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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|------------------------------|---|-------------------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 47685-2020 |
| Plaintiff-Respondent, |) | |
| |) | ADA COUNTY NO. CR01-19-29932 |
| v. |) | |
| |) | |
| CHELLIE LORENE |) | |
| BAKER-VARNEY, |) | APPELLANT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| <hr/> | | |

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE JONATHAN MEDEMA
District Judge

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STATEMENT OF THE CASE

Nature of the Case

After Chellie Baker-Varney pled guilty to one count possession of methamphetamine, the district court sentenced her to one year fixed, but suspended her sentence and placed her on probation for three years. As a condition of her probation, the district court ordered no contact between Ms. Baker-Varney and her fiancé, Jerry Brazzell, a man she had been residing with for over six years, because he was a convicted felon being supervised on parole. Ms. Baker-Varney filed a motion to modify her probation to allow her to live with and have contact with Mr. Brazzell at the discretion of the probation and parole officers, which the district court denied. Ms. Baker-Varney asserts that, because the probation condition prohibiting her from having contact with Mr. Brazzell is not reasonably related to the goals of probation, the district court abused its discretion. Accordingly, she respectfully requests this Court reverse or vacate the district court's order and remand this case for further proceedings.

Statement of the Facts and Course of Proceedings

At approximately 4:30 a.m., on July 23, 2019, a deputy drove by a thrift store and saw someone with a flashlight, looking into the donation bins. (Presentence Investigation (PSI), p.3.) When the deputy stopped the car [REDACTED] Ms. Baker-Varney was driving, he saw a large rug. (PSI, p.3.) Ms. Baker-Varney was honest with the deputy and told him that she and her passenger, Ivan Rawls, had taken the rug as well as a box of drinking glasses. (PSI, p.3.) Ms. Baker-Varney agreed to empty her pockets for the deputy and he saw a bag containing mushrooms and vials containing a substance consistent with methamphetamine. (PSI, pp.3-4.) Ms. Baker-Varney was charged by Information with one count of felony possession of

methamphetamine, one count of misdemeanor possession of drug paraphernalia, and one count of misdemeanor petit theft. (R., pp.23-24.)

Pursuant to a plea agreement, Ms. Baker-Varney pled guilty to one count of felony possession of methamphetamine and the remaining counts were dismissed. (9/10/19 Tr., p.9, Ls.11-17; p.10, Ls.18-24; R., pp.27-39.) As part of the plea agreement, the State agreed to recommend that Ms. Baker-Varney be placed on probation. (R., p.38.) At sentencing, the district court sentenced Ms. Baker-Varney to three years of probation, with an underlying one-year fixed sentence. (11/19/19 Tr., p.26, Ls.6-10; R., pp.43-50.) As part of the terms and conditions of Ms. Baker-Varney's probation, she was prohibited from having contact with Ivan Rawls or Jerry Brazzell for the duration of her probation, and "[t]he defendant may not live with anyone who is on probation or parole or who has been convicted of any drug offense." (11/19/19 Tr., p.27, Ls.13-20; R., p.44.)

Ms. Baker-Varney filed a motion to amend the terms and condition of probation to allow her to continue living with her fiancé, Mr. Brazzell. (R., pp.51-52.) In support of her motion, Ms. Baker-Varney submitted ten years of parole supervision notes for Mr. Brazzell. (R., pp.53-113.) After a hearing, the district court denied Ms. Baker-Varney's motion to modify. (12/10/19 Tr., p.9, L.4 – p.10, L.16; R., pp.53-54.) Ms. Baker-Varney filed a timely notice of appeal from her judgment of conviction and the order denying her motion to modify. (R., pp.121-24.)

ISSUE

Did the district court abuse its discretion by denying Ms. Baker-Varney's motion to modify probation, because the term prohibiting her from living with or having contact with Mr. Brazzell is unrelated to fostering Ms. Baker-Varney's rehabilitation and/or the protection of society?

