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### State v. Campbell Appellant's Brief Dckt. 46168

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46168-2018
Plaintiff-Respondent,	)	
	)	MINIDOKA COUNTY NO. CR-2016-440
v.	)	
	)	
TIFFANEY D. CAMPBELL,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Tiffany D. Campbell appeals from the district court's order revoking her probation and executing a sentence of five years, with two years fixed. She asserts that the district court abused its discretion by revoking her probation and executing her sentence rather than retaining jurisdiction.

Statement of the Facts & Course of Proceedings

In 2016, Ms. Campbell was charged with four counts of lewd conduct with a minor under the age of sixteen. (R., p.29.) She pleaded guilty to one charge of sexual abuse of a minor under

the age of sixteen and the district court imposed a unified sentence of five years, with two years fixed, and the court retained jurisdiction. (R., p.78.) Following the period of retained jurisdiction, the district court suspended the sentence and placed Ms. Campbell on probation for a period of four years. (R., p.104.)

Several months later, the State filed a motion to revoke probation, alleging that Ms. Campbell had violated her probation by changing her residence without permission, failing to maintain employment, failing to obtain treatment, and by absconding from supervision. (R., p.114.) Ms. Campbell admitted to the violations and the court revoked her probation and executed the sentence. (R., p.127.) Ms. Campbell appealed. (R., p.136.) She asserts that the district court abused its discretion by revoking her probation.

### ISSUE

Did the district court abuse its discretion when it revoked Ms. Campbell's probation and executed her sentence?

### ARGUMENT

#### The District Court Abused Its Discretion When It Revoked Ms. Campbell's Probation And Executed Her Sentence

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. Campbell does not challenge her admission to violating her 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. Campbell 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).

Ms. Campbell addressed the district court at the disposition hearing. She stated,

I was relying on a boyfriend and when he did break up with me I couldn’t pay my rent, the loss of a vehicle and couldn’t go to a treatment. Not that that’s an excuse. I realize it’s not. I was fearful to reach out to the probation officer, afraid that I’d get my time back in prison. So instead of doing the proper channels, as I was expected, I ran off. But while being on the run it was constant looking over my shoulder, worrying that I’m going to get caught.

When I first spoke with [my attorney] I had expressed that I was just going to ask for my time imposed and he went over the options and I accepted his recommendation of a rider because it does fit this time better what I actually want to do.

Even if you do impose my time this time I would take that consequence. I do deserve it, in all honesty. And even if I do get my time imposed, I intend to go through the same classes again, and even more than that, requesting psychiatric help and taking anger management, even though it was not required last time, and

extra things, because I realize I am a broken person now. Getting on medication and some of the psychiatric help that I've already gotten has made me realize how much of a problem I really do have. And I was in denial still the first time about how transient and parasitic I was, according to my PSI, and I realize now that it really did fit and that's exactly how I've been living.

And the boyfriend this time when I got out, him paying for the rent and giving me the car and everything, was the same behavior again. And this time I would rather go to a transitional housing being up in Boise, utilizing the bussing system after a rider and better job opportunities that are up there, that pay better and actually learning to stand on my own two feet for the first time ever. So I would really hope for the rider, even though I probably don't deserve it.

(Tr., p.13, L.22 – p.15, L.9.)

Counsel for Ms. Campbell requested that the court place her on another rider. (Tr., p.13, Ls.5-10.) While Ms. Campbell had previously been on a rider in this case, counsel noted that Ms. Campbell was pregnant when she went on the rider and that the child “was born when she was on the rider in the main yard at the prison.” (Tr., p.11., Ls.8-10.) Now, “without the distractions, without the pregnancy or the child ... I believe she is more focused at wanting help now than she was at the time.” (Tr., p.13, Ls.6-10.) Counsel also noted,

No excuse, but at the same time she got out on probation and they gave her 30 days, then they got her into a place that she had a boyfriend that was helping pay for it. Then he dumped her and she had no money, not enough to pay for everything that she had to do. She was working at the AC Drive In, and they were wonderful people to give her the job, but it wasn't enough to live on. It wasn't enough to pay for treatment. It wasn't enough to pay for housing.

She basically just said, I can't do it, and that's kind of how she's lived her life. She had nothing, no one. No support. Talked about she could have gone and maybe talked to the bishop and they could have helped her.

(Tr., p.11, Ls.11-23.)

Ms. Campbell accepted responsibility for violating her probation and recognized that another rider would benefit her. She intended on taking programs and staying on medication to help her and she realized that she needed to quit depending on others in her life. She was hoping

to find housing and employment in Boise where she could support herself. She realized that she handled the current situation poorly and should have reached out to her probation officer. Considering this information, Ms. Campbell asserts that the district court abused its discretion by revoking her probation and executing her sentence rather than retaining jurisdiction.

#### CONCLUSION

Ms. Campbell respectfully requests that the court's order revoking her probation be reversed and her case remanded for further proceedings.

DATED this 19<sup>th</sup> day of March, 2019.

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

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of March, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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

JMC/eas