

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

8-21-2018

### State v. Maloney Appellant's Reply Brief Dckt. 45474

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Maloney Appellant's Reply Brief Dckt. 45474" (2018). *Not Reported*. 4655.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/4655](https://digitalcommons.law.uidaho.edu/not_reported/4655)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

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

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45474
	)	
v.	)	KOOTENAI COUNTY NO.
	)	CR 2015-8831
PARKER COLE MALONEY,	)	
	)	REPLY BRIEF
Defendant-Appellant.	)	
<hr/>		

**REPLY BRIEF OF APPELLANT**

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

**HONORABLE JOHN T. MITCHELL**  
District Judge

**ERIC D. FREDERICKSEN**  
State Appellate Public Defender  
I.S.B. #6555

**BRIAN R. DISKSON**  
Deputy State Appellate Public Defender  
I.S.B. #8701  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR  
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

**ATTORNEY FOR  
PLAINTIFF-RESPONDENT**

**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 .....	3
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 .....	3
CONCLUSION .....	5
CERTIFICATE OF SERVICE .....	6

**TABLE OF AUTHORITIES**

Cases

*Montgomery v. Montgomery*, 147 Idaho 1 (2009) .....3, 4

*State v. Brashier*, 127 Idaho 730 (Ct. App. 1995) .....3

*State v. Chavez*, 134 Idaho 308 (Ct. App. 2000) .....3

*State v. Mummert*, 98 Idaho 452 (1977).....3, 4

*State v. Villavicencio*, 159 Idaho 430 (Ct. App. 2015) .....3, 4

*U.S. Bank Nat'l Ass'n N.D. v. CitiMortgage, Inc.*, 157 Idaho 446 (2014).....3

## STATEMENT OF THE CASE

### Nature of the Case

Parker Maloney contends the district court unduly narrowed the scope of its discretion when it revoked his probation without recognizing it had the authority to rule on his argument that the sex offender terms of probation imposed by his probation officer were improper. The State has not attempted to justify the district court's analysis in that regard.

Rather the State has argued that this Court should affirm the district court's ultimate decision on an alternative ground – the district court's assertion that the propriety of the sex offender terms was not relevant to the decision to revoke probation. The State is mistaken. Because the improper terms of probation had impacted Mr. Maloney's ability to effectively rehabilitate during the period of probation, the district court's failure to consider the impropriety of those improper terms of probation tainted its analysis of whether probation was a viable sentencing option going forward.

In fact, that sort of concern is precisely why Idaho's appellate courts have repeatedly held that, when the district court abuses its discretion in this fashion, the appellate court are to note the error and remand the case for the district court to make appropriate findings under the applicable legal standards in the first instance. Since the State's argument is inconsistent with this established principle, this Court should reject the State's argument and follow that precedent instead.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Maloney's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

## ISSUE

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.

## ARGUMENT

### 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

The State has not attempted to justify the district court's conclusion that it did not have the authority to assess the propriety of the sex offender terms of probation placed upon Mr. Maloney by his probation officer. (*See generally* Resp. Br.) In so doing, it has effectively conceded the district court erroneously narrowed the scope of its discretion in that respect.

Rather, the State has argued that this Court should ignore that abuse of the district court's discretion and affirm the ultimate decision to revoke probation based on the district court's assertion that the propriety of the sex offender terms had no impact on that decision. (Resp. Br., pp.4-6.) The State's argument is inconsistent with both Idaho Supreme Court and Court of Appeals precedent, which has repeatedly held that, when the district court abuses its discretion in this manner, the appellate court should simply remand the case so the district court can reconsider the motion and make appropriate findings under the proper legal standards. *See, e.g., U.S. Bank Nat'l Ass'n N.D. v. CitiMortgage, Inc.*, 157 Idaho 446, 455 (2014); *Montgomery v. Montgomery*, 147 Idaho 1, 6-7 (2009); *State v. Villavicencio*, 159 Idaho 430, 437 (Ct. App. 2015); *State v. Brashier*, 127 Idaho 730, 737 (Ct. App. 1995), *abrogated on other grounds*.

In fact, the rationale for that rule is actually illustrated by Mr. Maloney's case. The determination of whether to revoke probation turns on a determination of "whether the probation is achieving the goal of rehabilitation and whether continuation of the probation is consistent with the protection of society." *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). When the terms of probation are unrelated to the underlying crime of conviction, those terms do not promote the goal of rehabilitation. *State v. Mummert*, 98 Idaho 452, 454-55 (1977) (holding a

term of probation preventing a defendant convicted of forgery from driving a car was not related to the crime of conviction, and so, not a term reasonably related to the goal of rehabilitation). As a result, when improper terms of probation are imposed, they distort the district court's ability to assess a critical part of the ultimate question – whether the probation is achieving the goal of rehabilitation. *See id.* (proceeding to evaluate the impact of the improper term in regard to the ultimate decision to revoke probation).<sup>1</sup>

Thus, in Mr. Maloney's case, the improper terms of probation required him to participate in sex offender treatment programs and subjected him to various other restrictions, none of which were necessary to promote his rehabilitation for the crime of conviction. In fact, it was his inability to comply with those unnecessary terms which made up the vast majority of the alleged probation violations. (*See R.*, pp.121-27, 175-80.) As a result, those unnecessary and improper terms of probation set him up to fail, and so, detracted from, rather than promoted, the goal of rehabilitation. Therefore, before it could properly revoke his probation even on a violation of a non-sex-offender term of probation, the district court needed to consider whether a period of probation without the improper sex offender terms would actually promote the goal of rehabilitation, and so, be a viable option going forward. Ergo, the district court's failure to consider the propriety of the sex offender terms of probation tainted its analysis on the

---

<sup>1</sup> To the extent the *Mummert* Court considered whether, in its opinion, the district court was likely to weigh the facts the same way on remand, the appellate court was essentially weighing the facts itself. *See Mummert*, 98 Idaho at 455. However, the Supreme Court has since rejected that sort of analysis, making it clear that the appellate courts should not be concerned with weighing the evidence when it finds an abuse of discretion of that sort. *Montgomery*, 147 Idaho at 6-7. Rather, since the weighing of the evidence is the district court's responsibility, the Supreme Court has made it clear that the appellate courts are supposed to remand the case regardless of its views on the evidence so that the district court can properly evaluate the motion by actually making appropriate findings of fact in the first instance in light of the applicable legal standards. *Id.*; *see also Villavicencio*, 159 Idaho at 437 (applying that new standard of review).

alternative upon which the State's argument on appeal relies. As such, this Court should refuse to affirm the district court's erroneous analysis on that tainted basis.

Rather, as the Supreme Court and Court of Appeals have repeatedly instructed, this Court should remand this case so the district court can properly exercise its discretion in regard to the motion to revoke probation and make appropriate findings about the relevant facts under the applicable legal standards in the first instance.

#### CONCLUSION

Mr. Maloney respectfully requests this Court vacate the order revoking his probation and remand this case for further proceedings.

DATED this 21<sup>st</sup> day of August, 2018.

/s/ Brian R. Dickson  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 2018, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BRD/eas