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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 44982
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2016-349
v.	)	
	)	
KATIE JO MEYER,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE NANCY A. BASKIN**  
District Judge

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**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL .....	2
ARGUMENT .....	7
The District Court Abused Its Discretion When It Applied An Impermissibly Low Evidentiary Standard – Requiring Less Than A Preponderance Of The Evidence – To Find Ms. Meyer Violated Her Probation .....	7
A. Introduction .....	7
B. Standard Of Review .....	8
C. The District Court Failed To Comply With Ms. Meyer’s Right to Due Process When It Permitted The State To Establish The Violation By Proof <i>Less</i> Than A Preponderance Of The Evidence .....	8
D. The Error Harmed Ms. Meyer’s Right .....	10
CONCLUSION .....	11
CERTIFICATE OF MAILING .....	12

**TABLE OF AUTHORITIES**

Cases

*Gagnon v. Scarpelli*, 411 U.S. 778 (1973) ..... 8, 9

*Kinney v. Tupperware Co.*, 117 Idaho 765 (1990) ..... 10

*Masterson v. Idaho Dept. of Transp.*, 150 Idaho 126 (Ct. App. 2010) ..... 7, 10

*Morrissey v. Brewer*, 408 U.S. 471 (1972)..... 8, 9, 10

*State v. Garner*, 161 Idaho 708 (2017)..... 7, 8, 9

*State v. Rose*, 144 Idaho 762 (2007) ..... 8, 10

*State v. Roy*, 113 Idaho 388 (Ct. App. 1987)..... 9

*State v. Russell*, 122 Idaho 488 (1992)..... 5

*State v. Scraggins*, 292 Idaho 867 (2012) ..... 9

Statutes

I.C. § 19-2602 ..... 9

I.C. § 19-2604(1)(b) ..... 5

I.C. § 20-229B ..... 9

## STATEMENT OF THE CASE

### Nature of the Case

Katie Jo Meyer appeals from the district court's order revoking her probation. After a mental health breakdown, Ms. Meyer was arrested and jailed for allegedly violating probation by not taking prescription medications. Ms. Meyer denied she had done anything wrong. At the evidentiary hearing, the district court stated repeatedly that the State bore the evidentiary burden of proving the violation by "substantial competent evidence." Concluding that the State met that burden, the district court found Ms. Meyer had violated a special term of her probation, and ordered Ms. Meyer's probation revoked.

On appeal, Ms. Meyer claims the district court violated her due process rights when it lowered the State's burden of proving the violation to proof by "substantial competent evidence," and that district court should have required proof by a preponderance of the evidence before revoking her probation.

### Statement of the Facts and Course of Proceedings

Katie Jo Meyer pled guilty to possessing heroin and received a suspended sentence of seven years, with one and one-half years fixed, and was placed on probation. (R., p.42; 4/13/16 Tr., pp.29-42.) At her sentencing hearing, in April Of 2016, the district court orally pronounced the conditions of Ms. Meyer's probation, telling her "these are the conditions of your probation." (4/13/16 Tr., p.29, L.25.) The district court then detailed for Ms. Meyer the conditions of her probation, advising her that, "I need to go over these with you because there is a question of whether or not they are enforceable unless the Court actually goes over all the conditions with you also." (4/13/16 Tr., p.39, Ls.13-16.) The court initially informed Ms. Meyer she had to participate in the programs recommended by the GAIN assessment, which included psychiatric

medication and therapy; but after Ms. Meyer objected, telling the court she was “not interested in that” and thought it would be detrimental to her, and that she wanted to be in control of her own future (4/14/16 Tr., p.39, L.5 – p.32, L.3), the district court agreed not to impose that condition.

The court explained,

Okay. All right. This is what I am going to do ... instead of just saying you comply with all the GAIN recommendations – you need to do the level 2.1 outpatient treatment. That’s a *substance abuse program*. That should help you. These programs are designed to help you. Provide you good information and help to change your behavior. You are to waive your medical privilege. In other words, if the doctor prescribes controlled substances for you or drugs for you, then you need to be able to provide – your probation officer is entitled to look at that information to know that it is legitimate.

You are to complete all *substance abuse programs* that may be required by your probation officer. ...

(4/13/16 Tr., p.32, Ls.1-20) (emphasis added).

