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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45529
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2014-12677
)	
JOSE MANUEL CRUZ, JR.,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Cruz failed to establish that the district court abused its discretion by revoking his probation and executing his underlying unified sentence of 10 years, with three years fixed, imposed following his guilty plea to felony domestic violence?

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

While on probation for “aggravated DUI and leaving the scene,” Cruz “became angry” with his live-in girlfriend, Trisha, and “bit [her] on the neck, punched her in the hip/thigh,” kicked her “in the lower back and face,” “put a blanket over her face,” and “grabbed her neck with both of his hands and attempted to strangle” her while saying, “I’m going to kill you.”

(PSI, pp.398-99, 426, 590, 592.¹) Trisha “thought she lost consciousness” and believed she “was going to die.” (PSI, p.593.)

The state charged Cruz with attempted strangulation and felony domestic violence. (R., pp.49-50.) Pursuant to a plea agreement, Cruz pled guilty to felony domestic violence and the state dismissed the attempted strangulation charge and agreed to recommend a period of retained jurisdiction and a unified sentence of 10 years, with three years fixed. (R., p.57.) The district court followed the state’s recommendation and imposed a unified sentence of 10 years, with three years fixed, and retained jurisdiction. (R., pp.70-72.) Following the period of retained jurisdiction, the district court suspended Cruz’s sentence and placed him on supervised probation for 10 years with the condition that he participate in and successfully complete domestic violence treatment. (R., pp.79-84.)

The district court subsequently held review hearings at two-month intervals; at each of the three review hearings, the court told Cruz that “the court would like to see” domestic violence treatment/classes at the next hearing. (R., pp.94-96.) Cruz failed to engage in treatment, however, and within seven months, he absconded supervision. (R., p.99.) The state filed a motion for probation violation alleging that Cruz had violated the conditions of his probation by failing to attend and/or complete domestic violence treatment, failing to attend and/or complete MRT Aftercare, changing residence without permission, failing to make himself available for supervision, absconding supervision, failing to obtain and/or maintain employment, failing to pay his restitution, and failing to make payments toward his costs of supervision. (R.,

¹ PSI page numbers correspond with the page numbers of the electronic file “Cruz 45529 psi.pdf.”

pp.98-100.) Cruz was at large and unsupervised for approximately five months before he was arrested in another county for violating his no contact order with the victim of the instant offense, who told officers that she and Cruz had been living together for the past several months. (R., pp.107-08; PSI, pp.39-40.)

Cruz subsequently admitted that he had violated the conditions of his probation by failing to complete domestic violence treatment and absconding supervision, and the state withdrew the remaining allegations. (R., p.116.) At the November 7, 2016 disposition hearing, the district court continued the hearing until February 6, 2017, to allow Cruz to begin domestic violence treatment and demonstrate that he was serious about the treatment. (R., pp.11, 118-19; 10/16/17 Tr., p.10, L.14 – p.11, L.14.) However, Cruz failed to appear for the February 6, 2017 hearing and a warrant was issued for his arrest. (R., pp.119-21.) He was arrested approximately one week later, but posted bond and was released from the jail the same day. (R., pp.121-23.) A hearing was set for March 20, 2017; however, Cruz again failed to appear and absconded. (R., pp.128, 144, 146.) He was at large for another five months before finally being arrested on the warrant. (R., p.146.)

At the disposition hearing held on October 16, 2017, the district court revoked Cruz's probation and executed the underlying sentence. (R., pp.171-73.) Cruz filed a notice of appeal timely from the district court's order revoking probation. (R., pp.175-77.)

Cruz asserts that the district court abused its discretion by revoking his probation in light of his acceptance of responsibility, participation in Alcoholics Anonymous, prior completion of Moral Reconciliation Therapy, and focus on supporting his family. (Appellant's brief, pp.2-4.) Cruz 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 whether to revoke a defendant’s probation for a violation is within the discretion of the district court. State v. Garner, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017) (quoting State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003)). The goal of probation is to foster the probationer’s rehabilitation while protecting public safety. State v. Cheatham, 159 Idaho 856, ___, 367 P.3d 251, 253 (Ct. App. 2016) (citations omitted). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and is consistent with the protection of society. State v. Cornelison, 154 Idaho 793, 797, 302 P.3d 1066, 1070 (Ct. App. 2013) (citations omitted). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. Id. at 798, 302 P.3d at 1071 (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992)).

