1-31-2013

State v. Easley Respondent's Brief Dckt. 39710

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. KRYSTAL LYNN EASLEY, Defendant-Appellant.	)	No. 39710, 39711 Twin Falls Co. Case No. CR-2011-1200, CR-2010-7265

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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Nature of the Case

This case is before the Court on appeal from the district court's decision revoking Krystal Easley's probation and executing a reduced sentence.

Statement of Facts and Course of Proceedings

In August 2005, Defendant Krystal Easley consented to a police search of her car and person that yielded two pipes and a container with methamphetamine residue. (11/22/2005 PSI, p. 2.) Easley later pleaded guilty to possession of a controlled substance. (R., pp. 59-60.[1]) The district court sentenced Easley to a unified term of four years with two years fixed, but suspended sentence and ordered supervised probation subject to conditions. (R., pp. 82-86.)

In September 2007, Easley admitted to probation violations, including absconding and not staying in touch with her probation officer. (R., p. 111.) At her disposition hearing the following month, the district court granted the state's motion to revoke Easley's probation, and re-imposed her original sentence; but the court again ordered probation subject to conditions. (R., p. 115.)

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[1] Citations to the Court Record reference the electronic copy's pagination.

In July 2010, Easley admitted to further probation violations. (R., pp. 178-80.[2]) This time, her admissions included possessing and using methamphetamine and violating a no contact order. (R., p. 180.) At her disposition hearing in September 2010, the district court granted the state's (second) motion to revoke probation, and again re-imposed her original sentence. (R., p. 197.) This time, the court retained jurisdiction for Easley to participate in a rider program. (R., pp. 197-98.) At the rider review hearing in February 2010, the district court suspended the sentence and once again ordered probation subject to conditions. (R., pp. 205-07.)

In April 2011, the state filed a third motion to revoke probation. (R., pp. 214-16.) In November 2011, Easley admitted the violations (R., p. 233), which included failing to provide drug tests, actively avoiding supervision by her probation officer, and absconding. (R., pp. 215-16.) The district court reinstated probation and ordered her to undergo a substance abuse assessment and a mental health examination. (R., pp. 234, 236.)

Sometime around October 2011, Easley again violated probation by providing false information to law enforcement. (R., p. 242.) In December 2011, Easley admitted the violation. (R., p. 258.) At the disposition hearing in January 2012, the district court revoked probation for the fourth time, and executed the sentence. (R., pp. 268-69.) Easley timely appealed. (R., p. 462.[3])

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[2] Around this time, the district court began using a second case number (#10-7265) in addition to that for her original offense (#05-7711). (R., p. 183.)

[3] In March 2012, Easley's appeals on the two state court cases were consolidated. (R., p. 476.)

In April 2012, transcripts of the following hearings were lodged in the court record: 10/17/05 Entry of Guilty Plea Hearing, 11/28/05 Sentencing Hearing, and 1/31/12 Disposition Hearing. (R., p. 478.) In July 2012, Easley's counsel filed a motion to augment the record to include transcripts from the following hearings: 9/17/07 Admit/Deny Hearing, 10/29/07 Disposition Hearing, 2/22/11 Rider Review Hearing, 11/15/11 Admit/Deny Hearing, and 12/5/11 Admit/Deny Hearing. (7/27/12 Appellant's Mot. to Augment.) This Court granted the motion in part and denied in part, adding to the record only transcripts of the 11/15/11 Admit/Deny Hearing, and the 12/5/11 Admit/Deny Hearing.[4] (8/13/12 Order.)

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[4] The State did not object to the admission of these transcripts, but objected to transcripts of the earlier probation violation hearings because Easley's notice of appeal as to those probation revocations was untimely. (See 7/31/12 Objection in Part.)

ISSUES

Easley states the issues on appeal as:

1. Did the Idaho Supreme Court deny Ms. Easley due process and equal protection when it denied her Motion to Augment with the requested transcripts?

2. Does the Fifth Judicial District's practice, which allows the prosecutor to prevent a district court from considering the placement of a defendant into mental health court violate Idaho's separation of powers doctrine?

3. Does the Fifth Judicial District's practice, which allows the prosecutor to prevent a district court from considering a defendant as a candidate for mental health court violate the constitutional requirement that all courts of the same class have uniform judicial powers, procedures, and practices?