The district court did *not* tell Ms. Meyer that taking prescribed mental health medications would be a condition of her probation. (See 4/13/16 Tr., p.29, L.26 – p.42, L.5.13.)

However, the written Judgment, Suspended Sentence and Order of Probation filed that same day, included the following condition, C.2:

Defendant shall enroll in and meaningfully participate in any and all programs of rehabilitation, including but not limited to: a Level II. 1 Outpatient Substance Abuse Treatment Program and any/all substance abuse treatment required by her probation officer, including inpatient, if requested, and an aftercare program. *In addition, Defendant is to take all medication prescribed at the rate it is prescribed and shall waive privilege with all medical and mental health care providers as to her probation officer.*

(R., p.45) (emphasis added).

The judgment and order of probation filed with the court is signed by the district judge, but the lines for the probationer’s signature and date of acceptance are blank; Ms. Meyer never signed it. (See R., p.47.)

A few months later, Ms. Meyer had a psychotic breakdown; she was living with her parents, her son, and her sister at the time. (Tr. Vol.1, p.33, Ls.1-6.) On September 12, 2016, her father turned to Ms. Meyer's probation officer, Stephen Hardy, for help. (Tr. Vol.1, p.35, Ls.11-16.) Her father reported that Ms. Meyer was behaving strangely, was angry, and had threatened her mother and sister. (Tr. Vol.1, p.34, L.1 – p.35, L.16.)

When Probation Officer Hardy met with Ms. Meyer the following day, he observed her irrational, paranoid behavior, and was concerned she might be using drugs, but testing showed Ms. Meyer was "clean." (Tr. Vol.1, p.45, Ls.8-12, p.49, Ls.1-7.) He asked Ms. Meyer if she was taking mental health medications, and she "no," and that she felt she "didn't need to take medications [and] had no intention of taking them." (Tr. Vol.1, p.42, L.19 – p.43, L.4.) The probation officer suggested Ms. Meyer check herself into Intermountain Hospital. (Tr. Vol.1, p.44, Ls.12-14, p.47, Ls.16-17.) When Ms. Meyer declined, he had her arrested and jailed on an agent's warrant, alleging she violated her probation by not taking medications. (R., pp.61-64.) The State later moved to revoke Ms. Meyer's probation alleging two probation violations: (1) failing to stay on prescribed medications as ordered by the court, and (2) failing to obey an order of the probation officer to check herself into Intermountain Hospital. (R., p.71.)

Ms. Meyer remained in state custody for more than ninety days while the State evaluated her mental health and stabilized her condition. (Tr. Vol.1, p.22, Ls.14-16.) After the district court deemed her fit to proceed and allowed her to be released from custody (Tr. Vol.1, p.17, Ls.24-25), Ms. Meyer denied the State's allegations, and the matter was set for a probation revocation hearing (Tr. Vol.1, p.30, Ls.15-16).

Ms. Meyer's probation revocation hearing was conducted in two phases: an "evidentiary hearing" on the probation violation (Tr. Vol.1, p.30, L.9 – p.62, L.21), followed by a "disposition

hearing” (Tr. Vol.2, p.4, L.6 – p.29, L.25). At the outset of the evidentiary hearing, the district court announced that, “the burden is on the State to prove these violations by substantial evidence.” (Tr. Vol.1, Ls.18-21.) The State then called Ms. Meyer’s father, who testified that Ms. Meyer had been prescribed an antidepressant medication, and that she had acknowledged she was not taking it. (Tr. Vol.1, p.33, Ls.13-22.) Ms. Meyer’s father did not know the brand name of the medication or when it had been prescribed. (Tr. Vol.1, p.33, Ls.13-22.)

The State also called Ms. Meyer’s probation officer, Stephen Hardy. Probation Officer Hardy testified that he was aware of the written condition of probation that required Ms. Meyer to take prescribed medication at the rate it was prescribed, and that he *believed* Ms. Meyer was prescribed Celexa; he also testified that Ms. Meyer told him she was not taking any medication and she did not think she needed to. (Tr. Vol.1, p.39, L.20 p.40, L.24.) The State did not offer into evidence the doctor’s prescription order or the pharmacy fill. *See generally*, Tr., Vol.1, p.37, Ls.16 – p.50, L.21.) Nor did the State did produce a copy of the Order for Probation signed by Ms. Meyer. (*See generally*, Tr., Vol.1, p.37, Ls.16 – p.50, L.21.)