Cruz is not a viable candidate for probation in light of his refusal to abide by the conditions of community supervision, repeated absconding behavior, and failure to complete his required rehabilitative treatment while in the community. Cruz’s record contains multiple probation violations, and he has a history of absconding supervision. (PSI, pp.7-8.) He was on felony probation in an aggravated DUI case, absconded, and had been at large for approximately eight months when he committed the instant offense. (PSI, p.8.) At that time, his probation officer opined that Cruz “has made it clear he does not plan on taking advantage of the opportunity of supervision,” and, “He is not suitable for supervision in the community at this time and it would appear he will require a more structured environment where he can address his criminal thinking issues.” (PSI, p.404.)

After Cruz was placed on probation in this case, he failed to complete his mandatory domestic violence treatment, despite the district court's prompting and affording him numerous opportunities to do so. (R., pp.94-96, 99, 118; PSI, p.311.) Cruz instead chose to abscond supervision and moved in with the victim of the instant offense; he was not located until officers responded to their residence "in reference to a domestic dispute in progress," at which time Cruz was arrested for violating the no contact order with the victim. (PSI, pp.39-40, 99.) Even after Cruz admitted that he had violated his probation in this case, the district court granted him another opportunity to demonstrate that he was serious about completing domestic violence treatment by continuing the disposition hearing to allow Cruz time to meaningfully engage in treatment. (R., pp.11, 118-19; 10/16/17 Tr., p.10, L.14 – p.11, L.14.) However, Cruz squandered the opportunity and once more chose to abscond. (R., pp.119-23, 128, 144, 146.) An offender's decision to abscond, no matter the reason, prevents authorities from ensuring that probation is serving its intended function. In no way can probation meet the goals of protecting the community and rehabilitation if the probationer chooses to remove himself from probation supervision. See State v. Sandoval, 92 Idaho 853, 860, 452 P.2d 350, 357 (1969) (citing State v. Oylar, 92 Idaho 43, 436 P.2d 706 (1968)) (emphasis added) (purpose of probation is to give the offender "an opportunity to be rehabilitated *under proper control and supervision*"). In fact, Cruz's probation officer reported that, due to Cruz's absconding, he met Cruz only once during the two years that Cruz was on probation. (PSI, p.311.)

At the October 16, 2017 disposition hearing, the state addressed Cruz's failure to rehabilitate and his unwillingness to abide by the law, court orders, or the terms of community supervision. (10/16/17 Tr., p.4, L.6 – p.5, L.24 (Appendix A).) The district court subsequently articulated its reasons for revoking Cruz's probation. (10/16/17 Tr., p.10, L.9 – p.12, L.8

(Appendix B.) The state submits that Cruz has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the October 16, 2017 disposition hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Cruz's probation and executing his underlying sentence.

DATED this 13th day of April, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of April, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

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

APPENDIX A

<p style="text-align: right;">Page 1</p> <p>1 IN THE SUPREME COURT OF THE STATE OF IDAHO 2 -----x Docket No. 45529 3 STATE OF IDAHO, : 4 Plaintiff-Respondent, : 5 vs. : 6 JOSE MANUEL CRUZ, JR., : 7 Defendant-Appellant. : 8 -----x 9 10 Appealed from the District Court of the 11 Judicial District of the State of Idaho, in and 12 for the County of Ada, Deborah A. Bail, District 13 Court Judge. 14 15 Attorneys for Respondent Attorneys for Appellant 16 LAWRENCE G. WASDEN IDAHO STATE APPELLATE 17 Attorney General PUBLIC DEFENDER'S OFFICE 18 State of Idaho Boise, Idaho 19 Boise, Idaho 20 21 22 Reported by 23 Dianne E. Cromwell 24 CSR No. 21 25</p>	<p style="text-align: right;">Page 2</p> <p>1 IN THE SUPREME COURT OF THE STATE OF IDAHO 2 -----x Docket No. 45529 3 STATE OF IDAHO, : 4 Plaintiff-Respondent, : 5 vs. : 6 JOSE MANUEL CRUZ, JR., : 7 Defendant-Appellant. : 8 -----x 9 10 Received from Dianne E. Cromwell, 11 Official Court Reporter, of the above-entitled 12 action, and lodged with me December 27, 2017. 13 14 Christopher D. Rich 15 Clerk of the District Court 16 17 18 19 ----- 20 Deputy Clerk 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT 2 IN AND FOR THE COUNTY OF ADA 3 -----x Case No. CRFE-2014-12677 4 STATE OF IDAHO, : 5 Plaintiff, : 6 vs. : 7 JOSE MANUEL CRUZ, JR., : 8 Defendant. : 9 -----x 10 11 REPORTER'S TRANSCRIPT OF PROCEEDINGS 12 Held on October 16, 2017, before 13 Hon. Deborah A. Bail, District Court Judge. 14 15 A P P E A R A N C E S 16 For the State For Defense 17 Daniel R. Dinger Craig A. Steveley 18 ADA COUNTY ADA COUNTY PUBLIC 19 PROSECUTOR'S OFFICE DEFENDER'S OFFICE 20 200 W Front St, Rm 3191 200 W Front St, Ste 1107 21 Boise, ID 83702 Boise, ID 83702 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 BOISE, IDAHO 2 October 16, 2017, 5:30 p.m. 3 4 THE COURT: I'm taking up Jose Cruz. What 5 is the state's recommendation? 6 MR. DINGER: Thank you, Judge. The state's 7 recommendation is going to be for imposition. As 8 the court is no doubt aware, this is kind of an 9 interesting procedural history. This defendant 10 pled guilty to the probation violation or admitted 11 it over a year ago. 12 This court was -- he showed up for 13 sentencing November of 2016. This court was nice 14 enough to give him 60 additional days to try to 15 show some progress to begin his domestic violence 16 treatment that he had not started at the time. 17 He repaid the court's kindness by 18 failing to appear. I believe Mr. Steveley was 19 able to get a date for him to appear. He failed 20 to appear again on that. 21 His failures to appear are February 6 22 and March 20 of this year. He absconded and was 23 finally not seen by us until August 21 of 2017. 24 So history of failing to appear in this case, 25 including for the PV. I would note this is his</p>