ARGUMENT

The District Court Abused Its Discretion By Maintaining The Condition Of Ms. Baker-Varney's Probation Prohibiting Her From Having Contact With Jerry Brazzell, As The Condition Is Unrelated To Fostering Ms. Baker-Varney's Rehabilitation And/Or The Protection Of Society

A. Introduction

The district court abused its discretion by failing to act consistently with the applicable legal standards and by failing to reach its decision by an exercise of reason when it entered and maintained, as a condition of probation, a no contact order prohibiting Ms. Baker-Varney from having contact with her fiancé, Jerry Brazzell. The district court erred by denying Ms. Baker-Varney's motion to modify the terms and conditions of probation to allow her to live with Mr. Brazzell. Although Mr. Brazzell is a convicted felon, he is also Ms. Baker-Varney's fiancé and has not been convicted of any misdemeanor or felony offenses since his release from prison in 1984.

B. Standard Of Review

Although trial courts have broad discretion in the imposition of probation, the terms and conditions of probation must be reasonably related to the rehabilitative and public safety goals of probation. *State v. Wardle*, 137 Idaho 808, 810 (Ct. App. 2002). Whether the terms and conditions of a defendant's probation are reasonably related to the goals of probation is a legal question over which an appellate court exercises free review. *Id.*

C. The District Court Abused Its Discretion By Maintaining The Condition Of Ms. Baker-Varney's Probation Prohibiting Her From Having Contact With Jerry Brazzell As Such A Condition Is Unrelated To Fostering Ms. Baker-Varney's Rehabilitation And/Or The Protection Of Society

“The goal of probation is to foster the defendant’s rehabilitation while protecting public safety.” *Id.* A probation condition must be reasonably related to the purpose of rehabilitation. *State v. Parker*, 143 Idaho 165, 168 (Ct. App. 2006). Thus, a trial court is authorized to make probation subject to “such terms and conditions as it deems necessary and appropriate.” I.C. § 19-2601(2). Although the district court has “broad discretion” to impose restrictive terms, *Wardle*, 137 Idaho at 810, the discretion “is not unbounded,” *State v. Mummert*, 98 Idaho 452, 454 (1977). “[T]he conditions of probation must be reasonably related to the rehabilitative and public safety goals of probation.” *Wardle*, 137 Idaho at 810.

“The ‘reasonable relationship’ is the legal standard by which the validity of a term or condition must be judged.” *State v. Jones*, 123 Idaho 315, 318 (Ct. App. 1993). “Whether the terms and conditions of a defendant’s probation are reasonably related to the goals of probation and whether constitutional requirements have been satisfied are legal questions over which [appellate courts] exercise free review.” *State v. Cheatham*, 159 Idaho 856, 858 (Ct. App. 2016). If a defendant desires to challenge the legality of any proposed conditions of probation, he may do so on appeal from the judgment, or on habeas corpus.” *State v. Gawron*, 112 Idaho 841, 843 (1987); *see also Cheatham*, 159 Idaho at 857-58 (appealing from district court’s denial of motion “to eliminate condition” and amend judgment). In submitting a request to modify, the moving party must establish “good cause” for the modification. *State v. Gibbs*, 162 Idaho 782, 788 (2017).

I.C. § 20-221(2) states in relevant part:

Any party or the board of correction may submit to the court a request to modify the terms and conditions of probation for any probationer under the board's supervision at any time during the period of probation. A request to modify the terms and conditions of probation shall be supported by a statement attested to under oath or signed under penalty of perjury pursuant to section 9-1406, Idaho Code, setting forth the facts upon which the request is based.

I.C. § 20-221(2) (emphasis added).

Ms. Baker-Varney maintains the district court erred because the condition prohibiting her from living with Mr. Brazzell was not reasonably related to the goals of her probation. Moreover, Ms. Baker-Varney provided sufficient facts to support her request to modify the conditions of her probation, even though Ms. Baker-Varney's motion did not include an affidavit with facts in support. Ms. Baker-Varney asserts that an affidavit with supporting facts was not necessary because her motion to modify the probation condition was not based on new information gleaned subsequent to the sentencing hearing. Rather, the information pertaining to Mr. Brazzell and Ms. Baker-Varney's relationship was provided in the PSI and at the sentencing hearing, and she provided supplemental information in support of her motion to modify in the form of Mr. Brazzell's supervision notes. (R., pp.53-113; 11/19/19 Tr., p.27, L.23 – p.29, L.1; 12/10/19 Tr., p.6, L.24 – p.7, L.3.) She maintains the district court should have considered whether the condition—based on the facts known to the court—was reasonably related to the goals of her probation.