The district court found the State had met its burden of producing substantial evidence of the first violation; the court found there was a probation condition requiring Ms. Meyer to stay on prescribed medications, and that the State proved she had violated that condition by failing to take prescribed medications. (Tr. Vol.1, p.56, Ls.7-19, p.58, Ls.10-16.) The court dismissed the second violation, finding that because the probation officer testified that he had “suggested” to Meyer that she check into a hospital, the State failed to establish Ms. Meyer had disobeyed an *order* that she do so. (Tr. Vol.1, p.56, Ls.4-6.)



Based on its finding that Ms. Meyer violated the condition requiring her to take prescription medication, the district court revoked<sup>1</sup> Ms. Meyer's probation. (Tr. Vol.2, p.27, Ls.2-13.) Ms. Meyer timely appealed. (R., p.102.)

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<sup>1</sup> The court then reinstated probation. (Tr. Vol.2, p.27, Ls.2-13.) However, because there are collateral consequences to an order revoking probation, *State v. Russell*, 122 Idaho 488 (1992); *see* Idaho Code § 19-2604(1)(b), Ms. Meyer's reinstatement on probation does not rendered this appeal moot.

## ISSUE

Did the district court abuse its discretion when it applied an impermissibly low evidentiary standard – requiring less than a preponderance of the evidence – to find Ms. Meyer violated her probation?

## ARGUMENT

### The District Court Abused Its Discretion When It Applied An Impermissibly Low Evidentiary Standard – Requiring Less Than A Preponderance Of The Evidence – To Find Ms. Meyer Violated Her Probation

#### A. Introduction

The district court’s order revoking Ms. Meyers’ probation should be vacated, because the court failed to act in accordance with constitutional requirements that apply to probation revocation proceedings. The district court abused when it applied an impermissibly low evidentiary standard – requiring less than a preponderance of the evidence – to find Ms. Meyer had violated her probation. In order for a court to revoke a defendant’s probation, it must determine whether the defendant actually and willfully violated a condition of probation, and if so, whether probation should be revoked. *State v. Garner*, 161 Idaho 708, 711 (2017). Because of the important liberty interest at stake, a probationer has a due process right to an evidentiary hearing on these questions.

In this case, the district court required that the State prove the violation it alleged by “substantial competent evidence” – a standard of proof which is *lower* than a preponderance of the evidence. *See Masterson v. Idaho Dept. of Transp.*, 150 Idaho 126, 128 (Ct. App. 2010) (“Substantial evidence is more than a scintilla, but less than a preponderance”). Ms. Meyer asserts that allowing the State to establish a willful violation by applying such a low standard is incompatible with her procedural due process rights and represents an abuse of the district court’s discretion.

B. Standard Of Review

Review of a probation revocation proceeding involves a two-step analysis. First, the Court determines whether the terms of probation have been violated. *Id.* If they have, it is determined whether the violation justifies revocation of the probation. *Id.*

With regard to the first step, a district court may revoke probation only upon evidence that the probationer has violated probation.... A court's finding that a violation has been proved will be upheld on appeal if there is substantial evidence in the record to support the finding....

As to the second step, the decision whether to revoke a defendant's probation for a violation is within the discretion of the district court. Thus, we review a district court's decision to revoke probation under an abuse of discretion standard.

In determining whether the district court abused its discretion, this Court considers (1) whether the trial court understood the issue as discretionary; (2) whether the trial court acted within its discretionary scope and *under applicable legal standards*; and (3) whether the trial court exercised reason.”

*State v. Garner*, 161 Idaho 708, 710 (2017).

The determination of whether a district court adhered to the applicable constitutional requirements during probation violation proceedings involves questions of law over which Idaho appellate courts exercise free review. *State v. Rose*, 144 Idaho 762, 765 (2007).

C. The District Court Failed To Comply With Ms. Meyer's Right to Due Process When It Permitted The State To Establish The Violation By Proof Less Than A Preponderance Of The Evidence

The district court failed to comply with Ms. Meyer's due process rights when it allowed the State to prove the underlying probation violation by producing only “substantial competent evidence,” which is a standard *lower* than the preponderance of the evidence standard.