4. Did the district court abuse its discretion when it revoked Ms. Easley's probation?

5. Did the district court abuse its discretion when it failed to further reduce Ms. Easley's sentences *sua sponte* upon revoking probation?

(Appellant's brief, p. 5.)

The state rephrases the issues as:

1. Has Easley failed to show that transcripts she sought to add to the appellate record were relevant or necessary for adequate, effective review, and thus failed to demonstrate a due process or equal protection violation by this Court in denying her request?

2. Has Easley failed to establish that the Fifth Judicial District's practice of giving prosecutors veto power over participation in mental health court violates Idaho's Constitution?

3. Has Easley failed to demonstrate that the district court abused its discretion by revoking Easley's probation upon her admission to repeated probation violations, or by reducing Easley's sentence less than she wanted?

ARGUMENT

I.

Easley Has Failed To Show That Transcripts She Sought To Add To The Appellate Record Were Relevant Or Necessary For Adequate, Effective Review, And Thus Fails To Demonstrate A Due Process Or Equal Protection Violation By This Court In Denying Her Request

A. Introduction

Easley requested and was provided transcripts from hearings pertaining to her underlying offense and conviction, as well as her most recent admissions to probation violations. (8/13/12 Order.) However, this Court denied her request for transcripts of a rider review hearing and an earlier probation violation hearing. (Id.) Easley argues that the Court's denial of these transcripts violates her right to due process and equal protection. (Appellant's brief, pp. 6-20.) Because Easley misapplies the relevant law, her arguments fail.

B. Standard Of Review

Where, as here, a defendant appeals the denial of a motion to augment the record, the Idaho Court of Appeals will evaluate and rule on it as a renewed motion. State v. Morgan, 153 Idaho 618, __, 288 P.3d 835, 837 (Ct. App. 2012). A motion to augment is appropriately renewed where new evidence or the parties' briefing has clarified or expanded the issues on appeal, thus supporting addition of the requested documents. Id. Here, as in Morgan, there does not appear to be sufficient basis to warrant a renewed motion to augment. Id. But, assuming the motion was properly raised, see id., the state now responds on the merits of Easley's claim.

C. Denial Of The Motion to Augment Does Not Violate Easley's Due Process Right Because The Requested Documents Are Not Relevant To The Issues On Appeal

Easley argues that denial of her motion to augment the record violates her right to due process. (Appellant's brief, pp. 7-17.) In support, Easley offers a broad discussion of Idaho case law, but fails to clearly identify the applicable law. Under Idaho law, the appellate court must consider whether Easley has been denied "a record on appeal that is sufficient for adequate appellate review of the errors alleged regarding the proceedings below." Morgan, 153 Idaho at __, 288 P.3d at 838 (citations omitted). Although the record on appeal is not confined to those facts arising between sentencing and the probation revocation appealed, id. (citing State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 8 (Ct. App. 2009)), it need not include "*all* proceedings in the trial court up to and including sentencing." Id. (emphasis original). Rather, the appellate court will consider those elements of the trial court record *relevant* to the probation revocation issues and that are properly part of the appellate record. Id.

In Morgan, similar to this case, the defendant had more than one probation violation admission hearing, and more than one disposition hearing. Id. at 837. On appeal, Morgan moved to augment the record to include hearing transcripts regarding his initial probation violation, but was denied. Id. The Morgan court ultimately hung its hat on the defendant's untimely objection to the clerk's record under Idaho Appellate Rule 29(a). Id. However, the substantive rule articulated in Morgan still applies: that the appellate court need only consider those elements of the record below that were germane to the trial court's probation revocation decision. Id. To prevail on Easley's first issue, she must show that the transcripts from proceedings relating to her first

probation violation were germane to the trial court's revocation decision challenged in this appeal.[5] Easley fails to do so.

Notably, the Morgan court said, "[t]his Court will not assume the omitted transcripts would support the district court's revocation order since they were not before the district court in the [final] probation violation proceedings, and the district court gave no indication that it based its revocation decision upon anything that occurred during those prior hearings." Id. at 838. As in that case, the district court here gave no indication that its decision revoking Easley's probation and imposing sentence was based on information provided in prior hearings but *not* for her final disposition hearing. (1/31/12 Disposition Tr.) The transcript reflects instead that the court revoked Easley's probation based on information *provided* for the final hearing that meticulously chronicled Easley's history of probation violations and unresponsiveness to rehabilitative programming. (1/31/12 Disp. Tr., pp. 31-38.)

