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### State v. Allred Appellant's Brief Dckt. 47237

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 47237-2019
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-MD-2015-3395
v.	)	
	)	
JASON DAVID ALLRED,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Jason Allred was on probation for almost three years for aggravated battery. After admitting to violating his probation, the district court revoked his probation and executed a sentence of five years, with one year fixed. The court then suspended that sentence and retained jurisdiction for 365 days. Mr. Allred appeals and argues the court abused its discretion by revoking his probation.

Statement of the Facts & Course of Proceedings

In March 2015, Mr. Allred was charged with misdemeanor Domestic Battery. (R., p.15.) Those charges stemmed from an altercation with his then-girlfriend. (See PSI, p.3.) Three

months later, the complaint was amended to a felony charge of Domestic Violence in the Presence of a Child. (R., pp.44-45, pp.71-72.) A preliminary hearing was held and the case was bound over to the district court. (R., p.73 (court minutes from preliminary hearing), p.76 (Notice/Minute sheet showing case being bound over to district court).) An Information was filed and Mr. Allred was arraigned on the charge of Domestic Violence in the Presence of a Child. (R., pp.84-85 (Information), p.87 (Court Minutes for Mr. Allred's arraignment).)

Pursuant to a plea agreement, the State agreed reduce the charges to Aggravated Assault and to recommend a suspended sentence with five years' probation, unless Mr. Allred's Domestic Violence Evaluation came back as "high risk and unsuitable for community based [treatment]." pp.100-01 (Amended Information); (R., p.104.) The Court reviewed the agreement with Mr. Allred, accepted his guilty plea, set a sentencing date, and ordered him to complete a domestic violence evaluation. (R., p.99).

At the time scheduled for the sentencing hearing, Mr. Allred's attorney requested sentencing be continued as the Domestic Violence Evaluation suggested a mental health examination under Idaho Code section 19-2522 would be appropriate. (R., p.114.) The State had no objection to that request. The court agreed and reset sentencing for the next month. (R., p.114.)

At the next hearing, Mr. Allred asked for another continuance so he could complete an application to Mental Health Court. His attorney told the court that Mr. Allred's life had been really rough the last few weeks, that "Mr. Allred has been homeless [but] he's now gotten into a place; his father has now passed away [and] his ex-wife committed suicide; [and that Mr. Allred was in] a vehicle accident and totaled his car." (R., p.117.) Mr. Allred's attorney also discussed the completed mental health evaluation and concerns about a referral Mental Health Court

because he was not sure if Mr. Allred's previous diagnosis indicated that it was "severe and persistent" or that it described "psychotic features." (R., p.117 (Court Minutes); PSI, pp.27-38 (Mental Health Examination Report).) Mr. Allred submitted an application to Mental Health Court and a date for sentencing was set. (R., p.118 (Court Minutes); pp.119-23 (Signed Mental Health Court application and required disclosures).) The Mental Health Court team reviewed and denied Mr. Allred's application two months later. (R., p.10; PSI, p.323.)<sup>1</sup>

The week after his Mental Health Court application was denied, Mr. Allred was sentenced. (R., p.124.) The court imposed a unified sentence of five years, with one year fixed, before suspending that sentence and placing Mr. Allred on probation for five years. (R., pp.125-30.) The court also approved a transfer to Utah if the Department of Probation and Parole approved that transfer. (R., p.127.) As a condition of his sentence, Mr. Allred was also ordered to "participate meaningfully in and complete a 52 week domestic batterer's course as arranged through the probation officer." (R., p.127.) Mr. Allred agreed to those terms. (R., pp.131-33.)

Almost eighteen months later, a Motion for Bench Warrant for Probation Violation was filed with three allegations: that Mr. Allred had been charged with petit theft, that he failed to pay his court-ordered obligations, and that he had failed to pay the ordered restitution. (R., pp.160-63.) An Amended Motion for Probation Violation was filed three months later that added five additional allegations: that he had failed to complete required domestic violence treatment, that he changed residences without permission, that he left the State of Idaho without permission, that he absconded from supervision, and that he was not paying the cost of supervision fee. (R., pp.165-77.) Mr. Allred was arraigned and the next week, he admitted to three of the alleged

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<sup>1</sup> The case summary is cited as there were no transcripts or minutes supplied in the Record regarding the Mental Health Court team's discussion or decision on Mr. Allred's application.

violations: that he had been charged with petit theft, that he did not complete the domestic violence treatment, and that he had absconded from supervision. (R., pp.183-84.)

