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State v. Quisenberry Appellant's Brief Dckt. 47891

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 47891-2020
	)	
v.	)	ADA COUNTY NO. CR-FE-2014-9251
	)	
ROGER WAYNE QUISENBERRY,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

Having pled guilty to a violation of probation on the offense of telephone harassment, the district court revoked Roger Wayne Quisenberry's probation and ordered into execution his unified sentence of five years, with two years fixed. On appeal, Mr. Quisenberry argues the district court abused its discretion by revoking his probation.

Statement of Facts and Course of Proceedings

In August 2014, Mr. Quisenberry pled guilty to telephone harassment (Count 1, a felony) and harassment (Count 2, a misdemeanor). (R.,[1] pp.55-61.) The district court sentenced him on Count 1 to five (5) years in the custody of the Idaho State Board of Correction, with two (2) years fixed and the remaining three (3) years indeterminate. (R., pp.68-69.) On Count 2, the district court sentenced him to sixty (60) days in jail, to be served concurrently with Court 1.[2] (R., pp.68-69.) The court retained jurisdiction over Mr. Quisenberry's case for 365 days. (R., p.69.)

On March 2, 2015, the district court held a Rider Review and suspended the remainder of Mr. Quisenberry's prison sentence, placing him on five (5) years of probation with special conditions, including successful completion of a 52-week Domestic Violence Program, training and counseling as directed by the probation officer, and chemical testing for substance use. (R., pp.74, 76-81.) For more than four years, Mr. Quisenberry did well on probation. (R., pp.122-64.) He successfully completed the 52-week Domestic Violence Program and at times was "doing great," giving his probation officers "no concerns." (R., pp.119, 133.) Over the course of his probation, various officers supervised Mr. Quisenberry; Officer Duchene was new to Mr. Quisenberry's case when Duchene entered his first contact notes in May 2019. (R., p.157.) In those contact notes, Duchene described making a home visit and upon discovering that Mr. Quisenberry had vacated the residence, deemed Mr. Quisenberry to have "absconded," based on his failures to report to probation starting in May 2019 and his failure to reside at his listed

[1] Citations to the Record ("R.") refer to the 191-page electronic document with the court clerk's materials, titled "Quisenberry 47891 cr."
[2] The sentence on Count 2 was served to completion prior to Mr. Quisenberry's return to court on the probation violation addressed herein. (Tr., p.6, Ls.15-25.)

address in May-June 2019. (R., pp.117-18, 157.) Duchene also alleged that Mr. Quisenberry was out of compliance with his financial obligations. (R., p.118.)

While it is not clear from the record whether Officer Duchene ever actually met Mr. Quisenberry, Duchene submitted a Report of Probation Violation in which he represented that, "[w]hile the Defendant was initially successful on probation, he continues to exhibit behaviors indicative of an unwillingness to be supervised." (R., p.120.) Aside from recurring financial difficulties making it hard to stay current with his supervision fees, there is no indication Mr. Quisenberry's "continuous" failures to comply with probation began prior to May 2019. (R., pp.122-64.) The State filed a complaint alleging a violation of Mr. Quisenberry's probation in July 2019. (R., pp.116-21.) Later, the State amended its complaint to include a new allegation that in December 2019, Mr. Quisenberry had possessed a pipe containing methamphetamine residue. (R., p.174.)

On January 6, 2020, Mr. Quisenberry admitted to violating his probation.[3] (Tr.,[4] p.13, L.14-p.18, L.19.) A presentence investigation report ("PSI") was completed, which ultimately recommended that Mr. Quisenberry be sentenced to "a term of local incarceration followed by community supervision," i.e., reinstated probation, with increased supervision, substance abuse testing, employment monitoring and programs to help him address his thinking errors. (PSI, pp.251, 259.) At the sentencing hearing on March 9, 2020, the State's attorney noted that

[3] In particular, Mr. Quisenberry admitted to violating allegations 1 (failure to report to probation on dates between May 16-June 26, 2019), 3 (absconding from supervision), and 5 (knowingly possessing a pipe containing methamphetamine residue) of the Amended Motion for Probation Violation. Case CR01-19-51862 was dismissed as part of the plea, but the allegation in that case (possession of a pipe containing methamphetamine residue in December 2019) was included as allegation 5 in the probation complaint. (R., pp.173-74, Tr., p.5, Ls.8-24).