Easley has failed to show that transcripts from her prior hearings would be at all relevant for review of the district court's decision revoking Easley's probation and imposing sentence. Absent any relevance, Easley has not shown that exclusion of the transcripts in the appellate record hinders her counsel's ability to provide effective assistance. (See Appellant's brief, pp. 18-19.) Accordingly, Easley's due process arguments fail.

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[5] As discussed in the State's objection to Easley's initial motion to augment, this Court lacks jurisdiction to hear a challenge to the first probation violation. (See 7/31/12 Objection in Part.)

D. Easley Has Failed To Show The Requested Transcripts Are Needed For Adequate And Effective Review, So As To Support An Equal Protection Challenge

Easley also argues that the court's denial of her motion to augment the record violates her right to equal protection under the law. (Appellant's brief, pp. 7-17.) Easley cites a number of Idaho statutes and rules that she argues require transcripts to be provided for indigent defendants at county expense. (See Appellant's brief, p. 7.) According to Easley, the court's denial of her motion amounted to disparate treatment based on her indigence. (Id. at 8.) However, the statutes and cases cited by Easley do not support her argument.

The U.S. Supreme Court has said that "[d]estitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." Griffin v. Illinois, 351 U.S. 12, 19, 76 S.Ct. 585, 591 (1956). The Griffin court specifically provided that its holding did not require a state to pay for transcripts whenever a defendant requests it; rather, "adequate and effective appellate review" may be provided to indigent defendants through other means. Id. at 20, 76 S.Ct. at 591.

In her initial motion to augment, Easley failed to demonstrate that transcripts of initial probation violation proceedings are needed to insure adequate and effective appellate review. (Appellant's Mot. to Augment.) Thus, this Court appropriately denied her motion. (8/14/12 Order.) On her renewed request, Easley again fails to demonstrate that the requested transcripts are necessary. Even if she did demonstrate that those records were in some way relevant to her appeal, Easley has not established

that a transcription of proceedings at county expense is the only way to satisfy her right to equal protection. Griffin, 351 U.S. at 20, 76 S.Ct. at 591.

Easley contends that, "if an indigent defendant requests a transcript, the transcript must be created at county expense." (Appellant's brief, p. 7.) One statutory provision cited by Easley provides that the court reporter shall be paid at county expense where the accused lacks financial means to pay. I.C. § 1-1105(2). However, that provision applies to transcripts of proceedings *ordered by the court* following a party's written request. I.C. § 1-1105(1). This does not apply because this Court did not order but instead denied the transcripts requested. The second provision cited by Easley requires county reimbursement for the cost of transcription "necessarily incurred" in representing an indigent defendant. I.C. § 19-863(a). As already discussed, Easley has made no showing whatsoever that the requested transcripts are necessary.

Easley also argues that production of transcripts by an indigent defendant is required by Idaho Criminal Rule 5.2. But this rule concerns requests made to the *district court* for purposes of a criminal trial. The Idaho Appellate Rules, not the Criminal Rules, apply to Easley's appeal. No Idaho Appellate Rule requires the appellate court to provide a county-paid transcript upon request by an indigent defendant.

For these reasons, the court should deny Easley's first argument renewing her Motion to Augment.

II.

Easley Has Failed To Show That The Fifth Judicial District's Practice Of Giving Prosecutors Veto Power Over Participation In Mental Health Court Violated Idaho's Constitution

A. Introduction

Easley raises two constitutional challenges to the prosecutor's veto of her placement in mental health court. (Appellant's brief, pp. 21-37.) According to Easley, this veto power, held by the prosecutor in Idaho's Fifth Judicial District, violates both the separation of powers doctrine, and the requirement of uniformity in judicial powers and practices. (Id.) Because she cannot establish a constitutional violation, Easley's arguments fail.

B. Legal Standard

Easley's constitutional challenges are legal issues that the appellate court reviews *de novo*. State v. Olson, 138 Idaho 438, 440, 64 P.3d 967, 969 (2003). Easley acknowledges she did not object to the prosecutor's veto power. (Appellant's brief, p. 22.) Where a party asserts an unobjected-to fundamental error, she must show that the error (1) violates an unwaived constitutional right, (2) that it plainly exists, (3) and that it was not harmless. State v. Perry, 150 Idaho 209, 228, 245 P.3d 961, 980 (2010).

