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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45529
)	
v.)	ADA COUNTY NO. CR-FE-2014-12677
)	
JOSE MANUEL CRUZ, JR.,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jose Cruz appeals from the district court’s order revoking his probation. He contends that the district court abused its discretion by revoking his probation and instead should have reinstated his probation.

Statement of Facts and Course of Proceedings

In October 2014, Mr. Cruz pled guilty to felony domestic battery. (R., pp.57, 70.) The district court sentenced him to ten years, with three years fixed, and retained jurisdiction (“a rider”). (R., pp.70–71.) After the rider, the district court suspended Mr. Cruz’s sentence and placed him on probation. (R., pp.78, 79–82.)

In April 2016, the State moved for bench warrant for various probation violations. (R., pp.98–100.) The district court granted the motion. (R., pp.106–07.) Mr. Cruz admitted to violating his probation for failing to complete one year of intensive domestic violence treatment and absconding from supervision. (R., p.116; Tr. Vol. I,¹ p.5, Ls.4–9, p.6, Ls.3–12; Presentence Investigation Report (“PSI”),² pp.306–08.) The district court ordered an updated PSI. (Tr. Vol. I, p.6, Ls.15–19.)

The first probation violation disposition hearing was held in November 2016. (R., p.118.) Mr. Cruz was present. (R., p.118). The district court continued the hearing for domestic violence treatment, and Mr. Cruz failed to appear at the next hearing, held in February 2017. (R., pp.118, 119; Tr. Vol. II, p.10, Ls.14–23.) Due to Mr. Cruz’s failure to appear, the disposition hearing did not occur until October 2017. (R., p.170.) At the disposition hearing, the district court revoked Mr. Cruz’s probation and executed his ten-year sentence. (R., pp.170, 171–72; Tr. Vol. II, p.12, Ls.5–6.) Mr. Cruz timely appealed. (R., pp.175–76.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Cruz’s probation and executed his underlying sentence of ten years, with three years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Cruz’s Probation And Executed His Underlying Sentence Of Ten Years, With Three Years Fixed

The district court is empowered by statute to revoke a defendant’s probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to

¹ There are two transcripts on appeal. The first, cited as Volume I, contains the admit/deny hearing. The second, cited as Volume II, contains the probation violation disposition hearing.

² Citations to the PSI will refer to the 605-page document with the confidential exhibits.

review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines “whether the defendant violated the terms of his probation.” *Id.* Second, “[i]f it is determined that the defendant has in fact violated the terms of his probation,” the Court examines “what should be the consequences of that violation.” *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Cruz does not challenge his admissions to violating his probation. (Tr. Vol. I, p.5, Ls.4–9, p.6, Ls.3–12.) “When a probationer admits to a direct violation of her probation agreement, no further inquiry into the question is required.” *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Cruz submits the district court abused its discretion by revoking his probation.

“After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court.” *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). “A judge cannot revoke probation arbitrarily,” however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). “The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision.” *State v. Mummert*, 98 Idaho 452, 454 (1977). “In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society.” *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant’s conduct before and during probation. *Roy*, 113 Idaho at 392. In this case, Mr. Cruz submits that the district court erred by revoking his probation because his probation was achieving its rehabilitative objective.

Although Mr. Cruz had some setbacks, he was ready to get his life back on track and comply with the terms of his probation. Mr. Cruz accepted responsibility for his actions by

turning himself in after he failed to appear. (Tr. Vol. II, p.6, Ls.13–15.) He previously completed Moral Reconciliation Therapy and 90 for 90 with Alcoholics Anonymous. (Tr. Vol. II, p.6, Ls.10–11; PSI, p.4.) At the time of the disposition hearing, he was still attending Alcoholics Anonymous meetings. (R., p.165.) In addition, the birth of Mr. Cruz’s first child drastically changed his outlook on life. (PSI, pp.4, 10.) He had a supportive relationship with his child’s mother (his fiancé) and valued being a good father. (PSI, pp.11–12, 16.) His family was “the world” to him. (R., p.163.) He and his fiancé were attending counseling together “just to be as strong as we can be.” (R., p.164.) Mr. Cruz also enrolled in a 52-week online domestic violence class. (R., p.164.) Moreover, Mr. Cruz obtained employment with 208 Side Jobs doing landscaping, restoration, and general clean up. (R., p.164.) He saved some money to pay the cost of supervision. (R., p.164.) Finally, Mr. Cruz accepted responsibility for his actions, expressed remorse, and was grateful for another chance at probation. (*See generally* Tr. Vol. II, p.7, L.5–p.10, L.4.) He wrote to the district court:

I’ve been given purpose in the role of a loving father and fianc[é] and I’m so grateful. I hope and pray I’m able to continue doing these things and you will allow me to be . . . home with my family and can see the progress I’ve made. They need my help your [H]onor and at times we are all we have. I’m just trying to do the right thing truly. I hope you understand.

(R., pp.165–66.) In light of these facts, Mr. Cruz submits that the district court’s decision to execute his ten-year sentence was an abuse of discretion. Mr. Cruz was engaged in treatment, obtained employment, and was focused on supporting his family. These facts show that Mr. Cruz could succeed in the community under proper control and supervision. The district court should have placed him back on probation.

CONCLUSION

Mr. Cruz respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he respectfully requests that this Court vacate the district court's order revoking his probation and remand his case for a new disposition hearing.

DATED this 16th day of March, 2018.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of March, 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:

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas