

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 47685-2020
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR01-19-29932
)
 CHELLIE LORENE BAKER-VARNEY,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

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

HONORABLE JONATHAN M. MEDEMA
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Chellie Lorene Baker-Varney appeals from the district court's denial of her motion to modify a no contact order.

Statement Of Facts And Course Of Proceedings

Just past 4:00 a.m. on July 23, 2019, Ada County Sheriff's Deputy Koller saw a vehicle parked behind an Idaho Youth Ranch and someone using a flashlight to look inside the donation bins. (PSI, p.3.) When he attempted to make contact with the vehicle, it quickly left the parking lot and drove down the street. (Id.) Suspecting that the subjects were stealing from the donation bins, the officer stopped the vehicle, and saw a "large rolled up rug in the vehicle that spanned the whole length of it." (Id.) "Both occupants were breathing heavily and appeared shaky." (Id.) After talking to the driver, Chellie L. Baker-Varney, she admitted that she and her passenger, Ivan Rawls,¹ took the rug and a box of drinking glasses from the business for her home. (Id.)

Baker-Varney voluntarily emptied her pockets revealing a baggie and two metal vials which the officer suspected contained illicit narcotics based on his experience. (Id.) Baker-Varney said that the baggie contained spices, and appeared to be mushrooms. (Id.) The vials contained a crystalline substance that was consistent with methamphetamine, and a subsequent "NIK test of the crystalline substance indicated presumptive positive for methamphetamine." (PSI, pp.3-4.)

The state charged Baker-Varney with possession of a controlled substance (methamphetamine), possession of drug paraphernalia, and petit theft. (R., pp.23-24.) Pursuant to a plea agreement, Baker-Varney pled guilty to possession of methamphetamine and the

¹ Ivan Rawls is the nephew of Baker-Varney's boyfriend, Jerry Brazzell. (9/10/19 Tr., p.20, Ls.5-13; PSI, pp.4, 8.)

remaining charges were dismissed. (R., pp.38-39, 45; see generally 9/10/19 Tr.) The district court sentenced Baker-Varney to one year fixed, all suspended, and placed her on probation for three years. (R., pp.43-48; 11/19/19 Tr., p.26, Ls.6-10.) As a term of probation, the court imposed a no contact order preventing Baker-Varney from having contact with Ivan Rawls and her boyfriend, Jerry Brazzell, a parolee² with whom she had lived the previous six years. (R., p.44; 11/19/19 Tr., p.28, Ls.11-12; PSI, p.8.)

Baker-Varney filed a Motion to Amend Terms and Conditions of Probation, contending that the district court's order that she have no contact with Brazzell was not reasonably related to her rehabilitation. (R., pp.51-52.) The district court denied Baker-Varney's motion after a hearing. (See generally 12/10/19 Tr.) Baker-Varney timely appealed from the court's order regarding contact with Brazzell. (R., pp.121-123.)

² Jerry Brazzell was on parole following his imprisonment for second degree murder committed in 1987. See State v. Brazzell, 118 Idaho 431, 434, 797 P.2d 139, 142 (Ct. App. 1990).

ISSUE

Baker-Varney states the issue on appeal as:

Did the district court abuse its discretion by denying Mr. Baker-Varney's motion to modify, 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?

(Appellant's brief, p.3.)

The state rephrases the issue on appeal as:

Has Baker-Varney failed to establish the district court abused its discretion in failing to modify the no contact order to allow contact with Jerry Brazzell?

ARGUMENT

Baker-Varney Has Failed To Establish The District Court Abused Its Discretion In Failing To Modify The No Contact Order To Allow Contact With Jerry Brazzell

A. Introduction

Baker-Varney argues on appeal that the district court abused its discretion in denying her motion to allow contact with Jerry Brazzell. (Appellant’s brief, pp.4-10.) Baker-Varney has failed to establish an abuse of the district court’s discretion in its ruling on her motion.

B. Standard Of Review

“The decision whether to modify a no contact order is within the sound discretion of the district court.” State v. Cobler, 148 Idaho 769, 771, 229 P.3d 374, 376 (2010). In evaluating whether the trial court abused its discretion, this Court considers (1) whether the trial court perceived the issue as discretionary; (2) whether the trial court acted within the boundaries of its discretion and consistent with any applicable legal standards; and (3) whether the trial court exercised reason in reaching its decision. Id. (citation omitted).

C. Baker-Varney Has Failed To Establish The District Court Erred In Its Ruling On Her Motion To Modify The No Contact Order

Idaho Code § 18-920 provides:

When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905, 18-7906 or 39-6312, Idaho Code, *or any other offense for which a court finds that a no contact order is appropriate*, an order forbidding contact with another person may be issued.

I.C. § 18-920(1) (emphasis added).