[4] Citations to "Tr." refer to the 36-page transcript which includes two hearings: entry of plea on 1/6/20 and sentencing on 3/9/20, titled "Quisenberry 47891 tr."

Mr. Quisenberry's probation would have been completed one week before, had it not been for the violation. (Tr., p.22.) Arguing that eight (8) more months of probation was insufficient to address the violation, the State asked the court to revoke Mr. Quisenberry's probation and impose the suspended prison sentence. (Tr., pp.22-24.) Mr. Quisenberry's attorney urged the court to recognize that Mr. Quisenberry's difficulties in May through July of 2019 were primarily financial, to adopt the recommendations of the PSI and to reinstate probation. (Tr., pp.25-29.) The district court adopted the State's recommendation, revoked Mr. Quisenberry's probation and vacated the suspended sentence, ordering into execution his unified sentence of five (5) years, with two (2) years fixed. (Tr., p.34, Ls.2-10.) The district court entered a judgment of conviction and Mr. Quisenberry timely appealed. (R., pp.178-79, 182-84.)

ISSUE

I. Did the district court abuse its discretion when it revoked Mr. Quisenberry's probation and ordered into execution a unified sentence of five years, with two years fixed, for telephone harassment?

ARGUMENT

I.

The District Court Abused Its Discretion When It Revoked Mr. Quisenberry's Probation And Ordered Into Execution A Unified Five Year Sentence, With Two Years Fixed, For Telephone Harassment

The district court is statutorily authorized to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *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.*

Here, Mr. Quisenberry does not challenge his admission to violating his probation. (Tr. p.13, L.4–p.15, L.15.) "[W]hen 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) (citation omitted). Rather, Mr. Quisenberry submits the district court abused its discretion by revoking his probation.

"After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court." *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). The trial court's decision will not be overturned "absent a showing that the court abused its discretion." *Sanchez,* 149 Idaho at 105; *accord State v. Easley*, 156 Idaho 214, 218 (2013). However, "[a] judge cannot revoke probation arbitrarily." *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). "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). In making these determinations, the Court conducts an independent review of the entire record and may consider the defendant's conduct before and during probation. *Easely*, 156 Idaho at 218; *Roy*, 113 Idaho at 392; *State v. Chapman*, 111 Idaho 149, 153-54 (1986).

In this case, the district court's decision to reject the PSI recommendation was arbitrary and not supported by facts in the record. It is apparent from the transcript of the sentencing hearing

that the district court judge[5] interrupted Mr. Quisenberry's attorney in some way—apparently by making some visible indication of skepticism in the midst of the defense argument—and launched into his own speculation about how the PSI author reached her conclusions. (Tr., p.27, L.7-p.28, L.6.) In his comments, the district court acknowledged the PSI author's recommendation of a probationary sentence but complained "she doesn't say why she doesn't support [her recommendation]." (Tr., p.27, Ls.17-22.) In his sentencing commentary, the district court based its conclusions on allegations against Mr. Quisenberry that were far less substantiated than the PSI's recommendation. The district court inexplicably substituted the opinion of Duchene—who supervised Mr. Quisenberry only in the last few months of his probation and had very little (if any) actual contact with him[6]—for the professional opinion of the PSI author, speculating that Duchene "is likely to know him better than the presentence investigator is." (Tr., p.31, L.24 – p.32, L.2.) Ignoring the predominantly positive contact notes written about Mr. Quisenberry by the probation officers who supervised him over the previous four years, the district court overrode the PSI recommendation based on Duchene's uncorroborated conclusion that "by avoiding supervision, [Mr. Quisenberry].... has caused his probation officer to believe that [he] is not amenable to community supervision." (Tr., p.32, Ls.2-6.) The district court made this conclusion in spite of the fact that Mr. Quisenberry and his attorney had expressly represented his amenability to and request for community supervision, which was supported by nearly five years of successful compliance with community supervision. (Tr., p.29, Ls.7-23.) As Mr. Quisenberry told the district court: "I was successful for about four and a half years on probation, I did fail to report to the probation

