm;
- (b) The defendant did not contemplate that his criminal conduct would cause or threaten harm;
- (c) The defendant acted under a strong provocation;
- (d) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
- (e) The victim of the defendant's criminal conduct induced or facilitated the commission of the crime;
- (f) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that was sustained; provided, however, nothing in this section shall prevent the appropriate use of imprisonment and restitution in combination;

(g) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(h) The defendant's criminal conduct was the result of circumstances unlikely to recur; [and]

(i) The character and attitudes of the defendant indicate that the commission of another crime is unlikely.

I.C. § 19-2521(2).

Here, Ms. Matthews submits there is insufficient information in the record to determine that a suspended sentence and probation would be inappropriate. Specifically, on Ms. Matthews' substance abuse issues, she reported that methamphetamine was her preferred drug and she "[w]ent from getting high a couple times a week to getting high every day." (PSI, p.13.) Her GAIN-I assessment diagnosed her with "Amphetamine Dependence w/ Physiological Sx. – In a Controlled Environment." (PSI, pp.15, 28.) The GAIN-I assessment recommended Ms. Matthews "for Level 3.5 Residential Treatment to address her dependence on amphetamine, relapse potential and issues pertaining to her ongoing substance use." (PSI, pp.16, 36.)

Ms. Matthews now has the desire to overcome her substance abuse issues. At the sentencing hearing, Ms. Matthews told the district court, "I know I am a drug addict. I have been for years. But I can honestly say I am done. I am done this time." (Tr., p.30, Ls.2-6.) The presentence report stated Ms. Matthews "was afforded the opportunity to participate in felony drug court in Utah in 2014; however, she was suspended from that program when she absconded to Idaho and violated her probation." (PSI, p.13.) While she was incarcerated in Utah, Ms. Matthews completed a program with Mind-Altering Substances Anonymous, ten classes with the LDS Addiction Recovery Program, and a Planned Parenthood Empowered Women course. (See Tr., p.23, L.16 – p.25, L.24; Def. Exs. A-D.) Ms. Matthews' counsel explained the

participation in those programs was evidence that Ms. Matthews was “at a point where she’s ready to make a change.” (*See* Tr., p.25, Ls.16-22.) Counsel asserted, “[s]he didn’t just sit and let the time pass. She was actively engaged in trying to get help for her addiction which she knows she has.” (Tr., p.25, Ls.22-24.)

Ms. Matthews’ counsel also informed the district court Ms. Matthews “told me that she wants to be completely done with drugs.” (Tr., p.25, L.25 – p.26, L.1.) Counsel stated Ms. Matthews “had a niece who died from heroin use this last summer in July, and I think that’s affected her quite a bit, has . . . put the picture in front of her eyes very vividly of the reality of not only that drugs can rob one of their free will . . . but the very life that they have.” (Tr., p.26, Ls.1-7.) Ms. Matthews reported during the presentence investigation that she had decided she wanted to be sober “because she has been incarcerated for 10 months and her niece recently passed away and she could not attend the funeral.” (PSI, p.13.) At the sentencing hearing, Ms. Matthews’ counsel asserted Ms. Matthews “wants to live, and not just live, but she wants to live freely and be able to make her choices and not be ruled by this addiction.” (Tr., p.26, Ls.7-10.)

Ms. Matthews’ counsel further asserted Ms. Matthews “wants to be done. And now we just need to give her the tools, now that she’s in that mind-set, to continue with that.” (Tr., p.26, L.25 – p.27, L.2.) Counsel asserted, “I think a retained jurisdiction program would . . . at least get her started in the right direction to getting a handle on her drug addiction and get her some really good treatment for that.” (Tr., p.26, Ls.15-19.) According to Ms. Matthews’ counsel, “[a]fterwards, assuming she does well there, she could come out on probation and continue that treatment, which she knows she’s going to have to continue on. For the rest of her life, she’ll be battling this.” (Tr., p.26, Ls.15-21.)

Ms. Matthews submits that her substance abuse issues, and desire to overcome those issues, show that her “character and attitudes . . . indicate that the commission of another crime is unlikely.” *See* I.C. § 19-2521(2)(i). In light of the above, there is insufficient information in the record to determine that a suspended sentence and probation would be inappropriate. Thus, Ms. Matthews asserts that the district court abused its discretion when it ordered her sentence into execution, rather than retain jurisdiction. The district court should have instead followed Ms. Matthews’ recommendation by placing her on a period of retained jurisdiction.

CONCLUSION

For the above reasons, Ms. Matthews respectfully requests that this Court reverse the district court’s judgment and remand her case to the district court for the entry of an order placing her on a period of retained jurisdiction.

DATED this 1st day of June, 2017.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of June, 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:

PAULINE REBECCA MATTHEWS
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C/O JEFFERSON COUNTY SHERIFF'S OFFICE
200 COURTHOUSE WAY
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DARREN B SIMPSON
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CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas