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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                         |   |                                 |
|-------------------------|---|---------------------------------|
| STATE OF IDAHO,         | ) |                                 |
|                         | ) | Nos. 46483-2018 & 46484-2018    |
| Plaintiff-Respondent,   | ) |                                 |
|                         | ) | Ada County Case Nos.            |
| v.                      | ) | CR-FE-2015-2232 & CR01-18-24449 |
|                         | ) |                                 |
| ANTHONY CHARLES SCHWAB, | ) |                                 |
|                         | ) | RESPONDENT’S BRIEF              |
| Defendant-Appellant.    | ) |                                 |
| _____                   | ) |                                 |

Issue

Has Schwab failed to establish that the district court abused its discretion, either by revoking his probation and executing his underlying unified sentence of seven years, with two years fixed, for possession of heroin in docket number 46483, or by imposing a unified sentence of five years, with two years fixed, following his guilty plea to possession of methamphetamine in docket number 46484?

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

In 2015, the state charged Schwab with possession of heroin, possession of methamphetamine, and possession of drug paraphernalia in Ada County case number CR-FE-

2015-2232 (docket number 46483). (R., pp.49-50.) Pursuant to a plea agreement, Schwab pled guilty to possession of heroin and the state dismissed the remaining charges and agreed to recommend a unified sentence of seven years, with two years fixed, with a period of retained jurisdiction. (R., pp.53, 61-63.) On June 22, 2015, the district court imposed a unified sentence of seven years, with two years fixed, suspended the sentence, and placed Schwab on supervised probation for seven years with the condition that he successfully complete the Ada County Drug Court program. (R., pp.82-87.)

Schwab began violating the terms of Drug Court almost immediately – on July 7, 2015, he was ordered to serve one day on the Sheriff’s Inmate Labor Detail (“S.I.L.D.”) for failing to report for drug testing on several occasions; on July 14, 2015, he was ordered to serve two days on S.I.L.D. for being “late checking into [the] Mission” and “fail[ing] to produce for his UA” on two occasions; and, on August 25, 2015, he was again ordered to serve two days on S.I.L.D for missing drug testing, but failed to report. (R., pp.89-91; PSI, pp.195-96, 202-03.<sup>1</sup>) He was given the opportunity to reschedule his S.I.L.D time; however, he again failed to report and absconded from Drug Court. (PSI, pp.203-05.) The court issued a bench warrant on September 9, 2015, and Schwab was arrested on the warrant approximately one month later, after which he was ordered to complete the Substance Abuse Program (“SAP”) in the Ada County Jail. (R., pp.92-94.)

Schwab continued to violate the terms of Drug Court after he completed SAP – he was again ordered to serve two days on S.I.L.D. on December 15, 2015, two days on S.I.L.D. on December 22, 2015, and one day on S.I.L.D. on December 29, 2015, for various violations. (R.,

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Schwab 46483 & 46484 psi.pdf.”

pp.96-97, 100; PSI, pp.208-12.) In early January 2016, he was “taken into custody” for failing to comply with S.I.L.D. and for continuing to fail to produce urinalysis samples and to not appear for his drug testing. (PSI, pp.212-14.) Schwab was released from custody on January 20, 2016, after which he again absconded from Drug Court. (PSI, p.215.) On January 22, 2016, the court issued a bench warrant due to Schwab’s continued violations of the terms of Drug Court and his failure to appear as directed. (R., p.105.)

Schwab was arrested on the warrant approximately two months later, on March 23, 2016. (R., p.105.) The state subsequently filed a motion for discharge from Drug Court, alleging that Schwab had violated the terms of Drug Court by failing to appear for New Participant Orientation, being late checking in to the Mission on one occasion, failing to “sign in to the Mission until 2:00 a.m.” on a second occasion, failing to check in at the Mission altogether on a third occasion, failing to attend “RPG,” being unexcused from his Matrix Group on two occasions, submitting a urinalysis sample that he had diluted with “toilet water,” failing to “produce for a UA” on 12 separate dates, being unexcused from urinalysis testing on eight additional dates, failing to report to sign up for S.I.L.D. on two occasions, absconding from Drug Court in September 2015, and absconding from Drug Court a second time in January 2016. (R., pp.106-08.) The state also filed a motion for probation violation alleging that Schwab had violated the conditions of his probation by failing to successfully complete Drug Court, failing to pay his restitution as ordered, and failing to pay his “fines, fees, funds, surcharges and/or costs.” (R., pp.109-11.)