As to the second prong, an error is plain where "existing authorities have unequivocally resolved the issue in the appellant's favor." State v. Hadden, 152 Idaho 371, 375, 271 P.3d 1227, 1231 (Ct. App. 2012). As demonstrated below, Idaho law does not support that there was a constitutional violation. Accordingly, she does not satisfy any of the required elements for fundamental error.

C. Easley Has Failed To Show That The Prosecutorial Veto Power Permitted Under The Idaho Drug Court and Mental Health Court Act Violates The Separation Of Powers Doctrine

In challenging the prosecutor's veto power, Easley does not address the enabling statute, the Idaho Drug Court and Mental Health Court Act.[6] I.C. §§ 19-5601, et seq. Importantly, the Fifth Judicial District's practice of requiring prosecutorial approval for a defendant to participate in drug or mental health court, is expressly permitted by the Act. See I.C. § 19-5606. To understand this and the Act's impact here, some background is warranted.

The Act established Idaho's drug and mental health courts as "innovative diversion efforts," State v. Rogers, 144 Idaho 738, 739 n.1, 170 P.3d 881, 882 (2007), to alleviate jail and prison overcrowding, and address mental health and substance-abuse needs of offenders, among other goals. I.C. § 19-5602. The Act requires creation of a "coordinating committee" involving judges and court administrators, prosecutors and public defenders, treatment providers, law enforcement, legislators, mental health professionals, and a representative of the governor's office, among others. I.C. § 19-5606. This collaborative committee is responsible for developing guidelines regarding issues including eligibility, treatment, and evaluation. Id. Under the Act, "[n]o person has a right to be admitted into a mental health court" or drug court. I.C. §§ 19-5609(1), 5604(1).

Where a statute's language is unambiguous, the legislature's clearly expressed intent is given effect. State v. Dickerson, 142 Idaho 514, 517, 129 P.3d 1263, 1266 (Ct.

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[6]The law was first enacted by the Idaho legislature in 2001 as the Idaho Drug Court Act, and amended in 2005 as the Idaho Drug Court and Mental Health Court Act. I.C. §§ 19-5601, et seq.

App. 2006) (citations omitted). If ambiguous, the court will try to determine the legislative intent, and will construe the statute given its language, the reasonableness of proposed interpretations, and policy considerations. Id. By its language, the Act here provides for development of eligibility guidelines by a committee including members of all branches of government. I.C. § 19-5606. Nothing in the Act's language precludes a guideline wherein participation is determined by the county prosecutor. The question is whether the prosecutorial veto power, as permitted by the Act, violates the separation of powers doctrine.

Article V, Section 13 of the Idaho Constitution provides that "[t]he legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a coordinate department of the government . . .." Idaho Const. art. v, sect. 13. Whether the Act violates this separation of powers provision is one of first impression in Idaho. However, other jurisdictions' treatments of similar statutes offer guidance.

The Oregon Court of Appeals addressed the issue with respect to drug court in State v. Graves, 58 Or.App. 286, 648 P.2d 866 (Ct. App. 1982). There, the court noted that the decision to prosecute a defendant is well-established. Id. at 290, 648 P.2d at 868. Reasoning that "the power to decide whether to divert a defendant for drug treatment is no more intrusive on the judicial branch than the power to decide whether to take any action against a defendant at all," the Graves court found no separation of powers violation. Id. at 290-91, 648 P.2d at 868-69.

The Washington Court of Appeals also addressed the issue as to drug court in State v. DiLuzio, 121 Wash.App. 822, 90 P.3d 1141 (Ct. App. 2004). In that case, the

court noted that the purpose of drug court – to reduce recidivism and substance abuse among nonviolent abusing offenders[7] – "is best met when the prosecutor makes the initial eligibility determination." Id. at 828, 90 P.3d at 1144. This is true, the court found, because "the prosecutor is more involved with the defendant to best assess his or her eligibility." Id. The "practice of allowing the prosecutor to make the initial determinations of drug court eligibility [is not] an unconstitutional delegation of judicial power to the prosecutor." Id. at 828, 90 P.3 at 1144. Thus, the DiLuzio court held that statute did not violate the separation of powers doctrine. Id.