[5] Senior Judge Thomas F. Neville presided over the sentencing hearing but, based on a reading of the transcript as a whole, appears not to have presided over the case in any previous hearings.
[6] As stated previously, Officer Duchene's first and only contact notes appear in the probation records starting in May 2019, after Mr. Quisenberry had already allegedly "absconded." (R., p.157.)

officer. I feel if given a chance to fulfill this wrong and complete my probation successfully, I can definitely – would do so." (Tr., p.30, Ls.4-8.)

With respect to the allegation that Mr. Quisenberry had possessed a pipe with methamphetamine residue,[7] the district court noted that he had explained to probation the pipe was not his, and that he was helping a friend by taking possession of it, which he did not believe to be a mistake.[8] (Tr., p.36, Ls.11-18.) Without further context to illuminate why that decision may have been preferable to leaving the pipe with the friend, the district court took special issue with that explanation, pronouncing it a "major gross thinking error." (Tr., p.36, Ls.19-23.) In addition, the district court emphasized a disciplinary report from the Ada County jail in January 2020, in which Mr. Quisenberry allegedly asked a third party to deliver a message to his girlfriend, who was also confined in the jail. (Tr., p.32, L.9 – p.34, L.1.) The district court inflated the incident into an example of Mr. Quisenberry's "persistent attitude that is a thinking error that shows fundamental values have escaped Mr. Quisenberry, if he had them some point prior." (Tr., p.32 Ls.19-22.) The district court highlighted the significance of this disciplinary report despite the fact that the jail itself considered the infraction so minor that it sanctioned Mr. Quisenberry with a denial of telecommunication privileges **for only one day**. (PSI, p.269.) The jail's minimal sanction recognizes the infraction was Mr. Quisenberry's one and only disciplinary incident during the 89 days of his incarceration, and that he accepted full responsibility for the rule violation. (PSI, p.269; Tr., p.29, L.8.) It is clear, therefore, that the district court focused on relatively minor issues and

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[7] The pipe in question contained only residue, not a usable amount of drugs. Drug "residue" typically exists in trace amounts. "Residue" is defined as "something that remains after a part is removed, disposed of, or used; remainder; rest; remnant." (www.dictionary.com/browse/residue, 8/7/20.)

[8] Although the record is largely devoid of details, it appears uncontested that Mr. Quisenberry took possession of the pipe when his friend, Melissa Strain, gave it to him to dispose of; there were no allegations that Mr. Quisenberry himself had used methamphetamine. (Tr., p.26, Ls.8-23.)

placed substantially more emphasis on their import than the professionals tasked with evaluating and sanctioning Mr. Quisenberry with respect to those issues. The district court did so without articulating any facts in the record showing its rejection of those professionals' judgments was reasonable. And it did so without articulating any justification for rejecting Mr. Quisenberry's acceptance of responsibility, on multiple occasions, and his commitment to succeeding on probation, as evidence by his more than four years of successful probation.

In concentrating on the relatively minor examples of Mr. Quisenberry's "thinking errors," the district court failed to articulate how its analysis "focus[ed] on the objectives of criminal punishment: (1) protection of society; (2) deterrence of the individual and the public; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing." *State v. Pierce*, 150 Idaho 1, 5 (2010). The district court seemed determined to find that Mr. Quisenberry was "a danger to the public and society," while failing to articulate how society would be at risk, and failing to address the fact that the PSI concluded that Mr. Quisenberry's issues could be adequately addressed under community supervision. (Tr., p.33, Ls.16-22.) The record contains no clear indicators of Mr. Quisenberry putting individuals or society at risk while he was on probation, except for the district court's vague declaration that his "thinking errors" posed a danger. The district court failed to consider the possibility of rehabilitation, ignoring that Mr. Quisenberry had done remarkably well on probation for more than four years. This is particularly true where the PSI identified available community supervision and programs to address Mr. Quisenberry's ongoing needs.