On April 12, 2016, Schwab was discharged from Drug Court “for failing to adhere to Drug Court rules and regulations,” after which he admitted that he had violated the conditions of his probation by failing to successfully complete Drug Court. (R., pp.114-15.) The district court

revoked Schwab's probation, executed the underlying sentence, and retained jurisdiction. (R., pp.117-19.) Following the period of retained jurisdiction, on December 22, 2016, the district court suspended Schwab's sentence and reinstated him on supervised probation with the condition that he successfully complete the Rider Aftercare program. (R., pp.123-26.)

Less than three months later, in March 2017, Schwab was "discharged from Advanced Practice Aftercare, substance abuse counseling, as he missed four consecutive group sessions." (R., p.135.) In May 2017, he was twice ordered to serve discretionary jail time for "[a]voiding supervision, moving without permission, and use of drugs." (R., pp.127-28.) Schwab subsequently tested positive for and/or admitted to using methamphetamine on multiple occasions between May 2017 and May 2018. (R., p.130.)

On May 8, 2018, officers responded to Schwab's motel room after receiving a report that he was "currently 'shooting up heroin,'" and found Schwab in possession of a liquid-filled syringe and a baggie containing methamphetamine. (PSI, pp.79-80.) The state charged Schwab with possession of methamphetamine in Ada County case number CR01-18-24449 (docket number 46484). (R., pp.202-03.) In the 2015 case (docket number 46483), the state filed a motion for probation violation alleging that Schwab had violated the conditions of his probation by committing the new crime of felony possession of a controlled substance on May 8, 2018; failing to report for supervision as directed; failing to successfully complete Rider Aftercare; using methamphetamine in May 2017, December 2017, January 2018, March 2018, and May 2018; "contacting multiple people to purchase methamphetamine" in violation of his probation officer's directive that he not associate with individuals involved in drug use or criminal activity; changing residences without permission in May 2018; failing to pay his restitution and other court-ordered financial obligations; and absconding from supervision. (R., pp.129-33.) The

district court issued a bench warrant for the probation violation and, on August 15, 2018, an officer arrested Schwab on the warrant and found him in possession of a “bag of methamphetamine.” (R., pp.141-42; PSI, pp.93-95.)

The state charged Schwab with possession of methamphetamine in Ada County case number CR01-18-39759, and also filed an amended motion for probation violation in the 2015 case to add an allegation that Schwab had violated the conditions of his probation by committing the new crime of felony possession of a controlled substance on August 15, 2018. (R., pp.149-54.) Pursuant to a plea agreement, Schwab pled guilty to possession of methamphetamine in Ada County case number CR01-18-2449 (docket number 46484), and the state dismissed Ada County case number CR01-18-39759 and agreed to recommend a unified sentence of seven years, with two years fixed, to run concurrently with Schwab’s sentence in the 2015 case. (R., pp.209, 214.) The district court imposed a unified sentence of five years, with two years fixed, and ordered that the sentence run concurrently with Schwab’s sentence in the 2015 case. (R., pp.221-23.) In the 2015 case, Schwab admitted that he violated his probation by committing the new crime of possession of methamphetamine, and the district court revoked his probation and executed the underlying sentence. (R., pp.158, 161-63.) Schwab filed a notice of appeal in both cases, timely from the district court’s order revoking probation and executing his underlying sentence in the 2015 case (docket number 46483), and timely from the judgment of conviction in the 2018 case (docket number 46484). (R., pp.164-66, 224-26.)

Schwab asserts that the district court abused its discretion by revoking his probation in docket number 46483, and by imposing an excessive sentence in docket number 46484, in light of his family support, recognition of his substance abuse problem, and willingness to participate in treatment. (Appellant’s brief, pp.5-10.) Schwab has failed to establish an abuse of discretion.

When a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016) (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. 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. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). A sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” Id. (quoting State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008)).

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision whether to revoke a defendant’s probation for a violation is within the discretion of the district court. State v. Garner, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017) (quoting State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003)). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and is consistent with the protection of society. State v. Cornelison, 154 Idaho 793, 797, 302 P.3d 1066, 1070 (Ct. App. 2013) (citations omitted). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its

discretion. Id. at 798, 302 P.3d at 1071 (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992)).

