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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45618
)	
v.)	BINGHAM COUNTY NO. CR 2016-4060
)	
HEATHER LORRAINE HARRIS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Heather Harris appeals from the district court's order revoking her probation and executing her five-year sentence for burglary. She asserts the district court failed to exercise reason and therefore abused its discretion by declining to retain jurisdiction.

Statement of Facts and Course of Proceedings

In September 2016, Ms. Harris pled guilty to burglary for entering a medical clinic to pick up one of her home health patient's prescription for morphine and hydrocodone. (R., pp.91-

92; Presentence Investigation Report (“PSI”),¹ p.3.) This was her first felony offense. (PSI, p.6.) In October 2016, the district court placed her on probation, with an underlying sentence of five years, with two years fixed. (R., pp.104–06.) The district court also ordered her to participate in and complete the Drug Court program. (R., p.106.) In June 2017, Ms. Harris was transferred from the Drug Court program to the Wood Pilot Project, and the district court ordered that she participate in and complete this program as a condition of her probation. (R., pp.120–21.) In September 2017, she was terminated from the Wood Pilot Project. (R., p.131.) In October 2017, the State filed a Report of Probation Violation for her failure to complete the Wood Pilot Project. (R., pp.136–37.)

The district court held a joint admit/deny and disposition hearing. (R., pp.148–49; *see generally* Tr.²) Ms. Harris admitted to the probation violation. (Tr., p.6, Ls.5–14.) The district court proceeded directly to disposition. Ms. Harris requested the district court retain jurisdiction. (Tr., p.16, L.25–p.17, L.25.) The State recommended the district court revoke her probation and execute her sentence. (Tr., p.20, Ls.8–10.) The district court followed the State’s recommendation, revoking Ms. Harris’s probation and executing her five-year sentence. (Tr., p.25, Ls.4–6; R., pp.151–52.) Ms. Harris timely appealed. (R., pp.154–55.)

ISSUE

Did the district court abuse its discretion when it revoked Ms. Harris’s probation and executed her underlying sentence of five years, with two years fixed?

¹ Citations to the PSI refer to the forty-nine page electronic document with the confidential exhibits.

² There are two transcripts on appeal: a transcript of the sentencing hearing and a transcript of the admit/deny and disposition hearing. Only the admit/deny and disposition hearing transcript will be cited herein.

ARGUMENT

The District Court Abused Its Discretion When It Revoked Ms. Harris's Probation And Executed Her Underlying Sentence Of Five Years, With Two 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 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, Ms. Harris does not challenge her admission to violating her probation. (Tr., p.6, Ls.5-14.) "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, Ms. Harris submits the district court failed to exercise reason and thus abused its discretion by revoking her probation without a period of retained jurisdiction.

"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.

“The primary purpose of the retained jurisdiction program is to enable the trial court to gain additional information regarding the defendant’s rehabilitative potential and suitability for probation.” *State v. Jones*, 141 Idaho 673, 676 (Ct. App. 2005). “[P]robation is the ultimate objective of a defendant who is on retained jurisdiction.” *Id.* at 677. The district court’s decision to retain jurisdiction is reviewed for an abuse of discretion. *Id.* “There can be no abuse of discretion in a trial court’s refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation.” *Id.*

Here, Ms. Harris submits the district court erred by revoking her probation and executing her sentence without first allowing her the opportunity to participate in the retained jurisdiction program. The district court should have retained jurisdiction to determine Ms. Harris’s rehabilitative potential and to provide structured treatment. At forty-two years old, Ms. Harris was “tired of this life” and ready for a change. (Tr., p.16, Ls.7–9.) She had struggled for years with substance abuse and mental health issues. (PSI, pp.11–12, 15–16.) Her mother died in August 2017, and she was terminated from the Wood Pilot Project one month later. (Tr., p.20, L.15.) She apologized for absconding from the Wood Pilot Project, but explained that she had difficulties with the program’s restriction that she could not be around her family and fiancé. (Tr., p.20, Ls.19–23.) Ms. Harris “felt like just everything had been taken all at once from me.” (Tr., p.20, Ls.24–25.) She got “overwhelmed on these programs” and believed she would “do so much better” if she “could just focus on just one thing.” (Tr., p.21, Ls.1–3.) A period of retained jurisdiction would have provided the focus, structure, and separation from her family that Ms. Harris needed to move forward in her treatment. In light of these facts, Ms. Harris submits

the district court's decision to revoke her probation and execute her sentence without retaining jurisdiction was not an appropriate exercise of reason and therefore was an abuse of discretion.

CONCLUSION

Ms. Harris respectfully requests this Court reduce her sentence as it deems appropriate. Alternatively, she respectfully requests this Court vacate the district court's order revoking her probation and remand her case for a new probation violation disposition hearing.

DATED this 23rd day of April, 2018.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of April, 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