After an updated PSI was completed for Mr. Allred, a disposition hearing was held. (R., pp.185-86.) At that hearing, the State asked for the court to retain jurisdiction. (Tr., p.14, Ls.13-21.) Mr. Allred asked to either be screened again for mental health court, or to be placed on probation and allowed “to complete the remaining two or so years of probation in Utah.” (Tr., p.14, L.23 – p.15, L.2.) The court revoked Mr. Allred’s probation and retained jurisdiction. (R., pp.186-89.)

Mr. Allred timely appealed from the revocation of his probation. (R., pp.191-92.)

### ISSUE

Did the district court abuse its discretion by failing to properly consider evidence of Mr. Allred’s mental health when revoking his probation?

### ARGUMENT

#### The District Court Abused Its Discretion By Failing To Properly Consider Evidence Of Mr. Allred’s Mental Health When Revoking His Probation

The district court is empowered to revoke a defendant’s probation under certain circumstances. I.C. §§ 19-2602, 19-2603, 20-222. The court uses a two-step analysis to determine whether to revoke probation. *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.* The latter determination is discretionary. *State v. Knowlton*, 123 Idaho 916, 920–21 (1993) (“After a probation violation has been proven, the decision as to whether to revoke probation and

order a previously imposed sentence is vested in the sound discretion of the trial court.”), *abrogated on other grounds by State v. Perry*, 150 Idaho 209 (2010).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

*Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018) (emphasis in original).

Mr. Allred asserts that the district court abused its discretion by revoking his probation. He does not challenge his admissions to violating his probation. (Tr., p.10, L.3-p.11, L.2.) “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). Instead, Mr. Allred submits that the district court did not exercise reason, and thus abused its discretion, by revoking his probation because there were other options that would be better suited for his rehabilitation.

“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).

Here, Mr. Allred is a severely mentally ill individual who needs intensive mental health treatment. When Mr. Allred was arrested for violating his probation, he was participating in an intensive mental health treatment program with the help and assistance of his family. (*See PSI*, p.153.) Courts are required to consider the mental health of a defendant during sentencing

proceedings. *State v. Odiaga*, 125 Idaho 384, 391 (1994); *Hollon v. State*, 132 Idaho 573, 581 (1999).

From the beginning of his case, Mr. Allred has been seeking out appropriate mental health treatment. A mental health evaluation under I.C. § 19–2524 was completed, but Mr. Allred asked for a more thorough examination under I.C. § 19–2522 before he was sentenced. (PSI, pp.27-28 (I.C. § 19–2524 evaluation report); R., p.114 (request for evaluation under I.C. § 19–2522).) The domestic violence evaluation also suggested that Mr. Allred have the more thorough mental health evaluation. (See PSI, p.127 (“Mr. Allred would benefit from a psychiatric evaluation for medication to assist with [his mental health].”). The court ordered the additional evaluation which was received later that month. (R., pp.115-16 (order); PSI, pp.128-35 (I.C. § 19–2522 Psychological Assessment prepared by Dr. Chad Sombke).) Mr. Allred told the presentence investigator that “[h]e believ[ed] he would benefit from mental health counseling.” (PSI, pp.11, 178.) He also asked to be evaluated for Mental Health Court before being sentenced. (R., pp.117-18.) Unfortunately for Mr. Allred, he was not admitted to Mental Health Court. (See PSI, p.323.)

After being released on probation, Mr. Allred immediately began to experience struggles related to his mental health because he “did not qualify for funding for domestic violence and mental health treatment.” (PSI, p.152.) Despite those struggles, Mr. Allred still attempted to do everything he could to get mental health treatment. He told his probation officer he was receiving treatment for Grave’s Disease<sup>2</sup> and that he was experiencing “auditory hallucinations and

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<sup>2</sup> “Grave’s disease is an autoimmune disorder that causes hyperthyroidism, or overactive thyroid.” *Grave’s Disease*, National Institute of Diabetes and Digestive and Kidney Diseases (Dec. 26, 2019, 4:08 PM), <https://www.niddk.nih.gov/health-information/endocrine-diseases/graves-disease>.

possible schizophrenia.” (PSI, p.152.) But he still told his probation officer that “he felt lost.” (PSI, p.152.) He later began attending counseling sessions at “Access BHS for depression and anger issues.” (PSI, p.158.) He told a later probation officer that “he had been diagnosed with major depression with psychotic episodes, and schizoid effective disorder.” (PSI, p.158.)