At the sentencing hearing, the district court entered a no contact order preventing Baker-Varney from having contact with Jerry Brazzell following her conviction for possession of methamphetamine, and allowed her to work through her probation officer in order to “secure

another residence and get her items.” (R., p.44; 11/19/19 Tr., p.27, L.13 – p.28, L.10.) After Baker-Varney reminded the court that she had lived with Brazzell for six years, the court responded:

I realize that’s where you’re living now. Essentially, you’re going to have to find another place to live. I imagine the state will give you some grace period in which they’re not going to violate you if you stay there, but 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.13-20.) When asked by defense counsel to clarify whether Baker-Varney could reside with Brazzell “or is that a strict no contact order with [him],” the court responded, “I don’t want her associating with people who have drug histories, and from what I can tell, Mr. Brazzell has one.” (11/19/19 Tr., p.28, L.21 – p.29, L.1.) Baker-Varney agreed to follow those conditions of probation. (11/19/19 Tr., p.29, Ls.2-4.)

Three weeks after she was sentenced, Baker-Varney filed a Motion to Amend Terms and Conditions of Probation (R., pp.51-52), contending “condition No. 6 of the defendant’s judgment stating ‘The defendant shall have no contact with Jerry Brazzell’ be amended to allow contact at the discretion of the probation and parole officers, as said term is not reasonably related to her rehabilitation” (id., p.51). Attached to Baker-Varney’s motion was a 60-page IDOC Offender History (“parole officer notes”) for Jerry Brazzell, covering April 2008 to November 2019. (R., pp.53-113.) As explained by defense counsel, the parole officer notes show only that Brazzell has “got a thing for cough syrup,” but no other substance abuse failures while on probation. (12/10/19 Tr., p.6, L.24 – p.7, L.9.) When defense counsel argued that Brazzell and Baker-Varney had “been residing together with the blessing of his parole officer,” the court pointed out that the couple were living together at the time Baker-Varney “chose to commit this offense, so we can see how well that worked out.” (12/10/19 Tr., p.7, L.22 – p.8, L.5.) Defense counsel argued that Baker-

Varney's "relapse was her own," and, despite the fact that Brazzell's nephew (Ivan Rawls) was with Baker-Varney at the time of the offense, "I don't think there is anything in the record . . . that support[s] that [Brazzell] is, in fact, responsible in any way, shape or form for her relapse," and asked that the no contact condition be lifted. (12/10/19 Tr., p.8, Ls.6-17.) The district court rejected defense counsel's argument that Brazzell was oblivious to Baker-Varney's six-month period of relapse, explaining:

Well, as I indicated to Ms. Baker-Varney at the sentencing, I find it unlikely that she would have relapsed for the period of time she claims to have relapsed, and her live-in paramour, fiance, 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 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 [sic] to be with a member of his family and go out to commit drugs. 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.

I'll be honest with you, Ms. Baker-Varney, my inclination was simply to send you to prison for this charge. I was persuaded to give you the opportunity on probation. I was willing to give you that opportunity upon that condition for the reasons I've just stated, and, so I realize that's a hardship on you. It's probably less of a hardship than going to prison which is what I was initially inclined to do.

(12/10/19 Tr., p.9, L.4 – p.10, L.7.)

On appeal, Baker-Varney contends the district court's conclusion "that Mr. Brazzell knew [she] was using drugs and failed to hold her accountable" was "not based on evidence, but on the district court's conjecture and speculation." (Appellant's brief, p.9.) However, the Presentence Report supports the district court's opinion that the extent of Baker-Varney's drug use during her

six-month relapse was unlikely to have gone unnoticed by her live-in boyfriend, Jerry Brazzell; it states:

The defendant reported her drugs of choice are methamphetamine and marijuana. *She advised she was using methamphetamine and marijuana daily for approximately six months prior to the instant offense.* She said she was sober for nine years prior to relapsing and noted her relapse was because she “quit doing what was needed to stay clean and sober.” When asked what was happening in her life that made her use again, she relayed nothing was going on. She said she went to a bar and was speaking with a female she met that night and smoked marijuana then methamphetamine with the female. When asked how she knew the female was “an addict,” the defendant said, “an addict always knows.”

According to the appended GAIN evaluation, she “stated she last used (marijuana) ‘a couple days ago.’ She further explained: ‘I have been smoking marijuana to help manage my chronic pain. I smoked it almost daily for the past 6-7 months. I ran out the other day and I don’t plan on buying any more. I know I have to quit.’ Chellie reported she last used methamphetamine ‘a little over a month ago, probably around the beginning of September (2019)’ and further reported: ‘I used meth IV (intravenously) just about every day for about 6 months.’”

(PSI, pp.11-12 (emphases added).)

Based on Baker-Varney’s own statements, it was not unreasonable for the district court to conclude that Brazzell was aware she was smoking marijuana and injecting methamphetamine during her six month relapse – and said nothing about it. Regardless of whether Brazzell had a history of drug use, he did have a six-month history of covering up for (or not disclosing) Baker-Varney’s drug use.

In sum, the record supports the district court’s concern that continued contact between Brazzell and Baker-Varney endangered Baker-Varney’s probation because Brazzell showed, by his silence, that he would not try to deter her drug use in any significant way. Further, assuming Baker-Varney continues to use drugs in part because Brazzell can be relied upon to stay silent, his own parole would be placed in jeopardy by sharing his residence with a drug user. Baker-Varney

has failed to establish that the district court abused its discretion in refusing to modify the no contact order that was a condition of her probation.

CONCLUSION

The state respectfully requests this Court to uphold the district court's denial of Baker-Varney's motion to modify the no contact order that was a condition of probation.

DATED this 14th day of October, 2020.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of October, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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