The minimal due process protections required during parole and probation revocation proceedings are established by the United States Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). In *Morrissey*, a case dealing

with parolees, the United States Supreme Court held that revocation of parole entailed the loss of a liberty interest. *Morrissey*, 408 U.S. at 482. Because the loss of a significant liberty interest was at stake, the Court went on to hold that due process entitles parolees to some formal process before parole can be revoked. *Id.* at 485. In *Gagnon*, the Court held parole and probation revocation hearings to be equivalent for purposes of due process, and extended its holdings in *Morrissey* to require the same procedural protections applicable in parole revocation proceedings be applied in probation revocation proceedings. *Gagnon*, 411 U.S. at 782; *see State v. Scraggins*, 292 Idaho 867, 871 (2012).

A probationer has a due process right to a hearing. “This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation.” *Morrissey*, at 484. In Idaho, the State must provide the trial court “satisfactory proof” of a violation. I.C. 19-2602; *State v. Garner*, 161 Idaho 708, 711 (2017). However, this Court has not articulated the degree of proof that will satisfy the court. *See State v. Roy*, 113 Idaho 388, 390 (Ct. App. 1987) (where parties stipulated to a preponderance of the evidence standard, the appellate court need not decide whether different standard applied)

Given that a preponderance of the evidence standard is required for Idaho parole revocation proceedings, *see* I.C. § 20-229B, and that parole and probation revocation hearings are equivalent in terms of the requirements of due process, *see Gagnon*, 411 U.S. at 782, it follows that a preponderance of the evidence should be the standard of proof required to prove a probation violation at a revocation proceeding.

In this case, however, the district court declared the State’s burden to be satisfied by the mere production of substantial evidence, stating that “the burden is on the State to prove these

violations by substantial evidence” (Tr. Vol.1, p.30, Ls.19-21); that “the court merely needs to determine if there is substantial evidence” to establish a violation (Tr. Vol.1, p.57, Ls.20-22); and ultimately finding a probation violation based on the State having “produced substantial evidence” of its allegation (Tr. Vol.1, p.58, Ls.10-12). “Substantial evidence is more than a scintilla, but less than a preponderance” *Masterson v. Idaho Dept. of Transp.*, 150 Idaho 126, 128 (Ct. App. 2010) (citing *Kinney v. Tupperware Co.*, 117 Idaho 765, 769 (1990)).

This “substantial evidence” standard is incompatible with the function of a probation violation revocation hearing, which “must lead to a final *evaluation* of any contested relevant facts and consideration of whether the facts as determined warrant revocation.” *Morrissey*, at 484. Proof by a preponderance of the evidence is the level of proof necessary for the court to say it is *persuaded* that the violation *actually did* occur. And the latter – proof that a violation actually did occur – is required before a court is permitted to revoke a defendant’s probation. *Morrissey*, 408 U.S. at 484; *Rose*, 144 Idaho at 765.

D. The Error Harmed Ms. Meyer’s Right

The district court’s act of lowering the State’s burden of proof was harmful to Ms. Meyer. The State’s evidence of a *willful* violation was thin. The State offered no evidence to establish Ms. Meyer had knowledge of the probation condition that required her to take medications, and the State provided only very weak evidence to show that Ms. Meyer had been prescribed a medication. (Tr. Vol.1, p.27, Ls.2-17.) Ms. Meyer submits that, had the trial court held the State to the higher preponderance of the evidence standard, instead of merely requiring the State to produce substantial evidence, there is a very reasonable probability that the court would not have found the violation had been established.

Instead, the district court lowered the State’s burden of proof and deprived Ms. Meyer of

her due process rights. The district court's finding of a violation under the impermissibly low standard should be vacated, and Ms. Meyer's case should be remanded for a new hearing.

CONCLUSION

For the foregoing reasons, Ms. Meyer respectfully asks this Court to reverse the district court's finding that she violated her probation, vacate the order revoking her probation, and remand her case to the district court for further proceedings.

DATED this 16<sup>th</sup> day of January, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16<sup>th</sup> day of January, 2018, 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:

KATIE JO MEYER  
2224 S SKILLERN DR  
BOISE ID 83709

NANCY A BASKIN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

ANTHONY GEDDES  
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\_\_\_\_\_/s/\_\_\_\_\_  
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