The court in DiLuzio cited similar holdings by the Louisiana Supreme Court, State v. Taylor, 769 So.2d 535, 537 (La. 2000), and the Oklahoma Court of Criminal Appeals, Woodward v. Morrissey, 991 P.2d 1042, 1045 (Ok.App. 1999). Id. at 828-29, 90 P.3d at 1144-45.

The courts' analyses in Graves and DiLuzio apply here. Mental health court, like drug court, involves the collaborative efforts of all branches of state government, as well as community organizations and professional providers. See I.C. §§ 19-5602, et seq. As recognized by the court in DiLuzio, the prosecutor is in the best position to assess a defendant's eligibility. DiLuzio, at 828, 90 P.3d at 1144.

At Easley's disposition hearing, her counsel expressed that mental health evaluators recommended Easley's participation in mental health court (1/31/12 Tr., p. 38, Ls. 18-23). Although a mental health evaluator can certainly identify if someone has a mental health need, this is only one consideration in the eligibility calculus. Other factors include the defendant's likely success in mental health court, and optimal use of

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[7] DiLuzio, 121 Wash.App. at 825, 90 P.3d at 1143.

the state's limited resources. See I.C. § 19-5606 (coordinating committee shall "recommend funding priorities and decisions per judicial district").

The prosecutor acknowledged that Easley "may have or does have some mental health issues," but recommended that the issues could be addressed outside of mental health court. (1/31/12 Tr., p. 37, L. 23 – p. 38, L. 1. Also, the prosecutor noted that Easley had "been less than up front with law enforcement," and had "absconded probation." (1/31/12 Tr., p. 38, Ls. 2-4.) These observations addressed other relevant aspects of the decision to pursue mental health court.

The discretion afforded the prosecutor in determining Easley's mental health court eligibility parallels the wide discretion given prosecutors in deciding what charge(s) to file. See State v. Hernandez, 136 Idaho 8, 12, 27 P.3d 417, 421 (Ct. App. 2001) (citation omitted). Just as the facts in a case may legitimately invoke more than one criminal statute, id., the facts may also support multiple options for addressing the mental health issues of a defendant. The legislature acknowledged the variability of these facts in mandating the formation of a mental health coordinating committee to decide eligibility, among other decisions. I.C. § 19-5606.

Other than the veto of Easley's participation in mental health court, the prosecutor did not hinder the district court's ability to sentence Easley. Indeed, the district court reduced Easley's sentence to two and a half years fixed, four and a half indeterminate (1/31/12 Tr., p. 50, Ls. 5-8), from the prosecution's recommendation of

three years fixed with four years indeterminate[8] (1/31/12 Tr., p. 38, Ls. 7-9). Also, the court recommended a therapeutic community placement or other "mental health modalities that may be available" in the penitentiary. (1/31/12 Tr., p. 49, L. 25 – p. 50, L. 3.) These options suggest that mental health court is not the sole means of addressing defendants' mental health concerns; the availability of alternatives is yet another consideration for a defendant's candidacy into mental health court.

Ultimately, Easley has failed to show that the requirement of prosecutorial approval for her participation in mental health court is an impermissible encroachment on judicial power. Rather, the record demonstrates that the prosecutor's exercise of veto power was squarely within its valid legislatively delegated authority. Given the Act's objectives, the multiple considerations for participation in mental health court, and the district court's otherwise unencumbered sentencing power, there was no separation of powers violation here.

D. Easley Has Failed To Demonstrate A Violation Of Uniform Judicial Powers, Procedures, And Practices

Easley also argues that the prosecutor's veto power violates the constitutional requirement that all courts of the same class have uniform powers, procedures, and practices under Article V, Section 26 of the Idaho Constitution. (Appellant's brief, pp. 35-37.) That section provides that:

> All laws relating to court shall be general and of uniform operation throughout the state, and the organized judicial powers, proceedings, and practices of all the courts of the same class or grade, so far as regulated

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[8] This was the prosecutor's recommendation for the 2010 case, to run concurrently with a two year fixed, two year indeterminate sentence for Easley's 2005 case. (1/31/12 Tr., p. 38, Ls. 7-8.)

> by law, and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform.

Idaho Const., art. V, § 26. According to Easley, this provision was violated because the veto power afforded prosecutors in the Fifth Judicial District, over eligibility into mental health court, is inconsistent with mental health court practices in other districts. (Appellant's brief, pp. 35-36 (citing 1/31/12 Tr., p. 40, Ls. 17-22).)