These mental health struggles also impacted Mr. Allred’s ability to pay his court-ordered obligations, which included \$1,638.26 in restitution. (R., pp.157-58.) Just three months into his probation, he sent a letter to the court asking for help setting up a payment plan. (R., p.159.) There is nothing in the Record about whether Mr. Allred was successful in being able to set up a payment plan; what is reflected, however, is that of Mr. Allred’s eight alleged probation violations, three of them were due to his failure to pay his monetary obligations. (*See* R., p.166 (Allegations 2, 3, and 8).) This is unsurprising, as his probation officer reported six months after starting probation, “he was still unemployed and pending social security disability.” (PSI, p.159.) His housing situation was erratic and unstable, and he was frequently homeless or living in transitional housing when approved for funding. (*See, e.g.*, PSI, p.159.) Almost immediately after starting probation, he was forced to leave his home because his roommates were unwilling to help him abide by the terms of his probation which included a prohibition against alcohol. (PSI, p.152.) Almost immediately after that, he was charged with petit theft for stealing “a backpack, deodorant, and a bag of chips.” (PSI, p.152.) Mr. Allred never denied his violations or shied away from his problems. When admitting to the theft, he told the court, “I was in a bad place mentally but give no excuses for my actions that day.” (PSI, p.333.)

Eventually, the mental health problems and his financial struggles all became too much for Mr. Allred and he attempted to commit suicide. (PSI, p.332.)



When Mr. Allred is receiving appropriate treatment, he is able to be successful on probation. For example, when admitting to his probation violations, he told the court he had absconded “[d]ue to mental health issues and a suicide attempt.” (PSI, p.332.) But after absconding, his first contact with his probation officer was to inform him that he was “currently being treated for PTSD, Schizophrenia, and Anxiety by a mental health facility” and to provide his new address. (PSI, p.166.) He discussed those problems with his mother and they decided it would be best for him to move in with her in Utah and receive treatment closer to her home because “it would be better if I lived rather than committed suicide.” (PSI, p.332.) He told the court his goal after being released was to “get the help [he] need[s] for [his] psychological conditions.” (PSI, p.333.) He said that he was “filled with regret it came to the point of my absconding. I did not know what else to do. I was suicidal.” (PSI, p.333.)

Mr. Allred asserts that instead of revoking his probation and retaining jurisdiction, the court should have, at the very least, granted his request to again be screened for Mental Health Court. Both Mr. Allred’s probation officer and the presentence investigator recommended that he again be screened for Mental Health Court. (PSI, pp.154, 160.) Now, unlike when he first applied, Mr. Allred has been diagnosed with conditions that are both “severe and persistent” and that have described “psychotic features.” (*Compare R.*, p.117 (March 14, 2016 court minutes), PSI, p.27-38 (January 7, 2015 Mental Health Examination Report); *with* PSI, p.167 (e-mail from Mr. Allred stating he was being treated for “PTSD, Schizophrenia, and Anxiety”), pp.332-34 (letter from Mr. Allred describing his mental health concerns).) However, the court denied his request for screening, stating that it did “not believe he’s a good candidate for mental health court because his underlying offense was effectively a domestic violence crime.” (Tr., p.19,

Ls.3-6.) Accordingly, Mr. Allred asserts that by denying that request, the court abused its discretion.

Alternatively, Mr. Allred asks that he be returned to probation and allowed to complete the remainder of his probation in Utah. (Tr., p.14, L.25 – p.15, L.2.) His family has always been supportive of him, and it has been his desire to relocate back to Utah to take advantage of that support. (See PSI, pp.158, 332-34.) He absconded from supervision after a suicide attempt specifically so that he would be closer to that support and receive much-needed mental health treatment. (See generally PSI, pp.332-34.) Mr. Allred asserts that he should be released on probation and given assistance to apply for a transfer of supervision to Utah to again take advantage of that support; by denying this request, the district court also abused its discretion.

#### CONCLUSION

Mr. Allred respectfully requests that this Court vacate the order revoking probation and remand his case to the district court with an order that he be returned to probation and screened for Mental Health Court. Alternatively, he requests that this Court vacate the order revoking probation and remand his case to the district court with an order that he be returned to probation and allowed to transfer his probation to Utah.

DATED this 31<sup>st</sup> day of December, 2019.

/s/ R. Jonathan Shirts  
R. JONATHAN SHIRTS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of December, 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

RJS/eas