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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46058
)	
v.)	ADA COUNTY NO. CR-FE-2015-7608
)	
AMANDA LUCY BELLE DIAZ,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

This case illustrates the wisdom in the adage attributed to Ben Franklin – that an ounce of prevention is worth a pound of cure. Ms. Diaz’s first probation officer “really didn’t try very hard to get [her] involved in treatment, to get things going better,” (Tr., p.26, Ls.11-14), and as a result, did not intervene as Ms. Diaz experienced a full relapse during which she nearly died from an overdose. However, as defense counsel subsequently pointed out, by providing Ms. Diaz with a meaningful opportunity on probation, one with proper supervision and appropriate terms, probation could still achieve the ultimate goal of rehabilitation. As such, the district court abused its discretion by revoking her probation.

Statement of the Facts & Course of Proceedings

Following her conviction by a jury of driving under the influence of narcotics, the district court retained jurisdiction so Ms. Diaz could participate in a rider program. (Supp. R., pp.125-27.)¹ Ms. Diaz successfully completed the rider program and, despite having some disciplinary issues, the staff recommended the district court suspend her sentence for a period of probation. (Addendum to Presentence Report, pp.1-3.) The district court followed that recommendation, suspending her unified sentence of fifteen years, with three years fixed, for a fifteen-year period of probation. (R., pp.18-21.)

Unfortunately, as the district court ultimately found, Ms. Diaz was initially supervised by “a probation officer who really didn’t try very hard to get [her] involved in treatment, to get things going better.” (Tr., p.26, Ls.11-14.) That probation officer felt Ms. Diaz was performing well during the first few months of her probation, and, as a result, resisted the prosecutor’s efforts to initiate probation violation proceedings following an incident in May 2017 where Ms. Diaz was cited for driving without privileges. (*See* Tr., p.15, L.23 - p.16, L.2 (the prosecutor explaining the probation officer was “kind of fighting us because he couldn’t believe that we even filed a probation violation over something like that”); *see also* Tr., p.19, Ls.7-9, p.20, L.21 - p.21, L.2 (defense counsel agreeing that the probation officer’s evaluation of Ms. Diaz’s progress may have been overstated, though noting she had, in fact, made some progress, such as by participating in the Recovery For Life program and by earning her six-month certificate in the Chrysalis House program).)

However, once a new probation officer was assigned to Ms. Diaz’s case, it became apparent that the May 2017 incident was just the first warning flag that, despite her initial

¹ References to “Supp. R.” are to the record prepared in Ms. Diaz’s initial appeal, Docket No. 43870, which the Supreme Court ordered be augmented to the record in this case. (R., p.2.)

progress, Ms. Diaz was experiencing a relapse. (*See R.*, pp.42-46 (the new probation officer's report of violation detailing several violations of the terms of probation in the months following the May 2017 incident).) Ms. Diaz explained that she had gotten prideful with her initial progress, which led her to get complacent. (Tr., p.23, Ls.12-13.) Then she was laid off due to her employer downsizing. (*See Tr.*, p.20, Ls.14-20.) As a result, she stopped making as much progress as she had been, which discouraged her, but rather than re-engaging in the programs, Ms. Diaz admitted she let herself indulge in self-pity instead. (Tr., p.23, Ls.13-17.) She explained that this led to letting herself get into more and more compromising situations, which culminated with her nearly-fatal overdose. (Tr., p.23, Ls.18-22; *see R.*, pp.42-46 (noting that, during that time, Ms. Diaz had begun associating with other people with felony convictions, and she had begun using drugs and committing other offenses with them).)

The effects of Ms. Diaz's relapse continued after the report of violation was filed, as she continued to be late for, or miss, urinalysis tests, some of which tested positive for narcotics, during her time on pretrial release. (*See R.*, pp.53-54, 75.) However, she did also provide documentation showing that she had been given several narcotic medications during hospital visits immediately prior to the first positive tests. (*See R.*, pp.53-54 (the pretrial release officer's affidavit explaining the alleged violations).) Ms. Diaz ultimately admitted several violations of the terms of her probation. (Tr., p., L.12 - p.5, L.7.) The district court revoked her pretrial release at that time. (Tr., p.11, L.25.) Ms. Diaz explained that actually turned out to be a blessing because, during that time in jail, she was able to get control of the relapse. (Tr., p.24, Ls.19-23.) The district court actually acknowledged that fact, stating "I think you are better than you were because of the custody. I think it's given you a little bit more control." (Tr., p.29, Ls.1-3.)

Ms. Diaz acknowledged the reasonableness of the prosecutor's ensuing request for revocation and incarceration, particularly given the number of treatment opportunities she had been provided. (Tr., p.25, Ls.2-11.) However, she did ask the district court for another opportunity to build on the progress she had initially made. (Tr., p.25, Ls.12-23; *see* Tr., p.19, Ls.7-14 (defense counsel pointing out that Ms. Diaz has been able to make some progress when under the proper supervision).) The new GAIN-I evaluation conducted in anticipation of the disposition hearing concluded that Ms. Diaz "appears to be able to be managed safely at 1.0-OP LOC level of care." (PSI, p.46.) Additionally, defense counsel noted that Ms. Diaz had housing and employment options ready and waiting for her, if she were returned to probation. (Tr., p.19, L.21 - p.20, L.9.) As a result, defense counsel recommended the district court return Ms. Diaz to probation under appropriate supervision and terms of release. (*E.g.*, Tr., p.29, Ls.8-14).