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). Schwab's unified sentence of five years, with two years fixed, for possession of methamphetamine in docket number 46484 falls well within the statutory guidelines. (R., pp.221-23.) Furthermore, both Schwab's sentence in docket number 46484, and the district court's decision to revoke Schwab's probation and execute his underlying sentence in case number 46483, are appropriate in light of Schwab's ongoing disregard for the law and the terms of community supervision, his failure to rehabilitate or be deterred, and his high risk to reoffend.

Schwab, who is now 30 years old, reported that he began abusing illegal drugs approximately 14 years ago, at the age of 16. (PSI, pp.1, 11-12.) He has continued to abuse illegal substances and commit crimes despite having participated in a court-ordered substance abuse testing program while on felony probation in the State of Oregon; a one-year Intensive Treatment Rehabilitation Services program in 2011; outpatient substance abuse treatment via the Bridgeway Program from 2013 to 2014; the Ada County Drug Court program from June 2015 to April 2016; Cognitive-Behavioral Interventions for Substance Abuse, Thinking for a Change, FATHERS, and Pre-release during his rider in 2016; and substance abuse counseling via Advanced Practice Aftercare in 2017. (PSI, pp.5, 13, 50; R., pp.80-81, 115, 133-36.) Schwab's support from family, purported remorse, recognition of his substance addiction, and desire to participate in additional substance abuse treatment are all factors that were present at the time that the 2015 presentence report was completed, yet none of the factors precluded him from committing two additional felony drug offenses while he was on probation for the 2015 felony

drug offense. (PSI, pp.5-7, 13-14, 17, 79, 93; R., pp.150-51.) According to the presentence investigator, Schwab presents a high risk to reoffend. (PSI, p.14.)

At the combined sentencing and disposition hearing for these cases, held on October 22, 2018, the state addressed Schwab's ongoing unwillingness to abide by the law or by the conditions of probation, his failure to rehabilitate or be deterred despite multiple prior treatment opportunities and legal sanctions, and his high risk to reoffend. (10/22/18 Tr., p.6, L.19 – p.10, L.4 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Schwab's sentence in docket number 46484 and for revoking probation and executing Schwab's underlying sentence in docket number 46483. (10/22/18 Tr., p.13, L.10 – p.14, L.11 (Appendix B).) The state submits that Schwab has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the October 22, 2018 sentencing and disposition hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Schwab's probation and executing his underlying sentence in docket number 46483 and Schwab's conviction and sentence in docket number 46484.

DATED this 24th day of May, 2018.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of May, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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