Here, the facts show that the condition prohibiting Ms. Baker-Varney from having contact with Mr. Brazzell during her three-year period of probation was not reasonably related to the purpose of Ms. Baker-Varney's rehabilitation or to protect society from Ms. Baker-Varney. Ms. Baker-Varney asserts that the term of probation prohibiting her from having contact with Mr. Brazzell provides no protection to the public while actually undermining her rehabilitative efforts.

The district court's decision to order no contact between Ms. Baker-Varney and Mr. Brazzell was based on speculation where there had been no evidence or testimony that Mr. Brazzell knew of, encouraged, or covered-up Ms. Baker-Varney's methamphetamine relapse. (See PSI; 11/19/19 Tr.; 12/10/19 Tr., *generally*.) Mr. Brazzell is not himself a methamphetamine user. (12/10/19 Tr., p.7, Ls.2-3.) "Fixing' a non-existent problem does not contribute to an offender's rehabilitation. It also does not protect either the victim or society." *State v. Krueger*, 190 P.3d 318, 320 (Mont. 2008) (holding district court erred by including a probation condition that the defendant abstain from alcohol, where he had no history of alcohol abuse and alcohol was neither part of nor contributed to the offense to which he pled guilty).

The facts before the district court at sentencing indicated that Mr. Brazzell was not aware of Ms. Baker-Varney's relapse—she hid it from him. (PSI, p.12.) Mr. Brazzell is strong support for Ms. Baker-Varney. (PSI p.15.) The crime for which he is on parole occurred in 1987. *State v. Brazzell*, 118 Idaho 431, 434 (Ct. App. 1990). Mr. Brazzell was incarcerated for twenty-six years for the crime and is presently a [REDACTED] man with a heart condition. (PSI, pp.8, 38.) Mr. Brazzell was in and out of the hospital for the last three years, and Ms. Baker-Varney was always there to help him after his heart surgeries. (PSI, p.37.) He blamed himself for not noticing that Ms. Baker-Varney had relapsed—he was not paying attention due to his medical problems with his heart. (PSI, p.38.)

The court was aware that Ms. Baker-Varney had a prolonged period of sobriety—she had been sober for nine years. (PSI, pp.11, 15.) The court knew that she was in a stable living situation where she had been living with Mr. Brazzell at the same residence, which they own, for the past seven years. (PSI, pp.8, 37.) Ms. Baker-Varney met Mr. Brazzell at the Vineyard Church and they have plans to be married someday. (PSI, p.8.) She reported, "My boyfriend

and I have a great relationship, I have a stable home life, in fact, I have never been happier. I have been going to AA every day.” (PSI, p.27.)

Prohibiting Ms. Baker-Varney from living in the stable living situation¹ wherein she has resided for seven years (six and one-half of those were drug-free) with Mr. Brazzell, in a home they own, does nothing to protect the public.² (PSI, pp.27-28.) Ms. Baker-Varney essentially became homeless due to the district court’s order.³ (11/19/19 Tr., p.27, L.23 – p.28, L.20.) Ms. Baker-Varney takes five prescription medications to manage her mental health conditions. (PSI, p.18.) She has been diagnosed with Bipolar Disorder, Attention Deficit Hyperactivity Disorder (ADHD), Post Traumatic Stress Disorder (PTSD), night terrors, and Schizophrenia. (PSI, p.18.) Thus, her continuing to see and live with Mr. Brazzell actually benefits the community in that Ms. Baker-Varney remains on her mental health medication and is not homeless. (PSI, p.18.) Despite the fact that Mr. Brazzell was convicted of a felony, he is now sixty-eight and a source of stability for Ms. Baker-Varney. It is detrimental to Ms. Baker-Varney’s rehabilitation to be homeless and have her main support taken away from her.

The district court’s belief that prohibiting contact with Mr. Brazzell would help Ms. Baker-Varney stay sober is contradicted by the record. (12/10/19 Tr., p.7, L.25 – p.8, L.5.) When Ms. Baker-Varney’s counsel was discussing her client’s relapse, the district court commented that Ms. Baker-Varney was residing with Mr. Brazzell at the time she committed the offense, “And they were [living together] at the time she chose to commit this offense, so we can see how well that worked out.” (12/10/19 Tr., p.7, L.25 – p.8, L.5.) However, Ms. Baker-

¹ The GAIN administrator noted that “Chellie’s recovery environment is sufficiently stable and with continued structure and support, she can cope.” (PSI, p.28.)

