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### State v. Campbell Appellant's Brief Dckt. 46655

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46655-2019
	)	
v.	)	ADA COUNTY NO. CR01-17-9200
	)	
KENNETH W. CAMPBELL,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Kenneth W. Campbell pleaded guilty to felony possession of a controlled substance. The district court imposed a sentence of seven years, with two years fixed, and retained jurisdiction. After Mr. Campbell participated in a “rider,” the district court suspended the sentence and placed him on probation for a period of five years. Mr. Campbell later admitted to violating the terms of his probation, and the district court revoked probation and executed the sentence. On appeal, Mr. Campbell asserts the district court abused its discretion when it revoked probation and executed his underlying sentence.

## Statement of the Facts & Course of Proceedings

Garden City Police Department and Probation and Parole officers conducted a compliance check on Mr. Campbell at his residence. (See Presentence Report (*hereinafter*, PSI), p.64.)<sup>1</sup> Mr. Campbell had been on parole in Ada County No. CR 2012-4464, where he had been convicted of failure to register as a sex offender. (See PSI, pp.71-72.) Mr. Campbell admitted to using methamphetamine, and he claimed ownership of the drug paraphernalia found in plain view inside the residence. (PSI, p.64.) Residue within a glass pipe tested positive for methamphetamine. (PSI, p.64.)

The State charged Mr. Campbell by Information with possession of a controlled substance, felony, I.C. § 37-2732(c), and possession of drug paraphernalia, misdemeanor, I.C. § 37-2734A. (R., pp.20-21.) Pursuant to a plea agreement, Mr. Campbell agreed to plead guilty to possession of a controlled substance, and the State agreed to dismiss the possession of drug paraphernalia charge. (See R., pp.26, 28-31.) The district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.33-36.) After Mr. Campbell participated in a “rider,” the district court suspended the sentence and placed him on probation for a period of five years. (PSI, p.134; R., pp.39-45.)

About seven months later, the State filed a Motion for Probation Violation alleging Mr. Campbell had violated the terms of his probation. (R., pp.60-71.) Mr. Campbell admitted to violating his probation by using methamphetamine, not submitting to a drug test, not complying with his probation officer’s request that he stop donating plasma, and not complying with his probation officer’s request that he not access the Internet. (Tr., p.12, L.16 – p.14, L.19; *see* R., p.62.) The district court accepted Mr. Campbell’s admissions. (Tr., p.14, Ls.20-21.)

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<sup>1</sup> All citations to “PSI” refer to the 184-page PDF version of the Presentence Report and other confidential exhibits.

At the probation violation disposition hearing, Mr. Campbell recommended the district court “consider a second rider at this point, the AP rider.” (Tr., p.26, Ls.1-3; *see* Tr., p.26, Ls.24-25.) The State recommended the district court revoke probation and execute Mr. Campbell’s sentence. (*See* Tr., p.20, Ls.14-16.) The district court revoked probation and executed the sentence. (R., pp.79-82.)

Mr. Campbell filed a Notice of Appeal timely from the district court’s Order of Revocation of Probation, Imposition of Sentence and Commitment.<sup>2</sup> (R., pp.88-90.)

### ISSUE

Did the district court abuse its discretion when it revoked Mr. Campbell’s probation and executed his underlying sentence?

### ARGUMENT

#### The District Court Abused Its Discretion When It Revoked Mr. Campbell’s Probation And Executed His Underlying Sentence

Mr. Campbell asserts the district court abused its discretion when it revoked probation and executed his underlying sentence. The district court should have instead followed Mr. Campbell’s recommendation by retaining jurisdiction and placing him on a second “rider.” (*See* Tr., p.26, Ls.1-3.)

A district court is empowered by statute to revoke a defendant’s probation under certain circumstances. I.C. §§ 19-2602, 19-2603 & 20-222. “A district court’s decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion.” *State v. Sanchez*, 149 Idaho 102, 105 (2009). In reviewing a district court’s discretionary

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<sup>2</sup> Mr. Campbell also filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.83, 93-96.) On appeal, Mr. Campbell does not challenge the district court’s denial of the Idaho Criminal Rule 35 motion.

decision, appellate courts conduct an inquiry to determine whether the district court correctly perceived the issue as one of discretion, acted within the boundaries of its discretion, acted consistently with the applicable legal standards, and reached its decision by an exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

Appellate courts use a two-step analysis in reviewing a probation revocation proceeding. *Sanchez*, 149 Idaho at 105. First, the appellate court determines “whether the defendant violated the terms of his probation.” *Id.* “If it is determined that the defendant has in fact violated the terms of his probation, the second question is what should be the consequences of that violation.” *Id.*

Mr. Campbell concedes he admitted to violating his probation. (*See Tr.*, p.12, L.16 – p.14, L.19.) When a probationer admits to a direct violation of his probation agreement, no further inquiry into the question is required. *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Thus, this Court may go to the second step of the analysis and determine whether the district court abused its discretion when it revoked Mr. Campbell’s probation. *State v. Hoskins*, 131 Idaho 670, 672 (Ct. App. 1998) (internal citations omitted). As Idaho’s appellate courts have held, “[i]f a knowing and intentional probation violation has been proved, a district court’s decision to revoke probation will be reviewed for an abuse of discretion.” *Sanchez*, 149 Idaho at 106 (quoting *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001)).