# APPENDIX A

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| <p>1 COURTROOM OF THE DISTRICT COURT<br/> 2 FOURTH JUDICIAL DISTRICT<br/> 3 ADA COUNTY COURTHOUSE<br/> 4 ADA COUNTY, BOISE, IDAHO<br/> 5 MONDAY, OCTOBER 1, 2018<br/> 6 * * * * *</p> <p>7 THE COURT: State versus Anthony Schwab.<br/> 8 What would you like to do?</p> <p>9 MR. MARX: Your Honor, Mr. Schwab is going<br/> 10 to admit allegation No. 1. He's already entered a<br/> 11 guilty plea, and we would ask -- we filed the<br/> 12 motion to consolidate already. We would ask the<br/> 13 Court to sign that for disposition.</p> <p>14 THE COURT: All right. And it's not a<br/> 15 Rule 11; correct?</p> <p>16 MR. MARX: As far as I know it's not.</p> <p>17 THE COURT: Because -- I'll, well, based on<br/> 18 your representation, I'll accept it. And I would<br/> 19 revoke it. I don't take those, but, anyway.</p> <p>20 Okay. So do you want to do that,<br/> 21 Mr. Schwab?</p> <p>22 MR. MARX: One moment, Your Honor.<br/> 23 (Brief discussion held off the record.)</p> <p>24 THE DEFENDANT: Yes.</p> <p>25 THE COURT: Okay. And so you realize that</p> | <p>1 I'll have the clerk enter it.</p> <p>2 MR. MARX: Your Honor, I confirmed on the<br/> 3 offer sheet that those are not Rule 11 agreements.</p> <p>4 THE COURT: Okay. Well, I'll go ahead and<br/> 5 accept it. It looks like sentencing is kind of<br/> 6 set for pretty soon anyhow. Let me take a look<br/> 7 and see if I have a date near then, so we'll kind<br/> 8 of keep to the same schedule.</p> <p>9 I'm in the trial that week. That's<br/> 10 going to make my schedule a little difficult, but<br/> 11 let's take a look.</p> <p>12 Well, I think what we can do is since<br/> 13 it's so close, I think we'll go earlier. We'll<br/> 14 just go a day earlier because I'm sure everything<br/> 15 will be done by then. I'll set it for<br/> 16 October 22nd. It's already set for October 23rd,<br/> 17 but I'll set it for October 22nd at 3:00.</p> <p>18 THE DEFENDANT: Thank you.<br/> 19 (Proceedings concluded at 3:00 p.m.)</p> <p>20 ///</p> <p>21 ///</p> <p>22 ///</p> <p>23 ///</p> <p>24 ///</p> <p>25 ///</p>  |
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| <p>1 you are giving up your hearing if you admit to<br/> 2 this allegation?</p> <p>3 THE DEFENDANT: Yes.</p> <p>4 THE COURT: And you are doing this freely<br/> 5 and voluntarily?</p> <p>6 THE DEFENDANT: Yes.</p> <p>7 THE COURT: So you did plead guilty already<br/> 8 to possession of a controlled substance on<br/> 9 May 8th -- 7th and 8th. That's when the offense<br/> 10 happened, May 8, 2018?</p> <p>11 THE DEFENDANT: Correct.</p> <p>12 THE COURT: And that was in a different case<br/> 13 in front of Judge Greenwood it looks like.</p> <p>14 THE DEFENDANT: Yes.</p> <p>15 THE COURT: Okay. And you pled guilty<br/> 16 freely and voluntarily?</p> <p>17 THE DEFENDANT: Yes, I did.</p> <p>18 THE COURT: You had a lawyer represent you?</p> <p>19 THE DEFENDANT: Yes.</p> <p>20 THE COURT: And you understand the nature of<br/> 21 the offense and the consequences to a guilty plea?</p> <p>22 THE DEFENDANT: Yes.</p> <p>23 THE COURT: So it is a valid plea?</p> <p>24 THE DEFENDANT: Yes.</p> <p>25 THE COURT: All right. I'll accept it, and</p>          | <p>1 COURTROOM OF THE DISTRICT COURT<br/> 2 FOURTH JUDICIAL DISTRICT<br/> 3 ADA COUNTY COURTHOUSE<br/> 4 ADA COUNTY, BOISE, IDAHO<br/> 5 MONDAY, OCTOBER 22, 2018<br/> 6 * * * * *</p> <p>7 THE COURT: Okay. I'll take up State versus<br/> 8 Anthony Schwab. This is a probation violation<br/> 9 disposition because it's my understanding that the<br/> 10 other charge was dismissed as part of the plea<br/> 11 bargain agreement in this case.</p> <p>12 It was a little unclear. I looked at<br/> 13 the minutes from the other court.</p> <p>14 MR. MARX: So one charge was dismissed, and<br/> 15 he pled guilty to one, Your Honor.</p> <p>16 THE COURT: Okay. Well, let's talk about<br/> 17 it.</p> <p>18 Counsel for the state, comments.</p> <p>19 MS. WELSH: Your Honor, in this case, the<br/> 20 state is recommending on the new felony charge<br/> 21 that you impose a sentence of five years;<br/> 22 two years fixed followed by three years<br/> 23 indeterminate, that that be concurrent with the<br/> 24 probation violation case. That is CRFE-15-2232<br/> 25 case.</p> |

