6-20-2018

State v. Maloney Respondent's Brief Dckt. 45474

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45474**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2015-8831**
	)	
PARKER COLE MALONEY,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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STATEMENT OF THE CASE

Nature Of The Case

Parker Cole Maloney appeals from the revocation of his probation for domestic battery in the presence of a child.

Statement Of The Facts And Course Of The Proceedings

Maloney tried to push his way past his ex-wife into her house, and struck her in the nose with his elbow. (PSI, pp. 21-22.[1]) Maloney pled guilty to domestic violence in the presence of a child. (R., pp. 85-86.) The district court imposed a sentence of 10 years with eight years fixed and retained jurisdiction. (R., pp. 108-10.) At the conclusion of the retained jurisdiction the court placed Maloney on probation. (R., pp. 113-18.)

About 14 months later Maloney's probation officer reported that Maloney had violated the terms of his probation. (R., pp. 121-69, 175-80.) The probation officer reported violations for (1) failing to perform community service, (2) failing to live in approved housing, (3) violating the no-contact order regarding his victims, (4) being with a minor without supervision, (5) failing to pay court costs, (6) failing to take anger management classes, (7) failing to take urinalysis tests, (8) failing to take a psychosexual evaluation, and (9) failing to be truthful on a polygraph. (R., pp. 175-79.)

Maloney admitted violating his probation by (1) not doing his community service, (3) violating the no contact order, (6) failing to complete anger management classes, and (7) failing to report for urinalysis testing. (7/27/17 Tr., p. 4, L. 25 – p. 6, L. 4; 8/31/17 Tr.,

[1] Citations to the pages of the PSI are to the electronic copy.

p. 10, L. 8 – p. 12, L. 2.) The other allegations of violations (2, 4-5, 8-9) were dismissed by the state. (8/31/17 Tr., p. 10, L. 8 – p. 12, L. 2.)

The district court revoked probation. (R., pp. 186-87.) Maloney filed a timely notice of appeal. (R., pp. 190-92.)

ISSUE

Maloney states the issue on appeal as:

> Whether the district court abused its discretion when it refused to consider Mr. Maloney's argument that the sex-offender terms of probation had undermined his term of probation because it had erroneously concluded that it could not tell the probation officer how to classify him.

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Should this Court affirm the lower court on the unchallenged alternative ground that imposition of sex offender terms of probation made "absolutely no difference" in the case?

ARGUMENT

This Court Should Affirm The Lower Court On The Unchallenged Alternative Ground That Imposition Of Sex Offender Terms Of Probation Made "Absolutely No Difference" In The Case

A. Introduction

The district court recognized that the issue raised by Maloney was "whether or not [the probation officer] can supervise [Maloney] and classify [him] or the department can classify [him] as someone in need of sex-offender-level supervision." (08/31/17 Tr., p. 47, Ls. 5-9.[2]) The district court first rejected this claim on a legal basis, concluding it did not have the ability under the separation of powers to dictate to the Idaho Department of Correction what probation classification to apply to a probationer. (08/31/17 Tr., p. 47, L. 9 – p. 48, L. 13.) The court also rejected the claim because, from "a factual standpoint," the probationary sex-offender classification made "absolutely no difference in [the] case." (08/31/17 Tr., p. 48, Ls. 13-15.)

On appeal Maloney challenges only the district court's legal analysis, contending the district court did have authority to rescind conditions of probation mandated by the probation officer. (Appellant's brief, pp. 6-10.) However, Maloney does not challenge the district court's determination that the sex offender classification was factually irrelevant. (Id.) Because Maloney does not challenge the district court's determination that the

[2] The basis for classifying Maloney as a sex offender for purposes of probation was because he was previously convicted of a "crime that was sexual in nature as the primary offense," namely a domestic battery that involved "attempting to sodomize his wife two times." (08/31/17 Tr., p. 13, L. 21 – p. 15, L. 24.) The facts surrounding that prior conviction were that Maloney had an argument with the victim (the same victim as in this case) and "tried to force her to have anal sex with him" by pinning her face-down on a bed and "attempt[ing] to insert his penis into her rectum for approximately 30 minutes" but being unsuccessful because of her resistance and then, a short time later, trying the same thing again. (PSI, pp. 36-37.)

probation classification did not make a difference to its decision, this Court should affirm on this basis.

B. Standard Of Review

The decision to revoke probation is reviewed for an abuse of discretion. State v. Roy, 113 Idaho 388, 392, 744 P.2d 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 1021, 842 P.2d 698, 700 (Ct. App. 1992). "When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason." State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989). The appellate court "will not set aside a trial court's findings of fact unless the findings are clearly erroneous." Mortensen v. Berian, 163 Idaho 47, 408 P.3d 45, 48 (2017) (internal quotes omitted).

C. The District Court's Holding Must Be Affirmed On The Uncontested Basis That Maloney's Probation Classification Made "Absolutely No Difference" In The Case

"Where a lower court makes a ruling based on two alternative grounds and only one of those grounds is challenged on appeal, the appellate court must affirm on the uncontested basis." Rich v. State, 159 Idaho 553, 555, 364 P.3d 254, 256 (2015) (internal quotations omitted). See also State v. Goodwin, 131 Idaho 364, 366, 956 P.2d 1311, 1313 (Ct. App. 1998). Here the district court ruled on alternative bases, rejecting the challenge to Maloney's classification as a sex offender for purposes of probation on both legal (separation of powers) and factual (classification made "absolutely no difference" in the

case) grounds. (08/31/17 Tr., p. 47, L. 5 – p. 48, L. 15.) On appeal Maloney challenges only the district court's legal basis for rejecting his classification argument, but does not challenge the court's factual basis for doing so. (Appellant's brief, pp. 6-10.) This Court must affirm on the unchallenged factual conclusion that the probation classification made "absolutely no difference in [the] case." (08/31/17 Tr., p. 48, Ls. 13-15.)

Even if Maloney had challenged the court's factual grounds for rejecting his claim, he could not show clear error. Maloney admitted violating probation by failing to do community service, violating the no contact order, failing to complete anger management, and failure to submit to urinalysis testing (7/27/17 Tr., p. 4, L. 25 – p. 6, L. 4; 8/31/17 Tr., p. 10, L. 8 – p. 12, L. 2), all conditions of probation imposed by the district court (R., pp. 116-18 (conditions 10, 15, 29, and 31)). The district court gave "little weight" to the community service violation; the failure to complete anger management and submit to urinalysis were "important"; but the "most important" was the no contact order violation, especially given Maloney's extensive history of violating no contact orders. (08/31/17 Tr., p. 45, L. 10 – p. 47, L. 4; p. 48, L. 16 – p. 49, L. 11.) Whether the district court *could have* altered the probation classification under the separation of powers is irrelevant to the probation violations Maloney committed and the ultimate decision by the district court to revoke probation.

CONCLUSION

The state respectfully requests this Court to affirm the order revoking probation.

DATED this 20th day of June, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of June, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
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at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
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KKJ/dd