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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46054
)	
v.)	NEZ PERCE COUNTY NO. CR-2016-5989
)	
MATTHEW L. EVANS,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Matthew Evans appeals from the district court's order revoking probation and executing his unified sentence of five years, with two years fixed, entered upon his guilty plea to possession of methamphetamine. Mr. Evans asserts the district court abused its discretion by revoking his probation, in light of the mitigating factors that exist in this case. This reply brief is necessary to address an incorrect assertion contained in the State's Brief.

Statement of the Facts and Course of Proceedings

A statement of the facts and course of proceedings was articulated in Mr. Evans' Appellant's Brief, and is not repeated herein in detail

ISSUE

Did the district court abuse its discretion by revoking Mr. Evans' probation, in light of the mitigating factors that exist in this case?

ARGUMENT

The District Court Abused Its Discretion By Revoking Mr. Evans' Probation, In Light Of The Mitigating Factors That Exist In This Case

Mr. Evans asserts the district court abused its discretion by revoking his probation. His arguments in support of this assertion are found in his Appellant's Brief and are not repeated herein in detail.

The State recognizes that although Mr. Evans was alleged to have violated the terms of his probation by having an open container of alcohol, driving with a suspended driver's license, possessing and consuming alcohol, and testing positive for methamphetamine and marijuana, he admitted only to possessing and consuming alcohol and driving with a suspended license, and the State withdrew the remaining allegations. (Respondent's Brief, pp.2-3 (citing R., pp.134-37, 153; Tr., [p.62, L.25 – p.63, L.12.]¹ The State later argues, however, that Mr. Evans "chose to violate the law and the conditions of his probation by driving with a suspended driver's license and *using methamphetamine* and marijuana." (Respondent's Brief, pp.4-5 (emphasis added).)

Mr. Evans specifically denied using methamphetamine while he was on probation (although he did admit to using marijuana), and the State withdrew the allegations of controlled substances use. (Tr., p.41, L.18 – p.42, L.17; p.63, Ls.9-12.) As such, Mr. Evans asserts that this Court should not consider the allegation that he used methamphetamine while on probation,

¹ The State's citation to the transcripts include the date of the hearing and the page number associated with that individual transcript, while Mr. Evans' citation to the transcripts include the page number associated with the electronic file containing all of the transcripts.

when reviewing whether or not the district court abused its discretion by revoking Mr. Evans' probation.

CONCLUSION

Mr. Evans respectfully requests that this Court vacate the district court's order revoking probation, and remand his case to the district court with instructions that it place Mr. Evans back on probation.

DATED this 26th day of February, 2019.

/s/ Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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/s/ Evan A. Smith
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JCP/eas