The district court, however, decided to revoke Ms. Diaz's probation because "we don't have anything sufficient in the community to deal with the level of addiction and addiction related crimes that you are presenting." (Tr., p.29, Ls.4-7.) As a result, it executed her underlying sentence without modification.² (R., pp.83-84.) Ms. Diaz filed a notice of appeal timely from the order revoking her probation. (R., pp.86-87.)

ISSUE

Whether the district court abused its discretion when it revoked Ms. Diaz's probation and executed her underlying sentence.

² Ms. Diaz subsequently filed a motion for reduction of that sentence, but the district court denied that motion because it was not supported by any additional information. (R., pp.91-97.)

ARGUMENT

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

“The purpose of probation is rehabilitation.” *State v. Wilson*, 127 Idaho 506, 510 (Ct. App. 1995). “In deciding whether revocation of probation is the appropriate response to a violation, the court considers whether the probation is achieving the goal of rehabilitation and whether continued probation is consistent with protection of society.” *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). The decision to revoke probation is one within the district court’s discretion. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). A district court abuses its discretion when it fails to recognize the issue as one of discretion, acts beyond the outer limits of that discretion, does not act consistently with the controlling precedent, or does not reach a decision based on an exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863-64 (2018). In this case, a sufficient consideration of the mitigating factors demonstrates the district court did not reach its decision through an exercise of reason.

As the Court of Appeals has pointed out, when terms of probation, though otherwise proper, are “impossible or nearly impossible for [the defendant] to fulfill,” they do not “serve the ultimate goal of rehabilitation.” *State v. Wakefield*, 145 Idaho 270, 274 (Ct. App. 2007). Thus, in *Wakefield*, the Court found that, even though the district court had the authority to order the defendant to pay more each month toward restitution, it abused its discretion by doing so because it did not sufficiently consider his current ability to pay and the increase would use up most of his apparent income, thus making it impossible to fulfill that and all the other terms of his probation. *Id.* at 273-74.

The district court’s decision to revoke Ms. Diaz’s probation represents a similar failure to appropriately consider all the relevant factors. In particular, it did not sufficiently consider the

fact that Ms. Diaz's probation officer's failure to engage in proper supervision of her term of probation, like the order in *Wakefield*, set Ms. Diaz up to fail on probation. He "really didn't try very hard to get [her] involved in treatment, to get things going better," and fought against intervention efforts when the first warning flag appeared. (*See* Tr., p.15, L.23 - p.16, L.2, p.26, Ls.11-14.) As such, Ms. Diaz did not receive the sort of support (through supervision, intervention, and correction) that would have given her a meaningful opportunity to be successful on probation.

Moreover, by the time the initial probation officer's lax oversight was addressed and a new probation officer assigned to the case, Ms. Diaz was already in a full relapse. It was not until Ms. Diaz's pretrial release was revoked that she was finally able to get control over the situation. (*See* Tr., p.29, Ls.1-3 (the district court noting, "I think you are better than you were because of the custody. I think it's given you a little bit more control."); *see also* Tr., p.24, Ls.13-18 (Ms. Diaz acknowledging the responsibility for the relapse and for staying in control of those situations ultimately lay with her).) In other words, the new probation officer was left to play catch up, to try and get control of the relapse, rather than help Ms. Diaz develop and implement a meaningful plan to promote her continued rehabilitation. Therefore, though revoking probation was within the district court's authority it was, like the order in *Wakefield*, an abuse of discretion to exercise that authority without adequately considering the fact that Ms. Diaz was not actually afforded a meaningful opportunity to be successful throughout the period of probation.

Additionally, the fact that Ms. Diaz experienced this relapse does not mean she could not be successful on probation, if she were subject to proper supervision and terms. *Compare United States v. Hawkins*, 380 F.Supp.2d 143, 144 (E.D.N.Y. 2005) (explaining that "[t]he fact that the

defendant engaged in further criminal activity while she was in the process of rehabilitation does not preclude a finding of extraordinary rehabilitation” or the imposition of a more lenient sentence in recognition of that fact). After all, as the most recent GAIN-I evaluation pointed out, Ms. Diaz’s substance abuse issues could be managed safely in a Level 1 Out-Patient program. (PSI, p.46.) There was, in fact, programming available to her. (See PSI, p.196 (noting that Ms. Diaz was welcome to return to the Love and Unity program upon her release).) She had housing available at a “safe release house” and an offer for a managerial position with a previous employer. (Tr., p.19, L.20 - p.20, L.9.) As such, the district court did not consider all the relevant circumstances when it concluded there was not anything sufficient in the community to deal Ms. Diaz’s needs or level of addiction. (See Tr., p.29, Ls.4-7.)

Rather, a sufficient consideration of all the relevant factors reveals that the ounce of prevention available through placing Ms. Diaz on probation with the proper supervision and terms was worth more than the pound of cure the district court dosed up by ordering Ms. Diaz be incarcerated. As such, the district court abused its discretion by revoking her probation.

CONCLUSION

Ms. Diaz respectfully requests that this Court reverse the order revoking her probation and remand this case so she can be returned to probation under appropriate supervision.

DATED this 20th day of June, 2019.

/s/ Brian R. Dickson
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

BRD/eas