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## State v. Smith Respondent's Brief Dckt. 44736

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LAWRENCE G. WASDEN  
Attorney General  
State of Idaho  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44736
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2007-812
	)	
TIFFANY MARIE SMITH,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Smith failed to establish that the district court abused its discretion by revoking her probation, imposed following her guilty plea to grand theft?

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

Smith pled guilty to grand theft and, on August 20, 2007, the district court imposed a unified sentence of 14 years, with two years fixed, suspended the sentence, and placed Smith on supervised probation for 14 years. (R., pp.52-57.) In December 2010, the state filed a motion for bench warrant for probation violation alleging that

Smith had violated her probation by being convicted of three felony counts of forgery and three misdemeanor counts of theft in the third degree in Iowa, and by failing to pay fines, fees, and restitution. (R., pp.65-68.) After serving six years in an Iowa prison for her crimes, Smith was transported back to Idaho where she admitted to having violated her probation by being convicted of forgery. (R., p.131; 10/25/16 Tr., p.5, L.4 – p.8, L.21.) The district court revoked Smith's probation but *sua sponte* reduced her sentence to three years, with one year fixed, pursuant to I.C.R. 35. (R., pp.134-37.) Smith filed a notice of appeal timely from the order revoking probation. (R., pp.138-41.)

Smith asserts that the district court abused its discretion by revoking her probation in light of family and community support, her previous employment as a nurse, and the fact that she was incarcerated for committing other crimes while on probation for the instant offense. (Appellant's brief, pp.3-5.) Smith has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within 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.

Smith is not an appropriate candidate for probation. Before being sentenced in this case, Smith was charged in Wisconsin and Iowa for ongoing criminal conduct, theft in the first degree, and issuing worthless checks. (PSI, pp.272-73.) Smith committed

those crimes, as well as the grand theft to which she pled guilty in this case, as part of a crime spree with several accomplices. (PSI, p.273.) After being sentenced in Idaho Smith was returned to Iowa to be incarcerated there for her crimes; during her incarceration, and after being moved to a lower security setting and while in work release, Smith passed several forged checks and was convicted of three counts of felony forgery and three misdemeanor counts of theft in the third degree. (PSI, pp.3-6.)

At the disposition hearing for Smith's probation violation, the district court noted that Smith had already been incarcerated for six years in Iowa, that her crimes had negatively affected the community, and that probation was not appropriate in light of the fact that Smith had committed new felony offenses while concurrently on probation in this case and in prison on other cases. (12/13/16 Tr., p.25, L.10 – p.30, L.7.) Probation was clearly not serving the purpose of rehabilitation in this case, as evinced by Smith's continued criminal behavior while incarcerated. Neither was probation achieving the goal of community protection, given Smith's crimes created more victims.

The district court considered all of the relevant information and concluded, "I don't think it's appropriate to place you on probation given that you committed new felony offenses while you were on both probation in this case, and in prison for those other cases." (9/15/15 Tr., p.30, Ls.1-5.) Smith's continued criminal behavior and further victimization of others did not merit continued probation. The state submits that Smith has failed to establish that the district court abused its discretion by revoking her probation, for reasons more fully set forth in the attached excerpt 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 orders revoking probation.

DATED this 9th day of August, 2017.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

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

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

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

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1 So, I'd ask you to consider, Judge, to  
 2 re-in -- reinstitute probation on those terms and  
 3 conditions, or any other terms and conditions that you  
 4 would think appropriate.  
 5 THE COURT: Mr. Schild, thank you.  
 6 MR. SCHILD: Thank you.  
 7 THE COURT: Ms. Smith, you have the right to  
 8 speak with the Court, you're not required to; is there  
 9 anything you would like to say?  
 10 THE DEFENDANT: I would.  
 11 THE COURT: Go ahead.  
 12 THE DEFENDANT: First, I would like to  
 13 acknowledge the State; he is absolutely correct. I was  
 14 placed on probation -- first I victimized I -- the state  
 15 of Idaho. I was part of a check-writing scheme in 2005;  
 16 it was multistate. I victimized this town.  
 17 I was placed on -- I was extradited here and  
 18 placed on probation in 2007. I was then returned back to  
 19 Iowa, where I was returned to Wisconsin to serve more  
 20 prison time. I was then returned back to Iowa to go back  
 21 to prison. I was released into a lower security setting,  
 22 where I was allowed out to do work release and furloughs.  
 23 I took advantage of that.  
 24 I, furthermore, picked up new charges.  
 25 What I can tell you is at that point in my

