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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46316-2018
Plaintiff-Respondent,)	
)	Cassia County Case No.
v.)	CR-2008-7380
)	
MARIA ELENA CASTANEDA,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Castaneda failed to establish that the district court abused its discretion by revoking her probation and declining to reduce the indeterminate portion of her underlying sentence?

Castaneda Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Castaneda pled guilty to injury to a child and, on October 26, 2010, the district court imposed a sentence of 10 years, with two years fixed, suspended the sentence, and placed Castaneda on supervised probation for 10 years. (R., pp.114-21.) In January of 2013, the state filed a motion for bench warrant for probation violation alleging that Castaneda had violated the

conditions of her probation by failing to report to her probation officer, absconding supervision, and failing to pay court ordered financial obligations. (R., pp.128-33.) Castaneda admitted to violating the terms of her probation, and the district court continued probation. (R., pp.145-47.)

In May of 2013, the state filed another motion for bench warrant for probation violation alleging that Castaneda had violated the conditions of her probation by failing to report to her probation officer and absconding supervision. (R., pp.154-59.) Castaneda again admitted to violating the terms of her probation, and the district court again continued probation. (R., pp.168-70.)

In February of 2014, the state filed another motion for bench warrant for probation violation alleging that Castaneda had violated the conditions of her probation by failing to report to her probation officer and absconding supervision. (R., pp.171-75.) Castaneda again admitted to violating the terms of her probation, and the district court revoked her probation, executed the underlying sentence, and retained jurisdiction. (R., pp.185-87.) After a period of retained jurisdiction, the district court suspended the sentence and reinstated Castaneda on probation for two years. (R., pp.193-99.)

In June of 2015, the state filed yet another motion for bench warrant for probation violation alleging that Castaneda had once again violated the terms of her probation by changing residences without permission, failing to report to her probation officer, leaving Idaho without permission, failing to maintain employment, failing to attend Rider Aftercare, and absconding supervision. (R., pp.200-06.) Castaneda was at large for approximately three years before she was finally brought before the court and admitted to having again violated her probation. (R., pp.207, 210; see also 6/29/18 Tr., p.10, L.24 – p.11, L.5.) At the disposition hearing held on June 29, 2018, the district court revoked Castaneda's probation and executed the underlying

sentence without reduction. (R., pp.212-14.) Castaneda filed a notice of appeal timely from the district court's order revoking probation. (R., pp.215-17.)

Castaneda asserts that the district court abused its discretion by "failing to reduce the indeterminate portion of her sentence upon revoking probation" in light of her substance abuse and desire for treatment. (Appellant's brief, pp.3-4.) Castaneda has failed to establish an abuse of discretion.

Upon revoking a defendant's probation, a court may order the original sentence executed or reduce the sentence as authorized by Idaho Criminal Rule 35. State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 7 (Ct. App. 2009) (citations omitted). A court's decision not to reduce a sentence is reviewed for an abuse of discretion subject to the well-established standards governing whether a sentence is excessive. Hanington, 148 Idaho at 28, 218 P.3d at 7. Those standards require an appellant to "establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment." State v. Stover, 140 Idaho 927, 933, 104 P.3d 969, 975 (2005). 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. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016). The reviewing court "will examine the entire record encompassing events before and after the original judgment," *i.e.*, "facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation." Hanington, 148 Idaho at 29, 218 P.3d at 8.

On appeal, Castaneda argues that the district court abused its discretion by executing her underlying sentence, without reducing the indeterminate portion, in light of her substance abuse and desire for treatment. (Appellant's brief, p.3-4.) However, Castaneda's abysmal performance

while on probation and failure to rehabilitate while in the community demonstrate that she is not entitled to a reduction of the indeterminate portion of her sentence.

