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### State v. Adam Appellant's Brief Dckt. 45872

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 45872
	)	
v.	)	ADA COUNTY NO. CR01-17-11128
	)	
RICHARD DAVID ADAM, II,	)	
	)	APPELLANT'S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Richard David Adam appeals from the district court's order revoking his probation and executing his previously-suspended sentence of ten years, with two fixed, for burglary after he entered a vacant home to sleep. Mr. Adam had relapsed into drug use shortly after his release on probation, and he admitted violating his probation by absconding. He asked the district court for the opportunity to participate in the Ada County Drug Court Program, but the court declined even to have him screened for placement in that program. On appeal, Mr. Adam contends that the district court abused its sentencing discretion when it revoked his probation without giving him the chance to be considered for drug court.

## Statement of the Facts and Course of Proceedings

Mr. Adam pled guilty to burglary and on August 30, 2017, the district court granted him a suspended sentence of ten years, with two years fixed, and placed him on probation. (R., pp.47, 60.) Mr. Adam had struggled with methamphetamine use, and a condition of his probation required that he regularly report for drug testing. (R., pp.59, 61.) Shortly after his release, however, Mr. Adam encountered personal relationship difficulties, when the mother of his child, and his only family support, withdrew from his life and announced she would not even allow Mr. Adam to visit them. (Tr., p.10, L.10 – p.11, L.6.) Although he had developed a good plan for success and had acquired certain coping skills during his recent rider in a separate case, Mr. Adam was unprepared for this unexpected turn, and as a result he relapsed into drug use and absconded. (Tr., p.11, Ls.2-6.)

Mr. Adam admitted he violated his probation by absconding, and he admitted he had made poor choices. (Tr., p.4, Ls.3-6; p.11, Ls.1-6.) However, he asked the court to give him another chance at probation, and to order that he be screened for participation in the Ada County Drug Court Program. (Tr., p.8, Ls.16-18.) The district court declined his request, and instead adopted the disposition recommended by the State: the court entered an order revoking probation and executing the previously-suspended sentence. (R., p.12, L.4 – p.12, L.7; R., p.105). Mr. Adam filed a timely Notice of Appeal. (R., p.108.)

## ISSUE

Did the district court abuse its discretion when it revoked Mr. Adam's probation without considering the option of drug court?

## ARGUMENT

### The District Court Abused Its Discretion By Revoking Mr. Adam's Probation Without Considering The Option Of Drug Court

#### A. Introduction

Mr. Adam admits that he violated the terms of his probation. (Tr., p.4, Ls.3-6.) He claims, however, that in light of the circumstances surrounding his violation, along with his drug dependency and his potential for rehabilitation, his probation violation did not justify revocation and imprisonment. The district court should have considered the option of drug court.

#### B. Standard Of Review

This Court employs a two-step analysis to review a probation revocation proceeding. *State v. Garner*, 161 Idaho 708, 711 (2017) (quoting *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.* A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *State v. Beckett*, 122 Idaho 324, 325 (Ct. App. 1992).

In determining whether to revoke probation, the trial court must examine whether the probation is achieving the goal of rehabilitation and is consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995). “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.” *Upton*, 127 Idaho at 275. The court may

consider the defendant's conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

C. The District Court Abused Its Discretion By Revoking Mr. Adam's Probation Without Considering The Option Of Drug Court

Mr. Adam was exposed to addiction early in his life in California; his father was an alcoholic who beat his children, and his mother used methamphetamine in their home. (PSI, 385.) Mr. Adam was removed from the family home after a particular beating and placed in state custody, where he was moved between group homes, and frequently ran away in search of his parents. (PSI, p.386.) He was introduced to methamphetamine by his mother, and they smoked it together when Mr. Adam was fourteen; he began using it more consistently over time. (PSI, pp.386, 392.) He has no meaningful relationship with his parents or any of his siblings, the latter of whom are also convicted felons. (PSI, p.386.)

Despite these challenges in his early life, Mr. Adam went to culinary school and also completed his GED. (PSI, p.390.) He attended City College in California and studied engineering, and he has tutored students in math and English. (PSI, p.390.) He hopes to complete his Bachelor of Arts degree, and to then go on and obtain his Master's. (PSI, p.390.) Although he has endured periods of homelessness, he has also owned his own electronics repair company. (PSI, p.391.)

Mr. Adam committed the underlying burglary, his second felony, when he was thirty-four years old and on methamphetamine; he went into a vacant home that was for sale to sleep. (R., pp.34, 397.) However, he had previously maintained long periods of sobriety. He stayed away from drugs for more than seven years during his relationship with his non-drug using girlfriend, but he returned to drugs following their difficult breakup. (PSI, p.392.)

Mr. Adam's strong potential for success is also shown by his success on his recent rider. He completed his program expectations, demonstrated that he has the ability to rearrange his lifestyle to provide more protective factors, and demonstrated his ability to follow the rules. (PSI, p.365.) His plan for success, however, envisioned family support from his child's mother. As Mr. Adam explained to the district court, when that support was removed, he made a very poor choice in the moment and returned to drugs.

[T]hose wrong choices I made in that brief moment snowballed and making more bad choices and more bad choices ... when she didn't want to help me through, I just started to just throw my cards in, so to speak, and just gave up. And I realize I shouldn't have done that. And I realize I made a huge mistake which will more than likely cost me valuable time of my life, somewhere I don't want to be, but I have to choose. I have to live with the decisions I make, and I have to choose my battles, and all of that stuff.

So there's no excuse for what I did. I just don't want to do that anymore. I don't want to get out of prison and be hooked on drugs. I don't want to be on drugs period.

(Tr., p.10, L.18 – p.11, L.15) (typographical errors corrected.)

As he stated during his recent rider, Mr. Adam is eager to live a better life in the community and to be a benefit to others around him. (PSI, p.365.) However, he needs to better understand and manage the triggers of his drug problem. (PSI, p.365.) He is capable of correcting his behavior, but still needs the structured environment that a drug court program has to offer.

In light of these facts, Mr. Adam submits that the district court's decision to revoke his probation without further consideration of drug court, and execute his sentence of ten years, with two years fixed, was an abuse of discretion.

CONCLUSION

Mr. Adam respectfully requests that this Court vacate the order revoking probation, and remand his case to the district court with directions that his probation be continued, and that he be considered for placement in the drug court program.

DATED this 31<sup>st</sup> day of August, 2018.

/s/ Kimberly A. Coster  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of August, 2018, I caused a true and correct copy of the foregoing APPELLANT'S 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

KAC/eas