In addition, the district court's decision to revoke Mr. Quisenberry's probation was unreasonable in light of several mitigating factors, including: (1) the fact that his conduct was less egregious than in many similarly charged cases, (2) his exceptional conduct while in custody, (3) his good character generally, (4) his family support and need to support his children, (5) his lack

of prior felony convictions, (6) his employment history and employability, (7) his acceptance of responsibility and remorse, and (8) his amenability to treatment.

First, Mr. Quisenberry's failures on probation—after more than four years of success—appear to be based largely on financial difficulties. As his lawyer explained to the court, Mr. Quisenberry earned insufficient money to meet all of his obligations, particularly after probation insisted that he move from an affordable Nampa residence back to Ada County—adding financial stress that he could not afford. (Tr., p.25, Ls.11-17.) Yet, throughout his probation, Mr. Quisenberry made great efforts to catch up with his outstanding supervision fees. (R., pp.138-39.) By 2018, his financial struggles were becoming quite apparent to his probation officers, but he continued to respond to requests to make payments, and to move from place to place, as directed. (R., p.151.) This is in contrast to many probationers who never get off the ground with their probation requirements, and whose noncompliance with probation is much more egregious than failing to afford fees and moving costs.

In addition, as noted above, the negative factors highlighted by the district court are substantially less aggravating than those frequently seen in probation violation cases. Mr. Quisenberry's four years of success on probation, his successful completion of the domestic violence program and his great efforts to meet financial obligations that he could hardly afford were positive facts that the court failed to consider. Moreover, unlike so many other probationers, Mr. Quisenberry remained clean and sober throughout his probation. (PSI, pp.248-49.) And, even though he had remained sober, he was accepted into the Rising Sun Sober Living community, where he could have continued his probation with extra support to succeed. (PSI, p.573; Tr., p.26.) Where it is evident that an offender's crime is not as egregious as it could have been, the Idaho Supreme Court has recognized the mitigating nature of that fact. *See State v. Jackson*, 130 Idaho

293, 295 (1997). Although the author of the PSI recognized that Mr. Quisenberry's relatively mitigated noncompliance could be resolved with increased supervision, programs to address thinking errors, continued substance abuse testing and employment monitoring, the district court unreasonably discounted those recommendations and revoked his probation.

Second, the district court failed to consider the mitigation of Mr. Quisenberry's exemplary conduct while incarcerated. Prior to suspension of his prison sentence, Mr. Quisenberry spent every day of his incarceration on good behavior, without a single formal or informal disciplinary sanction. (PSI, p.230.) Officials noted that he made "steady progress throughout his 'A New Direction' programming and appears to have developed a deeper level of insight into correcting his antisocial beliefs and behaviors." (PSI, p.231.) He participated in the "Fathers" program respectfully and diligently. (PSI, p.231.) In the "Career Bridge Three" program, he was respectful, conscientious, and became "a good role model to the other offenders." (PSI, p.231.) According to IDOC officials, "[h]is overall willingness to complete his 'Rider' programming is commendable and can be considered a good indicator toward what we may expect from him in the community." (PSI, p.233.) During his time in IDOC in 2014-2015, Mr. Quisenberry completed: (1) the Employability program; (2) the Pre-Release program; (3) the Rider Group program; (4) three Education Integrated Pathway Pre-Release programs; (5) the Fathers program; (6) the Rider Aftercare program; (7) an education and career planning academic program; (8) the Chapter 5 Money academic program; (9) the Pre-Release academic program; and (10) 600 hours of education, treatment, and/or work. (PSI, p.266.)