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1 life, I wasn't ready to change. I, furthermore,  
 2 victimized more people. I wasn't done, Your Honor. And  
 3 what I can tell you is, I take accountability for my  
 4 actions. I'm not sorry that I was caught; I'm sorry  
 5 because I did it. I'm sorry because today people still  
 6 pay the consequences. Today -- they pay today for the  
 7 things that I've done.  
 8 My kids grow up -- grow up without a mom.  
 9 People today pay more at the bank for fees. And I mean,  
 10 I see the ripple effect of the damage that I've caused.  
 11 And what I can tell you is that I started to change my  
 12 life probably around 2012.  
 13 I was, as the State said, placed in a  
 14 long-term treatment program. It's where I really had the  
 15 opportunity to look at myself. Since that time, I have  
 16 looked at myself. I looked at my thinking errors, I have  
 17 looked at my criminal conduct, I have looked at the  
 18 things that have brought me here today. I offer no  
 19 excuses for my behavior because I know there is not one  
 20 that's not good enough. I know what I have done is  
 21 wrong.  
 22 I further know that if you choose to  
 23 incarcerate me, I know that that's what needs to happen.  
 24 I don't think that, at this point, it is  
 25 any more beneficial. I've served a lot of prison time,

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1 Your Honor. I feel that I would really like the  
 2 opportunity to return to society.  
 3 In my presentence investigation, it said that  
 4 when I'm speaking I sound rehearsed, and by one's  
 5 perception I may because I've come across many Parole  
 6 Boards, and I have pled to be free for a while now. I  
 7 would like that opportunity, but I also know the  
 8 responsibility that comes with that opportunity.  
 9 In no way, shape, or form will my parents pay  
 10 my restitution; I will be doing that. The only thing  
 11 that I would like is the supportive environment because I  
 12 have been incarcerated a long time, and I don't -- I  
 13 would like to not be put in a high risk situation. I  
 14 know that I have to be reintegrated into society because  
 15 I have been incarcerated so long.  
 16 But I will say that my behavior speaks  
 17 volumes because it's been my experience, working with the  
 18 women in prison, that you can talk a good talk, but your  
 19 behavior speaks volumes. I have been without tickets, I  
 20 have not had a problem with my behavior. And that has  
 21 been a long time. Not just -- it has been multiple years  
 22 I've not had tickets.  
 23 And I guess, Your Honor, I'm asking you to  
 24 look at that. And I'm asking you not to give up on me,  
 25 and please don't hand me over to DOC. But you choose to

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1 do that, I understand why you do that because I probably  
 2 do deserve that.  
 3 And I guess I just apologize that we all have  
 4 to sit here today because I did make those poor choices,  
 5 and I thank you for your time.  
 6 THE COURT: Thank you, Ms. Smith. Thank you.  
 7 Ms. Smith, on your admissions to violating  
 8 the conditions of probation, I'll find that you have  
 9 willfully violated those conditions.  
 10 This is -- this case is unusual. In my  
 11 20 years of doing criminal law, I'm not sure I've seen a  
 12 case exactly like this. You are -- you're essentially in  
 13 prison when you come before the Court for sentencing in  
 14 this case. You've already been adjudicated in Wisconsin  
 15 and Iowa for similar offenses. Judge Neville places you  
 16 on probation, runs this case concurrent with those other  
 17 cases. I think it was Judge Neville's intent simply that  
 18 you would be jointly supervised by the parole officials  
 19 in those other states and the probation officials here.  
 20 Unfortunately for everyone, you chose to take  
 21 advantage of your opportunity on the work release program  
 22 and victimize other people in the state of Iowa. That  
 23 resulted in the probation violation motion that we're  
 24 here to address today being filed back in 2010. It also,  
 25 understandably, resulted in you remaining in prison in