Retained jurisdiction is designed “to allow the trial court additional time to evaluate the defendant’s rehabilitation potential and suitability for probation.” *State v. Chapel*, 107 Idaho 193, 194 (Ct. App. 1984). “Probation is the ultimate objective sought by a defendant who asks a court to retain jurisdiction.” *Id.* (citing *State v. Toohill*, 103 Idaho 565, 567 (Ct. App. 1982)). Whether to place a defendant on probation is a choice “committed to the sound discretion of the

trial court.” *Id.* Because probation is at issue, the standard of review for a district court decision on whether to retain jurisdiction is the “clear abuse of discretion” standard, with a focus on the criteria set forth in I.C. § 19-2521. *Id.* “Refusal to retain jurisdiction will not be deemed a ‘clear abuse of discretion’ if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521.” *Id.*

Here, the district court did not have sufficient information to determine that a suspended sentence and probation would be inappropriate for Mr. Campbell. During the disposition hearing, defense counsel described the AP rider he recommended the district court consider for Mr. Campbell as “sort of, a refresher course,” and he thought “that may be another shot at an attempt to learn some new things. (See Tr., p.26, Ls.1-7.) The AP rider would also potentially let Mr. Campbell “have a little more insight into himself and what he needs to do when he gets out in the community . . . .” (See Tr., p.26, Ls.7-10.)

Additionally, Mr. Campbell’s counsel wanted the district court to know that Mr. Campbell was concerned about the stigma of being a sex offender when he got out of prison. (See Tr., p.26, Ls.11-16.) He told the district court, “when they put him on the sex offender probation it’s always unsettling to him. I have had these talks with him. And he is resistant to that.” (Tr., p.22, Ls.21-24.) Counsel also asked the district court to “[t]ake into consideration there are some serious mental health problems and some serious cognitive defects as well.” (Tr., p.26, Ls.18-20.) Mr. Campbell had gone through some psychotherapy to deal with his conditions such as ADHD and bipolar disorder, and counsel reported Mr. Campbell was now stable on medication. (See Tr., p.25, Ls.6-16.) Moreover, Mr. Campbell had done vocational rehabilitation and obtained a job before losing the job because he was out sick, and he wanted another opportunity at vocational rehabilitation. (See Tr., p.24, Ls.6-12.)

For his part, Mr. Campbell told the district court: “My roommate was selling drugs in my house and I went straight to my PO and I told him what was going on. And I called the landlord [and told them] what was going on. And then I told my PO I need to move and she came up with a place. And then two days later I got arrested.” (Tr., p.27, Ls.5-10.) He also reported that he was trying to get into treatment and attend college. (*See* Tr., p.27, L.15 – p.28, L.2.) He admitted he was at fault for choosing to use methamphetamine again. (*See* Tr., p.28, Ls.4-10.) Mr. Campbell stated, “And I chose to try to fix my life after that with my PO and things like that.” (Tr., p.28, Ls.10-12.)

Addressing the district court, Mr. Campbell additionally related: “I want help. I want guidance. I need knowledge and I need the ability to know I can not use. I don’t want to use ever again. I want help.” (Tr., p.28, Ls.22-25.) He further explained: “I just don’t understand every time I get on probation they want to put me on sex offender caseload. . . . That’s what gets me, kind of, flustered is when they do that to me and then they want me to do treatment. But I’ve already done treatment.” (Tr., p.29, Ls.7-16.) Mr. Campbell wanted “to stay sober. I want to be a normal person in society and live a normal life. I just can’t be around users. And I don’t want to be around users.” (Tr., p.30, Ls.1-4.) He also told the district court he wanted to go to college and get his GED. (Tr., p.30, Ls.7-8.) Mr. Campbell had a friend who was willing to give him another chance at a job. (Tr., p.30, Ls.11-12.) He thought “this AP rider would help me to get the ability for more knowledge.” (Tr., p.31, Ls.15-17.)

In light of the above, the district court did not have sufficient information to determine that a suspended sentence and probation would be inappropriate for Mr. Campbell. Thus, the district court abused its discretion when it revoked probation and executed his underlying

sentence. The district court should have instead followed Mr. Campbell's recommendation by retaining jurisdiction and placing him on a second rider.

CONCLUSION

For the above reasons, Mr. Campbell respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 29<sup>th</sup> day of April, 2019.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of April, 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](mailto:ecf@ag.idaho.gov)

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

BPM/eas