Based on all of these achievements, and without any convincing evidence or professional opinions to the contrary, it appears that the district court was unreasonable in disregarding them. Idaho courts have often recognized that good conduct during incarceration mitigates a potential

sentence. *See State v. Barreto*, 122 Idaho 453, 455 (Ct. App. 1992); *State v. Gonzales*, 122 Idaho 17, 20 (Ct. App. 1992); *State v. Jardin*, 121 Idaho 1030, 1031 (Ct. App. 1992); *State v. Sanchez*, 117 Idaho 51, 52 (Ct. App. 1990); *State v. Snapp*, 113 Idaho 350, 351 (Ct. App. 1987); *State v. Torres*, 107 Idaho 895, 898 (Ct. App. 1984).

Third, the district court also revoked Mr. Quisenberry's probation without acknowledging several indicators of his good character. A family man, the record indicates that Mr. Quisenberry consistently voiced his priorities to maintain a stable job, attend treatment, and to have meaningful relationships with his children. (PSI, p.33.) Before his incarceration, Mr. Quisenberry worked in trucking and belonged to Highway Truckers Ministries. (PSI, p.10.) With respect to the original offense to which he pled guilty, Mr. Quisenberry's sister confirmed to authorities that his crime was not consistent with his overall character. (PSI, p.10.) Idaho courts have often recognized that positive attributes of a defendant's character constitute mitigation to be considered by the sentencing court. *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991); *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Mitchell*, 11 Idaho 115, 118 (1955).

Fourth, the record is clear that Mr. Quisenberry has the advantage of a very supportive family. (PSI, p.9.) He is also a father of three children and wishes to be there for them. (PSI, p.33.) Supportive families and the need to support children are mitigating factors to be considered at sentencing, yet the court in this case did not appear to even acknowledge these facts. *Shideler*, 103 Idaho at 595; *State v. Baiz*, 120 Idaho 292, 293 (Ct. App. 1991); *State v. Kellis*, 148 Idaho 812, 817 (Ct. App. 2010); *State v. Coffin*, 146 Idaho 166, 171 (Ct. App. 2008); *State v. Nice*, 103 Idaho 89, 91 (1982).

Fifth, it is significant that Mr. Quisenberry has no felony convictions prior to or subsequent to his guilty plea in this case.[9] (PSI, pp.5-8.) The district court did not mention this significant fact or appear to consider it in revoking his probation, despite the fact that a lack of prior felony convictions is a factor favoring leniency. *State v. Owen*, 73 Idaho 394, 402 (1953) ("The courts have long recognized that the first offender should be accorded more lenient treatment than the habitual criminal. In addition to considerations of humanity, justice and mercy, the object is to encourage and foster the rehabilitation of one who has for the first time fallen into error, and whose character for crime has not become fixed."), *overruled on other grounds by State v. Miller*, 151 Idaho 828 (2011); *Nice*, 103 Idaho at 91; *Shideler*, 103 Idaho at 595; *State v. Hoskins*, 131 Idaho 670, 673 (Ct. App. 1998).

Sixth, Mr. Quisenberry appears to have "no problems maintaining employment," with skills as a journeyman finisher and form setter in concrete. (PSI, p.247, Tr., p.31, Ls.1-3.) At the time of the presentence investigation, he was employed in two jobs in the Boise area. (PSI, p.247.) As the district court was informed, Mr. Quisenberry was ready and able to return to those jobs if he were returned to community supervision. (Tr., p.29, Ls.9-11.) *See Shideler*, 103 Idaho at 595; *Nice*, 103 Idaho at 90-91; *Mitchell*, 77 Idaho at 119; *State v. Hagedorn*, 129 Idaho 155, 161 (Ct. App. 1996); *Baiz*, 120 Idaho at 293.