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| <p style="text-align: center;">7</p> <p>1 Your Honor, the state's recommending<br/>2 \$200 restitution for the lab in that new case as<br/>3 well. I believe that the Tuhill factors support a<br/>4 prison recommendation at this time. I turned<br/>5 specifically to this issue of rehabilitation.<br/>6 The state's position is that it's<br/>7 simply not appropriate for the defendant at this<br/>8 point because we've, essentially, passed that<br/>9 point with him. He's been supervised in one way<br/>10 or another since his first felony in the state of<br/>11 Oregon in 2007.<br/>12 He's been supervised in the state of<br/>13 Idaho since 2015. And during that time, he's<br/>14 picked up two probation violations, counting the<br/>15 one before Your Honor. There was one prior to<br/>16 this, and then two new felony crimes. One which<br/>17 you are sentencing him on today, and the other<br/>18 that is being dismissed pursuant to that plea<br/>19 agreement.<br/>20 If we go back to the 2015 case,<br/>21 initially he was sentenced to drug court and had<br/>22 the opportunity to participate in drug court.<br/>23 That didn't go well and resulted in his first<br/>24 probation violation in Idaho. As a result of<br/>25 that, he was sentenced to a rider, released from</p> | <p style="text-align: center;">9</p> <p>1 He has gone through drug court. He went through a<br/>2 rider. And the case that Your Honor is sentencing<br/>3 him on now also involves syringes and IV drug use.<br/>4 So turning to deterrence, it's clear<br/>5 he's not been deterred by his past convictions and<br/>6 supervision. Again, he had that burglary -- first<br/>7 felony in 2007, was supervised in Oregon, and then<br/>8 he picked up another felony in 2011 in Oregon, a<br/>9 coercion and then endangering the welfare of a<br/>10 minor. It's not clear if that is a felony or a<br/>11 misdemeanor, but he also received supervision --<br/>12 three years of supervision on that.<br/>13 That old PSI indicates that he didn't<br/>14 complete programming while he was on probation in<br/>15 Oregon beginning in 2007 and 2011. He obviously<br/>16 did complete some programming in Idaho, but he has<br/>17 not been deterred. So, perhaps, a prison sentence<br/>18 on this would deter him. I just don't know.<br/>19 Punishment. Two years of prison is an<br/>20 appropriate punishment for someone who has not<br/>21 taken the advantage of those systems trying to<br/>22 help him and simply committing new crimes in our<br/>23 community.<br/>24 And then the protection of community.<br/>25 There is a high risk that Mr. Schwab will commit</p> |
| <p style="text-align: center;">8</p> <p>1 that and given probation in December of 2016. And<br/>2 now here we are at probation violation at number<br/>3 two.<br/>4 So from the state's perspective, when<br/>5 you've exhausted drug court and you have exhausted<br/>6 a rider, we are just not at a place that probation<br/>7 is appropriate for Mr. Schwab.<br/>8 I do want to speak briefly to that<br/>9 letter of support and note that the person who<br/>10 wrote that letter indicates she met him in April<br/>11 or May of 2018. And that also corresponds<br/>12 perfectly with the time in which he absconded from<br/>13 felony probation. So that is a -- that's a<br/>14 certain.<br/>15 The other letter from the -- I believe<br/>16 it was the Rescue Mission simply says if he is<br/>17 willing to work hard, that he will be successful.<br/>18 But I think his history in these cases have shown<br/>19 that he is not. So the state simply does not have<br/>20 an abiding conviction that if released, he will be<br/>21 crime free and turn his life around.<br/>22 So, I guess, the real question might be<br/>23 should he complete another rider. And, again, I<br/>24 turn to the facts in 2015. We don't have an<br/>25 updated PSI, but he was an IV drug user in 2015.</p>            | <p style="text-align: center;">10</p> <p>1 another crime if released. At this point it<br/>2 almost becomes a matter of protecting Mr. Schwab<br/>3 from himself. The state is recommending that two<br/>4 plus three for five, imposition.<br/>5 Thank you.<br/>6 THE COURT: Well --<br/>7 MR. MARX: Your Honor, we would ask the<br/>8 Court to reinstate Mr. Schwab on the probation<br/>9 violation, impose a period of supervised probation<br/>10 on the new felony charge, sentence him to complete<br/>11 the New Life Program that he's been accepted into.<br/>12 Certainly, he has had some programming<br/>13 and opportunity. There's -- the position for the<br/>14 penitentiary oftentimes is when there is no other<br/>15 options or no other programming. There is<br/>16 programming available for him in the community.<br/>17 This isn't simply an application for a Rising Sun<br/>18 house or Ascent or something of that nature where<br/>19 it's outpatient programming.<br/>20 He has applied to go to a program that<br/>21 is 12 to 18 months long. It's quite intensive.<br/>22 You are not able to just come and go as you<br/>23 please. There are some of those restrictions that<br/>24 certainly would be beneficial to Anthony to<br/>25 complete.</p>   |

