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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 46036 & 46037
Plaintiff-Respondent,)	
)	ADA COUNTY NOS. CR-FE-2013-17418
v.)	& CR01-18-669
)	
STEPHANIE DELL HART,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Stephanie Dell Hart appeals from the district court's order revoking probation in Docket No. 46036 and from her judgment of conviction for injury to a child in Docket No. 46037. She asserts that the district court abused its discretion by revoking probation in Docket No. 46036 and by imposing an excessive sentence in Docket No. 46037.

Statement of the Facts & Course of Proceedings

In 2014, Ms. Hart pleaded guilty to possession of a controlled substance, and the district court imposed a sentence of seven years, with two years fixed, and the court retained jurisdiction.

(R., p.55.) The court subsequently suspended the sentence and placed Ms. Hart on probation for seven years. (R., p.69.)

In November 2017, the State filed a motion for probation violation, alleging nine violations of the terms of her probation. (R., p.87.) Ms. Hart eventually admitted to violating her probation by committing the crimes of injury to a child and possession of drug paraphernalia and by using methamphetamines and marijuana. (R., pp.103, 107.) She also pleaded guilty to the new charge of injury to a child. (R., p.164.) The district court revoked Ms. Hart's probation and executed her sentence in Docket No. 46036 and imposed a sentence of ten years, with two years fixed, for injury to a child in Docket No. 46037. (R., pp.109, 165.) Ms. Hart appealed in both cases. (R., pp.112, 168.) She asserts that the district court abused its discretion by revoking her probation in Docket No. 46036 and by imposing an excessive sentence in Docket No. 46037.

ISSUE

Did the district court abuse its discretion when it revoked Ms. Hart's probation in Docket No. 46036 and when it imposed a unified sentence of ten years, with two years fixed, in Docket No. 46037?

ARGUMENT

The District Court Abused Its Discretion When Revoked Ms. Hart's Probation In Docket No. 46036 And When It Imposed A Unified Sentence Of Ten Years, With Two Years Fixed, In Docket No. 46037

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Ms. Hart's sentence for injury to a child does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable,

Ms. Hart “must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Stevens, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Further, 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. Hart does not challenge her admission to violating his probation. “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. Hart submits that the district court abused its discretion by revoking her 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. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

In this case, counsel for Ms. Hart requested that the court retain jurisdiction. (Tr., p.23, Ls.6-11.) He also requested an underlying sentence of “one plus four or five, concurrent to her probation violation.” (Tr., p.23, Ls.8-11.) Further, he emphasized that Ms. Hart had accepted responsibility – “She came in to the court. She admitted guilt. She admitted responsibility for what she did.” (Tr., p.23, Ls.12-16.)

Further, counsel acknowledged that this “was a toxic situation for everybody. It wasn’t great for the children there. It wasn’t great for Ms. Hart. There were multiple people living in the house, and drug use, and things of that nature, and things spiraled out of control to where they find themselves with Ms. Hart sitting here today.” (Tr., p.23, Ls.18-25.) Counsel acknowledged that drug use played a significant role in this case, but noted that Ms. Hart had been sober for a significant period of time. (Tr., p.24, Ls.1-6.)

Counsel emphasized that a rider would give Ms. Hart an opportunity to build on the reflections she had and get her quickly into programming. (Tr., p.24, Ls.18-25.) “I think the

rider would give the Court some insight into whether she is prepared and able to be released into the community as she puts forth.” (Tr., p.25, Ls.7-10.) Counsel therefore requested a rider to “[give] her the opportunity to build on the process that she’s taken to this point and put to use some of those skills and positive thinking she has.” (Tr., p.25, Ls.10-15.)

Ms. Hart addressed the court at the hearing. She stated,

I want to apologize for my poor choices as well as myself – how I’ve been conducting myself. I’m very disgusted and remorseful for what I’ve done to my children and my family.

If given the opportunity to demonstrate that – I’m sorry, Your Honor – demonstrate that I am capable of living a life and being productive in it and correcting my support systems, my life skills, and relocating away from the hazardous elements, I will be able to be more success.

(Tr., p.25, L.19 –p.26, L.3.)

Considering that Ms. Hart accepted responsibility for her actions and expressed remorse, and wanted treatment and programming that would be available during a rider, she respectfully submits that the district court abused its discretion by revoking her probation in Docket No. 46036 and by imposing an excessive sentence in Docket No. 46037.

CONCLUSION

Ms. Hart respectfully requests that the order revoking her probation be reversed and the case remanded for further proceedings. She also requests that this Court reduce her sentence as it deems appropriate or her case be remanded for a new sentencing hearing.

DATED this 15th day of May, 2019.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JMC/eas