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1 third lifetime felony PV. Pretty blatant
 2 violation of the court's orders from the state's
 3 perspective involving new crimes of violence,
 4 violating a no-contact order, absconding, not
 5 doing treatment. He has done two prior riders,
 6 including the rider on this case; a prior felony
 7 conviction for aggravated DUI out of another
 8 county where he was given probation; PV, reinstate
 9 his PV, and did a rider, and then of course he did
 10 a rider on this one.
 11 So long history of disregarding
 12 probation. Took this court's kindness and this
 13 court's opportunity to get involved in treatment
 14 and pretty much blew that off. So we would ask
 15 the court to impose.
 16 The other thing that I just want
 17 note that I think is kind of interesting is, when
 18 he was initially in front of Your Honor for this
 19 PV, September 1, 2016, you set bond at \$50,000.
 20 He hadn't paid a dime in restitution at that point
 21 but was able to post that \$50,000 bond.
 22 And so it's clear that his priorities
 23 are with himself and not with taking care of his
 24 obligations. So we would ask the court to impose.
 25 Thank you.

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1 has made will -- can be utilized in the future to
 2 help him be more successful than he has been.
 3 THE COURT: What do you have to say,
 4 Mr. Cruz?
 5 THE DEFENDANT: I know that in the past I
 6 haven't always made a perfect track record for
 7 certain things. I don't have anything written
 8 down. I don't have a letter to read off to you.
 9 I don't have anything that I have rehearsed or
 10 practiced in my mind or anything.
 11 I'm sitting here and I'm afraid that
 12 I'm going to lose my family. I'm afraid that my
 13 daughter is going to grow up without her father.
 14 I just want you to know that when you did give me
 15 that opportunity to seek job and find treatment, I
 16 did. I was looking for treatment. I called
 17 multiple places to Caldwell, to the Nampa area,
 18 the Boise area, and the treatment that I resorted
 19 to was an online class.
 20 I figured that I don't have -- I didn't
 21 have my license at the time, and that I would save
 22 money on gas. In the case that I wasn't able to
 23 make a meeting, I have since figured out that I
 24 could have classes closer to home where I'm at in
 25 Payette. I was working the entire time on top of

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1 THE COURT: All right.
 2 MR. STEVELEY: Thanks, Judge. I think some
 3 of these points, Judge, we've already made in
 4 previous dispositions, but just to reiterate some
 5 of those. He came from a pretty descent up
 6 upbringing, still close with his siblings. Was
 7 described by his mother as a loving father.
 8 Likewise was described as a good father and a good
 9 guy by his fiancee.
 10 He did do a 90-90 AA class previously.
 11 He had finished his MRT aftercare previously. He
 12 wanted the court to know that he had been paying
 13 the cost of supervision, and, most importantly,
 14 that he did turn himself into the jail after his
 15 FTA. He does have a GED, some job skills in
 16 landscaping, construction, and as well as some
 17 kitchen cook experience.
 18 Judge, he has struggled on probation.
 19 I think I've had this case since 2014. He
 20 acknowledges that he has struggled, but he also
 21 believes that he has made a lot of progress at
 22 least in terms of his thinking and with respect to
 23 his believing in himself and his family.
 24 So he is asking the court to give him a
 25 chance again on probation, thinks the progress he