² Mr. Brazzell was Ms. Baker-Varney’s live-in domestic partner of six years, and they combine their disability incomes to afford a joint residence.² (12/10/19 Tr., p.6, Ls.16-23.)

³ The district court commented, “you need to get on it and find another place to live, or you can just go to prison for a year. Whichever, that’s your choice.” (11/19/19 Tr., p.28, Ls.17-20.)

Varney was sober for nine years, and simply relapsed. (PSI, p.18.) Although the relapse occurred while she was residing with Mr. Brazzell, so did a six-year period of sobriety. As Ms. Baker-Varney's counsel pointed out, there was no information supporting a belief that Mr. Brazzell is "responsible in any way, shape or form for her relapse." (12/10/19 Tr., p.8, Ls.10-17.) However, the district court focused on the fact that Mr. Brazzell is on parole, and concluded that Mr. Brazzell's association with Ms. Baker-Varney was harmful to Mr. Brazzell's rehabilitation:

Well, as I indicated to Ms. Baker-Varney at the sentencing, 1, I find it unlikely that she would have relapsed for the period of time she claims to have relapsed, and her live in paramour, fiancé, whatever you want to call him, is unaware of it, and if he's on probation living with someone using controlled substances, that puts his freedom at risk.

Certainly, he was apparently unwilling to report her use of drugs to others, including his parole officer. I think that creates a risk that he'll violate his parole and may lead to him committing new crimes. Certainly, that's not conducive for her sobriety or her ceasing to commit crimes, because she's not being held accountable when he's, I'm confident, aware that she was using drugs.

She choses to be with a member of his family and go out to commit crimes. It does not appear to me that her relationship with Mr. Brazzell is one that's conducive to their compliance with the law, her continued sobriety, and that is why I imposed that condition.

(12/10/19 Tr., p.9, Ls.4-24.) The district court concluded that Mr. Brazzell knew Ms. Baker-Varney was using drugs and failed to hold her accountable. However, this was not based on evidence, but on the district court's conjecture and speculation. Ms. Baker-Varney admitted that she had relapsed and had used methamphetamine for six months. (PSI, p.18.) During this time, Mr. Brazzell was being treated for a heart condition. (PSI, p.38.)

Ms. Baker-Varney relapsed on methamphetamine after a long-term period of sobriety, for approximately nine years, six of which were spent living in a clean and sober residence she shared with Mr. Brazzell. (12/10/19 Tr., p.6, L.16 – p.7, L.6; PSI, p.18.) The ten years of parole

notes submitted by Ms. Baker-Varney in support of her motion to modify the terms of probation indicate that Mr. Brazzell had not been using controlled substances during that time. (R., pp.53-62.) During the seven years of his relationship with Ms. Baker-Varney, Mr. Brazzell had not had been formally accused of violating any probation terms, had not been suspected of using controlled substances, and had not broken any laws.⁴ (12/10/19 Tr., p.7, Ls.1-24; R., pp.81-113.)

Ms. Baker-Varney asserts that in consideration of the nature and circumstances of her criminal conduct, and in recognition of her mental illness, the imposition of a no contact order with Mr. Brazzell for her three-year term of probation is not reasonably related to the rehabilitative and public safety goals of probation under the circumstances of her case. In this case, to prohibit Ms. Baker-Varney from living in a stable home with Mr. Brazzell was an unreasonable and arbitrary decision, contrary to any goal of probation. The district court's decision should be reversed.

CONCLUSION

Ms. Baker-Varney respectfully requests that this Court eliminate the term of her probation mandating no contact with Jerry Brazzell.

DATED this 24th day of July, 2020.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

⁴ Apparently Mr. Brazzell had overindulged in Nyquil cough syrup during his parole. (12/10/19 Tr., p.7, Ls.1-9.) Mr. Brazzell struggled with alcohol use while on parole, but had no indications of drug abuse. (R., pp.53-113.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2020, 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

SJC/eas