## APPENDIX B

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| <p style="text-align: center;">11</p> <p>1 He's gotta figured it out at some point<br/> 2 one way or the other. He finds himself back in<br/> 3 front of Your Honor on new charges. And the<br/> 4 probation violation, while that certainly could<br/> 5 warrant penitentiary time, I think if there is an<br/> 6 opportunity and programming for him in the<br/> 7 community and they are willing to take him, giving<br/> 8 him the opportunity to do that is certainly<br/> 9 worthwhile.</p> <p>10 Whether his support was somebody who<br/> 11 came into his life while he was absconding or not,<br/> 12 the fact of the matter is there is somebody that<br/> 13 is supportive of him who is sober and, certainly,<br/> 14 is pushing him to do the right thing and be<br/> 15 successful in the community. That is a positive<br/> 16 support system, and that is something he has<br/> 17 available to him as well.</p> <p>18 THE COURT: What do you have to say,<br/> 19 Mr. Schwab?</p> <p>20 THE DEFENDANT: Um, Your Honor, may I read<br/> 21 the letter?</p> <p>22 THE COURT: Sure.</p> <p>23 THE DEFENDANT: Okay. It says, as I stand<br/> 24 here today, I find myself very nervous and scared.<br/> 25 Scared what the future may hold. And I've reached</p>   | <p style="text-align: center;">13</p> <p>1 Today I'm not asking for the easy way.<br/> 2 I'm asking for you to allow me to do this. I'm<br/> 3 ready for it, and I'm ready for change. I need my<br/> 4 family back. And I know the program is hard, but<br/> 5 it's probably going to save my life.</p> <p>6 So thank you.</p> <p>7 THE COURT: Is there a legal cause why we<br/> 8 should not proceed?</p> <p>9 MR. MARX: None known, Your Honor.</p> <p>10 THE COURT: Well, the problem I have is that<br/> 11 so many different options have already been tried.<br/> 12 And I look at this, and I see possession on<br/> 13 May 8th. I see another one that is part of a<br/> 14 package deal that was dismissed, but it was on<br/> 15 August 15th. And then I see somebody who's been<br/> 16 using a lot, not reporting, getting kicked out of<br/> 17 treatment for missing groups, and absconding.</p> <p>18 And I don't -- I think this is time for<br/> 19 consequences. You've been given a lot of<br/> 20 opportunities. You haven't chosen to avail<br/> 21 yourself of them.</p> <p>22 On the new charge, the 24449 case, I'm<br/> 23 imposing a sentence of two years fixed followed by<br/> 24 three years for a five-year sentence.<br/> 25 On the 2015 case, I'm revoking</p> |
| <p style="text-align: center;">12</p> <p>1 the point in my life where I'm tired of being<br/> 2 sick. Sick of watching my loved ones suffer as I<br/> 3 have while this disease slowly kills me.</p> <p>4 I continue to give up everything to<br/> 5 stay on the path of chemical dependency and<br/> 6 self-destruction.</p> <p>7 Substance abuse has always plagued me<br/> 8 and allowed me to wrongfully hurt those that I<br/> 9 love, and today I'm over it. I'm done living this<br/> 10 way. I realize I cannot stop using on my own. I<br/> 11 need help. I need to start from ground zero, and<br/> 12 I know that the New Life Program is the program<br/> 13 meant for me. It is my level ground.</p> <p>14 It's an intensive and patient structure<br/> 15 where entry into the community is slow and<br/> 16 supportive, structurally and emotionally as well.</p> <p>17 And, Ma'am, I don't think being<br/> 18 institutionalized is really the help that I need.<br/> 19 That is equivalent to bandaging a wound that needs<br/> 20 stitches. This is not a "get out of jail free"<br/> 21 card. Two and a half years ago I thought I<br/> 22 received that when you granted me drug court.<br/> 23 Admittedly, I failed, and I ended up<br/> 24 (unintelligible) none the less, so prison seems<br/> 25 the easy way.</p> | <p style="text-align: center;">14</p> <p>1 probation, imposing sentence, but there is quite a<br/> 2 bit of credit for time served. And it can be<br/> 3 concurrent, but, frankly, I think this is the<br/> 4 point where it's fair to serve consequences as<br/> 5 well.</p> <p>6 You've been given lots of chances,<br/> 7 including by the probation officer, to do<br/> 8 treatment. You didn't follow through, and you<br/> 9 have taken off the credible options, particularly,<br/> 10 picking up new charges while the other charges are<br/> 11 pending is problematic.</p> <p>12 So you do have 42 days in which to<br/> 13 appeal.</p> <p>14 (Proceedings concluded at 4:23 p.m.)<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23<br/> 24<br/> 25</p>  |