In November of 2008, officers received a report that a vehicle was “all over the road.” (PSI, p.12.¹) When officers pulled the vehicle over they found Castaneda’s 13-year-old daughter in the driver’s seat, her 11-year-old and 10-year-old sons in the backseat, and Castaneda in the front passenger seat. (PSI, p.12.) Castaneda was intoxicated. (PSI, p.12.) During the traffic stop Castaneda was “non-cooperative,” “combative,” and had to be physically forced into handcuffs and into the patrol vehicle. (PSI, p.12.) While in the patrol vehicle, Castaneda hit the window and “kicked out” to keep the door from closing. (PSI, p.12.) At the time of the offense, Castaneda had already amassed seven misdemeanor convictions that included making a false report, possession of marijuana with intent to distribute, driving without privileges, and four counts of DUI. (PSI, pp.13-14)

At the time of sentencing, Castaneda stated, “I will attend and complete a program. I will report to probation. I will follow all rules.” (PSI, p.21.) However, Castaneda has failed to complete any programming while in the community, and has utterly failed to follow the rules by absconding supervision multiple times. Castaneda’s desire for treatment does not outweigh her poor performance or her failure to take advantage of substance abuse treatment while in the community.

At the disposition hearing, the district court articulated its reasons for revoking Castaneda’s probation and executing her sentence without reduction. (6/29/18 Tr., p.10, L.2 – p.13, L.25.) The state submits that Castaneda has failed to establish an abuse of discretion, for

¹ PSI page numbers correspond with the page numbers of the electronic file “Appeal - Confidential Exhibits.pdf.”

reasons more fully set forth in the attached excerpt of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Castaneda's probation and executing her underlying sentence without reduction.

DATED this 23rd day of April, 2019.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of April, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 maybe it would do the trick.
 2 So we would ask the Court to consider
 3 retaining jurisdiction. If the Court is not willing
 4 to retain jurisdiction and chooses to impose sentence
 5 in this matter, frankly, given, I think this was a
 6 two to ten, given 557 days credit for time served,
 7 Ms. Castaneda would be eligible for parole in less
 8 than six months, so asking for a reduction in the
 9 determinate period of time seems superfluous.
 10 I would ask the Court to consider, if it is
 11 going to impose sentence, to consider reducing the
 12 indeterminate period, possibly, to two plus four, for
 13 a total of six, simply to give, based on the age of
 14 the case, the amount of time that Ms. Castaneda has
 15 done in this matter already.
 16 But we would ask the Court to consider
 17 retaining jurisdiction and giving Maria an
 18 opportunity to see if she can get it together, and
 19 with the assistance of the rider program, come out
 20 and be able to do probation.
 21 Does the Court have any questions?
 22 THE COURT: No. It was 557?
 23 MR. SCHNEIDER: 557.
 24 MR. LARSEN: And the State will agree to
 25 that, Your Honor.

8

1 THE DEFENDANT: Thank you.
 2 THE COURT: So I, obviously, was not the
 3 judge on this when this case came through, but I've
 4 looked back at the PSI from 2010 to understand why we
 5 got the sentence that Judge Crabtree issued.
 6 And this was from November 2008, and it's
 7 Deputy Higley pulled over a vehicle that was "all
 8 over the road in the area of Main Street and
 9 Highland." And he observed the vehicle travel into
 10 the oncoming lane of traffic and swerve. He pulled
 11 the vehicle over.
 12 The driver was 13-year-old Gracie Sandoval.
 13 The girl's mother, Maria Castaneda, was the front
 14 passenger. She was intoxicated. Also in the vehicle
 15 were Maria's sons -- anyway, they list those names.
 16 And Gracie advised Deputy Higley that her mother was
 17 shifting the gears for her and that she had never
 18 driven before today.
 19 So I don't read that to remind you of that.
 20 I know you're painfully aware of that. That was new
 21 information to me, and that helped me to understand
 22 Judge Crabtree's sentence, and it makes sense. It's
 23 a serious offense. You put a lot of people at risk.
 24 And then you had the series of probation
 25 violations, which I have not reviewed every single