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1 Iowa on those charges for significantly longer than you  
 2 might otherwise have had to do so.  
 3       The Interstate Agreement on Detainers doesn't  
 4 cover probation violation allegations; it only -- it only  
 5 grants rights to those people who are facing new charges.  
 6 So, for that reason, you simply sat and served your  
 7 prison time in Iowa from 2010 until now.  
 8       Apparently, the Iowa Department of  
 9 Corrections believes you're an appropriate candidate for  
 10 parole. And so, now you're here to address these  
 11 violations.  
 12       As far as I can tell, you don't have any  
 13 contacts with the state of Idaho; your folks live in  
 14 Washington. You've had this friend who you lived with in  
 15 Iowa at times. You have -- do you have time left on your  
 16 Wisconsin sentence?  
 17       THE DEFENDANT: I've discharged my Wisconsin  
 18 sentence.  
 19       THE COURT: All right. That's what I had  
 20 thought; I simply wanted to clarify.  
 21       You've got -- you've got 15 years remaining  
 22 on your Iowa sentence?  
 23       THE DEFENDANT: As long --  
 24       MR. SCHILD: 14.  
 25       THE DEFENDANT: -- as long as I remain good,

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1 I will discharge in 2018 on my 25-year ongoing criminal  
 2 conduct case.  
 3       THE COURT: All right. So, they do it  
 4 differently than here. You've got another two years of  
 5 supervision?  
 6       THE DEFENDANT: If I remain good and don't  
 7 lose any of my good time.  
 8       THE COURT: What's the worse case scenario,  
 9 you go back to prison and serve the rest of the 25 years?  
 10       THE DEFENDANT: 2033.  
 11       THE COURT: Well, on this -- I -- I can't --  
 12 I can't kind of put aside the suspicion that you are  
 13 entitled to significantly more credit than the credit  
 14 that I can appropriately find on the record before me,  
 15 Ms. Smith. As I indicated to your attorney, you're  
 16 entitled, under Idaho law, to credit if the -- if I  
 17 impose this sentence to -- well, whether I do or not, you  
 18 would be entitled to credit from the date that the  
 19 warrant was served upon you to today's date.  
 20       The only information I have in the Court's  
 21 record, at this point, is that the warrant was served  
 22 upon you October 3, 2016. You had 53 days prior to the  
 23 entry of judgment of credit that you had spent on this  
 24 case. That means that you have slightly less than six  
 25 months credit as you sit here today, unless that warrant

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1 was served on you many, many years ago, when it was first  
 2 issued. You've told your attorney you believe that that  
 3 was done. I don't have any evidence in the record from  
 4 which I can make that finding.  
 5       It's not lost on the Court that I think  
 6 Judge Neville's intent was that this case run  
 7 concurrently with your prison case in Iowa. Of course,  
 8 you've spent the last six years incarcerated for that  
 9 offense. I have some mind to kind of give you credit  
 10 for -- I can't give you credit officially. I simply --  
 11 I've taken into consideration that you spent the last six  
 12 years in custody in that case. I think, to some extent,  
 13 Judge Neville intended that to be credit for this case as  
 14 well, notwithstanding the fact that you -- this probation  
 15 violation was outstanding for the period of six years.  
 16       The victims in these offenses are both  
 17 national financial institutions; you owe a significant  
 18 amount of money to them, Ms. Smith. However, I'm  
 19 confident that they can collect on that judgment.  
 20 They're well-versed in collecting on money that's owed to  
 21 them without the assistance of the criminal justice  
 22 process.  
 23       I'm -- you know, I understand your request to  
 24 be released on probation, Ms. Smith. I guess I'm trying  
 25 to balance the fact that it appears you've been in