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1 watching my daughter every day daily.
 2 I haven't had a drink of alcohol since
 3 2014 or smoked marijuana since. I had a small
 4 relapse in 2015. I'm not perfect. I know this,
 5 and I know it is no excuse. But I'm sitting there
 6 holding my daughter and knowing full well that I
 7 could potentially go to prison.
 8 And me having to come in and turn
 9 myself in, because I know it's the right thing to
 10 do, I don't want to sit there and stretch
 11 something out that I know is a bad decision to
 12 make. I know it is going to cause nothing but
 13 problems. And whether the outcome changes or
 14 doesn't change, I just wanted you to know that I
 15 was trying my best. And my family doesn't deserve
 16 this, and whatever decision you choose to make, I
 17 understand.
 18 I'm afraid, and I wish that things were
 19 different, but I really was trying my best. I
 20 wasn't until two months into that class or a
 21 couple weeks after that, but a couple months later
 22 when I talked to you about the class, I wasn't
 23 aware that I had to get permission from you to
 24 continue that.
 25 And as far as not talking to my PO,

APPENDIX B

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1 it's just something I was honest about from the
 2 get-go. This is not something I was looking to
 3 hide when I had my PSI interview. I went to it.
 4 I told them, Hey, I'm not being supervised
 5 currently. I wasn't under the impression I had.
 6 I've never bailed out on a probation violation.
 7 I'm sorry. I'm currently enrolled in
 8 the ABC classes. I'm trying my best just to get
 9 back on track for my family's sake, for my sake,
 10 so that I could be done with this. I'm tired of
 11 coming to jail. I'm extremely tired of it.
 12 I've gained sobriety through all this.
 13 I did my 90 and 90, my aftercare. I was seeing my
 14 PO constantly. I went through four probation
 15 officers in a year, Your Honor. It wasn't like I
 16 wasn't trying.
 17 This is the best that I've done, and
 18 I'm sorry that the court feels that you might be
 19 giving up hope on me, but I haven't given up hope
 20 on myself. And I know I'm a good person and a
 21 good father. And me taking the stuff to care of
 22 that on my own, I know that was the right decision
 23 to do, me being fully afraid of that as well.
 24 And I love this woman behind me, and I
 25 wish to God and I pray every day that this doesn't

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1 though that's what you were ordered to do, that
 2 was the critical part. I gave you a chance. I
 3 continued the probation violation so you could
 4 deal with the thing that was the central thing you
 5 were supposed to do, and you blew it off.
 6 Now, I know you have been in the system
 7 a long time and had a significant prior record as
 8 a juvenile adult, but it seems to me that the sad
 9 thing is, all you have learned how to do is fill
 10 the air with empty promises. Because I continued
 11 the disposition so you could show me, Hey, I'm
 12 serious about that. I'm a mature person. I'm
 13 going to start working on this. This is what you
 14 told me to do. I'm going to show you I can do it.
 15 Doesn't happen. Then you abscond. You
 16 skip several weeks of classes, so they dumped you
 17 from classes previously. No proof of employment.
 18 Start huffing compressed air, which hadn't
 19 previously been an issue. You were enrolled, and
 20 you never did it. I gave a chance to prove in
 21 real life that you were serious and that you then
 22 deal with the one thing I said to do, which is do
 23 your domestic violence treatment. Because this
 24 was a serious case that you came before the court
 25 in. That was the issue that you needed to

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1 happen and this outcome wouldn't come to.
 2 I want you to know I'm sorry. I'm
 3 sorry, Your Honor. I don't know what else I can
 4 possibly do.
 5 THE COURT: Is there a legal cause why
 6 judgment and sentence should not be pronounced?
 7 MR. STEVELEY: None known, Judge.
 8 MR. DINGER: No.
 9 THE COURT: You were before the court on
 10 November 7, 2016, and you had a probation
 11 violation disposition. And the state said that
 12 probation should be revoked and sentence should be
 13 imposed.
 14 And what I did was, I continued your
 15 disposition even though at that point it was
 16 already clear you violated probation. And I said,
 17 Start your domestic violence treatment, and I'll
 18 see you in January. And the thing was, you were
 19 supposed to start your domestic violence
 20 treatment. And so I gave you a chance to address
 21 the critical thing that you did not do when you
 22 were placed on probation which was to do the
 23 domestic violence treatment.
 24 Then you failed to appear, and you
 25 don't do any domestic violence treatment. Even

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1 address. You didn't.
 2 I gave you a chance to do it. You
 3 didn't do it. And so I think the consequences are
 4 the consequences that you have when you have a
 5 suspended sentence. Probation is revoked,
 6 sentence imposed. You're getting credit for time
 7 served. But I gave you a lot of time to get this
 8 addressed, and you didn't do it.
 9 So you do have 42 days in which to
 10 appeal.
 11 (Proceedings concluded.)
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