This argument relies on the premise that the prosecutor's veto power is a court procedure or practice. As argued in the preceding section, the requirement of prosecutorial approval for participation in mental health court is not a judicial function. Instead, it is a function validly conferred to the prosecutor under the language of the Act. See I.C. 19-5606. Because Easley cannot show that the prosecutorial veto power is a judicial function, she also fails to show lack of uniformity in judicial powers, procedures, or practices.

III.

Easley Has Failed To Demonstrate That The District Court Abused Its Discretion In Revoking Easley's Probation Upon Her Admission To Repeated Probation Violations, Or By Reducing Easley's Sentence Less Than She Wanted

A. Introduction And Legal Standard

Easley's remaining arguments assert that the district court abused its discretion in revoking her probation and imposing sentence. On review of a district court's decision revoking probation, the appellate court considers (1) whether the defendant violated probation, and (2) whether probation should be revoked or continued. State v. Sanchez, 149 Idaho 102, 105, 233 P.3d 33, 36 (2009). The appellate court will defer to the district court's credibility determinations, and will not disrupt the district court's decision revoking probation absent showing that it abused its discretion. Id. Easley

concedes that she violated probation. (Appellant's brief, p. 38.) Thus the question is whether the trial court abused its discretion in revoking her probation.

As to sentencing, a trial court's sentence that is within statutory limits must also be undisturbed absent showing that it clearly abused its discretion. State v. Windom, 150 Idaho 873, 875, 253 P.3d 310, 312 (2011) (citation omitted). To carry her burden, an appellant must show that her sentence is excessive "under any reasonable view of the facts," considering the objectives of criminal punishment: protection of society, deterrence, rehabilitation, and retribution or punishment. Windom, 150 Idaho at 876, 253 P.3d at 313. In reviewing an excessive sentence claim, the appellate court independently reviews the record, examining the nature of the offense, and the offender's character. State v. Delling, 152 Idaho 122, 132, 267 P.3d 709, 719 (2011) (citation omitted). Where reasonable minds could differ as to whether a sentence is excessive, the appellate court will not disturb it. State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011) (citation omitted).

In determining whether the district court abused its discretion – as to a probation revocation or in sentencing – the appellate court considers (1) whether the trial court understood that the issue was discretionary; (2) whether the trial court acted within its discretionary scope and under applicable legal standards; and (3) whether the trial court exercised reason. Miller, 151 Idaho at 834, 264 P.3d at 941 (citation omitted). Here, Easley challenges only the final consideration, whether the district court exercised reason.

B. Easley Has Not Met Her Burden Of Showing That Her Probation Revocation Was An Abuse Of Discretion, Or That Her Sentence Was Excessive Under Any Reasonable View Of The Facts

Given the facts, Easley does not come close to showing that the district court abused its discretion. As to her probation revocation, Easley's history of repeated probation violations more than supports revocation. (R., pp. 111, 178-80, 233, 242.) After no fewer than four motions to revoke probation, to which Easley admitted violations, it is plain that the goal of rehabilitation was not being satisfied. See State v. Leach, 135 Idaho 525, 529, 20 P.3d 709, 713 (Ct. App. 2001). There is simply no basis to disturb the district court's decision revoking probation.

As to sentencing, the district court reduced Easley's sentence to two and a half years fixed from the prosecutor's recommendation of three years fixed (to run concurrent with term of two years fixed in other case). (1/31/12 Tr., p. 38, Ls. 4-9; p. 50, Ls. 5-8.) This reduced sentence, in light of Easley's repeated probation violations was certainly reasonable – even generous. In arguing her sentence is excessive, Easley notes only that she suffers from mental health problems, and that she has family support. As discussed above, there may be therapeutic programs available in the penitentiary system to address her mental health concerns. (See 1/31/12 Tr., pp. 59-50.) In light of the record, Easley has not satisfied her burden of showing the district court's order should be disturbed under any reasonable view of the facts.

CONCLUSION

For the foregoing reasons, the state respectfully requests that this court deny Easley's appeal.

DATED this 31st day of January 2013.

DAPHNE J. HUANG
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of January 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SHAWN F. WILKERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

DAPHNE J. HUANG
Deputy Attorney General

DJH/pm