Seventh, in addition to admitting to violating his probation without demanding a hearing, Mr. Quisenberry accepted responsibility for his violation when he addressed the court, committing himself to completing his probation successfully. (Tr., p.30, Ls.5-8.)[10] Mr. Quisenberry's remorse and unequivocal acceptance of responsibility for his conduct was mitigation that should have been

[9] Mr. Quisenberry appears to have seven (7) misdemeanor convictions. (PSI, pp.5-8.)
[10] Mr. Quisenberry also took accountability for his original offense in 2014, saying that he was "ashamed and wish I had acted like more of an adult about the situation." (PSI, p.5.)

considered by the district court. *State v. Jackson*, 130 Idaho 293, 295-96 (1997); *see also State v. Carrasco*, 114 Idaho 348, 354-55 (Ct. App. 1988) (apparently treating as mitigation the fact that the defendant "acknowledged the wrongfulness of the transaction [drug sale] and he openly expressed contrition for his acts."), *reversed on other grounds*, 117 Idaho 295 (1990); *Caudill*, 109 Idaho at 224; *Shideler*, 103 Idaho at 594-95 (reducing defendant's sentence in part because "the defendant has accepted responsibility for his acts," "expressed regret for what he had done" and "indicated that he was confident he could be a productive citizen in the future."); *Coffin*, 146 Idaho at 171; *Cook*, 145 Idaho at 489; *Alberts*, 121 Idaho at 209 (holding that leniency was required in part because the defendant expressed "remorse for his conduct."); *Baiz*, 120 Idaho at 293.

Finally, although there is no suggestion that Mr. Quisenberry relapsed during his probation, there are indications of past substance abuse. (R., p.124; PSI, pp.254, 259.) In light of those issues and in an attempt to proactively address any concerns about public safety and his exposure to people using methamphetamine, Mr. Quisenberry put together a plan to succeed on probation after his violation, which included securing sober housing. (Tr., p.26, Ls.1-7, p.30, Ls. 3-1) He also registered at Recovery For Life and was accepted into their treatment program. (Tr., p.26, L.24-p.27, L.3; PSI, p. 575.) A court's failure to consider a defendant's substance dependency can be indicative of an unreasonably excessive sentence. *Nice*, 103 Idaho at 91; *State v. Osborn*, 102 Idaho 405, 414 n.5 (1981). More to the point in this case, the court should have taken into consideration Mr. Quisenberry's amenability to treatment. *Shideler*, 103 Idaho at 595 (reducing sentence of defendant who, *inter alia*, "stated he had successfully recovered from his dependency on and abuse of prescription medications."); *see Coffin*, 146 Idaho at 171 (finding the sentence was not excessive, but recognizing mitigating circumstances including defendant's "expression of remorse for his conduct, the family support that he still retains, the part that his being under the

influence of alcohol played in the incident, and his willingness to seek treatment for an alcohol problem.").

The record in this case simply contradicts the district court's grounds for revocation. In light of the PSI recommendation for probation with increased supervision and additional conditions, the substantial mitigation in his favor, and the disproportionately critical treatment the court gave to Mr. Quisenberry's relatively minor thinking errors, the district court's revocation of his probation was arbitrary and unreasonable. It appears that the district court overrode the careful recommendation of the pre-sentence investigator, without providing any substantial rationale as to why. Mr. Quisenberry committed to a plan to succeed on probation, maintaining sobriety, employment and working toward a positive future—much as he had for the first four years of his probation. In his own words:

> I have worked very hard to keep my sobriety and not be a burden on my family and society, and to change the pattern of thinking also realizing the only people I can and should control is myself. I do have great support from friends and family that do hold me accountable for any and all problem areas in my life which has helped me tremendously over the past 5 years while I have been on probation. I will continue this positive trend no matter what the future brings.

(PSI, p.249.) Nevertheless, without any corroboration from the author of the PSI or from any professional who knew Mr. Quisenberry and his needs in a meaningful way, the district court failed to exercise reason; the district court arbitrarily concluded that he would be unable to comply with probation, and that he posed some vague threat to society. (Tr., p.33, Ls.16-22.) The district court should have reinstated Mr. Quisenberry's probation and failing to do so constituted an abuse of discretion.

CONCLUSION

Mr. Quisenberry respectfully requests this Court vacate the district court's order revoking his probation and remand his case to the district court for an order reinstating his probation or a new disposition hearing.

DATED this 1st day of October, 2020.

/s/ Garth S. McCarty
GARTH S. McCARTY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, served as follows:

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