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1 custody essentially for these -- these acts for the last  
 2 six years with the fact that the taxpayers of the state  
 3 of Idaho have already gone to some significant expense to  
 4 adjudicate these charges, and wondering how much  
 5 additional expense the taxpayers of the state of Idaho  
 6 ought to incur to kind of supervise your rehabilitation.  
 7 You don't have any ties here when you're on parole to  
 8 another state.  
 9       Here's what I'm going to do, Ms. Smith. I'm  
 10 going to revoke your probation; I'm going to impose your  
 11 underlying sentence. I'll give you credit, as I have  
 12 indicated, toward the execution of that sentence.  
 13       Pursuant to Idaho Criminal Rule 35, I will  
 14 modify your sentence.  
 15       I'm hesitant on how do that, Ms. Smith,  
 16 because, like I said, I'm not sure that I have correctly  
 17 calculated your credit for time served, and the correct  
 18 calculation of that credit could effect the modifications  
 19 I make. I'm simply going to decide that issue based on  
 20 the record I have before me, that is that you have credit  
 21 for somewhat less than a year -- for somewhat less than  
 22 six months, to be precise.  
 23       I'll modify the Judgment of Conviction in  
 24 your case. It will be one year fixed, followed by two  
 25 years indeterminate, for a total of three years. In

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1 doing that sentence, Ms. Smith, I don't think it's  
 2 appropriate to place you on probation given that you  
 3 committed new felony offenses while you were on both  
 4 probation in this case, and in prison on those other  
 5 cases. However, I'm not -- it's not lost on me that  
 6 you've already spent five years in custody for your  
 7 choice to make -- to commit those acts.

8 I'm reducing the sentence in this case, but  
 9 imposing it, hopefully in a manner that gives you an  
 10 opportunity to be released relatively quickly on this  
 11 case on parole. The authorities here can coordinate with  
 12 the authorities in Iowa to release on parole, if that's  
 13 what they deem is appropriate. I've significantly  
 14 reduced the total amount of the sentence because I think  
 15 it's appropriate that you simply serve some punishment  
 16 for the acts you committed in Idaho, then that Idaho not  
 17 be burdened with your supervision further. You can  
 18 simply serve this case and be done.

19 Again, this runs concurrently with your  
 20 sentences in the Iowa case.

21 Mr. Schild, do you have questions about  
 22 the -- the Court's Rule 35 modifications?

23 ATTORNEY 3: I do not, Judge. Thank you.

24 THE COURT: All right.

25 Ms. Smith, I think this is going to give you

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1 an opportunity to be released on parole relatively  
 2 shortly, ma'am. You'll have some additional time to  
 3 serve in Idaho; I know that's not what you wanted, but  
 4 certainly six months is a whole lot less than 12 years  
 5 you had over your head before you walked in today.

6 I want to encourage you. It appears that you  
 7 have convinced the authorities in Iowa that you're an  
 8 acceptable candidate for parole. I have no doubt that  
 9 you can convince the authorities in Idaho as well.  
 10 You're certainly going to have to make decisions  
 11 differently if you're released on supervision and when  
 12 you're ultimately released from both of these cases.

13 Given my decision today, that's going to be  
 14 around the same period of time, as long you're good. I  
 15 encourage you to keep up the -- the work that you've put  
 16 in so far. When you get released into the community,  
 17 make choices to live in a different manner than you were  
 18 eight year ago.

19 Do you have any questions for the Court,  
 20 Ms. Smith?

21 THE DEFENDANT: I don't. Thank you for your  
 22 time.

23 THE COURT: Ms. Smith, you have the right to  
 24 appeal this order revoking, imposing, and amending your  
 25 prison sentence. That appeal must be taken within 42

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1 days of today's date. In that appeal, you have the right  
 2 to the assistance of Counsel. If you're indigent, the  
 3 costs of your attorney and the costs of the appeal will  
 4 be paid for by the State.

5 Any questions about your appeal rights,  
 6 Ms. Smith?

7 THE DEFENDANT: No.

8 THE COURT: Good luck to you, ma'am.

9 THE DEFENDANT: Thank you.

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11 (The proceedings concluded at 11:25 a.m.)

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