10

1 THE COURT: Ma'am, you have an opportunity
 2 to address the Court. You don't have to, but is
 3 there anything you would like to say?
 4 THE DEFENDANT: Yeah. Honorable Judge
 5 Tribe, thank you for your time with my case.
 6 As I said from the very beginning of my
 7 sentences, that my journey would begin by baby steps.
 8 I've fallen several times, believing I was cured from
 9 my alcoholism and my addictions. I became too
 10 confident. I didn't have a great support system when
 11 I was released, so I fell flat on my face.
 12 Once again, although my heart's desire is to
 13 live a sober life, especially now more than ever,
 14 being that I have cirrhosis and pancreatitis induced
 15 from alcohol. As I was living this last time, I
 16 violated probation. I lived to die daily, and now
 17 coming back to jail and getting life back into
 18 prospective, I choose to live.
 19 In this short period of time, I've come back
 20 to Christ, learning to love myself again, and others
 21 as well. I know that life has changed me, and only
 22 praying and believing that with more classes and
 23 going to the Chrysalis House after I'm released will
 24 ensure success in terminating probation.
 25 THE COURT: Thank you.

9

1 one of them, but our most recent one is obviously you
 2 absconded, been gone for three-plus years; really,
 3 exactly three years.
 4 The PV was filed June 26th of 2015. You
 5 entered admissions June 26th, 2018. Sometimes we
 6 joke that a defendant is self-probating. They're on
 7 probation.
 8 And sometimes we even hear the argument,
 9 well, they must not have gotten in trouble because we
 10 didn't see him for three years, so they must have
 11 been doing well. That's not a good argument for the
 12 judge to hear.
 13 THE DEFENDANT: Yeah.
 14 THE COURT: Fundamentally, you were not
 15 doing what you were supposed to do --
 16 THE DEFENDANT: No.
 17 THE COURT: -- by checking in. And I will
 18 tell you, I had not contemplated a period of retained
 19 jurisdiction very much for today simply because your
 20 just utter failure to not comply with the terms of
 21 probation.
 22 But you've only got six months before you're
 23 going to be eligible for parole, but I don't know
 24 what the parole board is going to do. And like
 25 Mr. Larsen said, if you're going to go do your time,

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1 you don't just sit there. So I will tell you, I have
2 factored in and thought about doing a period of
3 retained jurisdiction, recognizing that the one you
4 did back in 2014 is different.
5 But I think with the underlying charge, just
6 really the awful performance, I think I can say that
7 on probation, over the years, certainly I don't
8 think -- I'm not going to put you on probation,
9 you're not a good risk for that, too big a risk to
10 re-offend.
11 I think you will end up with essentially
12 some of the same programming on the way out if I
13 reimpose your sentence or sentence you. I just think
14 it's a poor message.
15 And I know it's ignorant of me to think that
16 what I do to you today is going to be broadcast all
17 over my county, our county, and people are going to
18 know, if you abscond supervision, you're going to be
19 incarcerated. I wish it had that effect. It
20 doesn't. I'm not that naive.
21 But I think the fact that you just absconded
22 makes it difficult for me to put you on a rider at
23 this point. So for those reasons stated, reviewing
24 the original PSI, not so much as your conditions, but
25 the underlying facts, the fact that you absconded for

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1 three years, I'm going to, obviously, revoke your
2 probation and reimpose the sentence and give you
3 credit for time served in the amount of 557 days.
4 I've considered modifying the sentence, but
5 I find the original sentence to be appropriate. And
6 so you're going to go up and do your time well and
7 you're going to have an appointment with the parole
8 board and be able to talk to them.
9 So you have 42 days from the file stamp
10 within which to appeal as to those matters that
11 haven't been previously waived. If you can't afford
12 the cost of appeal, you may proceed with what's
13 called in forma pauperis or with a court-appointed
14 lawyer.
15 So I'll remand your custody to the sheriff
16 for delivery to the State Department of Corrections
17 to begin serving your sentence. And I'm optimistic
18 that you've made some changes in your life and you're
19 going to be able to talk to the parole board, and who
20 knows, you might be out soon.
21 Take that next step on parole. You've got a
22 family, I'm sure, who's waiting and interested in
23 seeing what happens to you, but for now, in the
24 interest of I think everyone in the county, in an
25 exercise of discretion, that's what we'll do today.

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1 Thank you.
2 (Whereupon, the proceedings concluded.)
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