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### State v. Clarke Appellant's Brief Dckt. 48152

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48152-2020
Plaintiff-Respondent,	)	
	)	MINIDOKA COUNTY NO. CR34-18-200
v.	)	
	)	
SEAN CLARKE,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Sean Clarke appeals from the district court’s order revoking his probation and executing a unified sentence of five years, with two years determinate, for possession of a controlled substance. He asserts that the district court abused its discretion by revoking probation and executing his sentence rather than retaining jurisdiction.

Statement of the Facts & Course of Proceedings

In 2018, Mr. Clarke was charged with possession of a controlled substance, hydrocodone, and with a sentencing enhancement for a subsequent offense. (R., p.37.) He pleaded guilty and

the district court imposed a unified sentence of five years, with two years determinate, and the court retained jurisdiction. (R., p.58.) The court subsequently suspended the sentence and placed Mr. Clarke on probation for a period of three years. (R., p.65.)

In December 2018, the State filed a motion to revoke probation, asserting that Mr. Clarke was a relationship with a woman who was on felony probation, had tested positive for methamphetamine, had been discharged from counseling due to his failure to attend, had not made himself available for supervision, and had not many any monthly payments. (R., p.72.) Mr. Clarke admitted to using methamphetamine and to being discharged from counseling. (R., p.99.) The district court revoked probation and imposed the sentence, suspended it for four years, and ordered an additional term that Mr. Clarke complete drug court. (R., p.114.)

Mr. Clarke was subsequently terminated from drug court for using methamphetamine and absconding. (R., p.121.) The State also sought to revoke his probation. (R., p.124.) Mr. Clarke admitted to violating his probation by being terminated from drug court, by using methamphetamine, by failing to report to his probation officer, and by absconding. (R., pp.124, 149.) The district court revoked Mr. Clarke's probation and executed the underlying sentence. (R., p.151.) Mr. Clarke appealed. (R., p.158.) He asserts that the district court abused its discretion by revoking his probation.

#### ISSUE

Did the district court abuse its discretion when it revoked Mr. Clarke's probation?

## ARGUMENT

### The District Court Abused Its Discretion When It Revoked Mr. Clarke's Probation

The district court is empowered by statute 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. Clarke does not challenge his admission to violating his probation. "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). Rather, Mr. Clarke submits that 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). "A judge cannot revoke probation arbitrarily," however. *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). The court may consider the defendant's conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

In this case, Mr. Clarke submits that the district court erred by revoking his probation. At the disposition hearing, counsel for Mr. Clarke requested that the court place Mr. Clarke on a rider or commute his sentence. (Tr., p.8, Ls.17-20.) While Mr. Clarke had been terminated from drug court, counsel “believe[d] that if he can get on a rider, another rider, then come back, we might be able to get him back into drug court, just on the basis that he didn’t start it anyway. There might be that possibility.” (Tr., p.9, Ls.7-12.) Counsel believed that Mr. Clarke needed additional treatment “and I don’t want him just to go off to prison without some sort of follow-up treatment afterwards.” (Tr., p.9, Ls.13-15.) Counsel also noted that, while Mr. Clarke had absconded, he had picked up no new charges., and had a job, house, and wife in Chubbuck. (Tr., p.10, Ls.5-13.)

Mr. Clarke also addressed the court at the hearing. He emphasized that he knew that absconding was not the right course of action but stated that he was not a “lost cause” or a “drug-induced criminal.” (Tr., p.10, Ls.19-25.) While he was in Pocatello, he “stayed employed through the same employer, stayed clean. I obtained vocational certificates, Haz-Mat safety and small space confinement.” (Tr., p.11, Ls.6-11.)

Further, Mr. Clarke had concerns with his health. He had been diagnosed with Crohn’s disease and was scared for his safety being stuck in a cell with someone else for 20 hours when he needed to use the restroom. (Tr., p.11, Ls.12-17.) If he remained on probation, Mr. Clarke was determined to “show that I can do it. I didn’t leave Idaho. I’m not some drug-craved-induced person. I’m a citizen. I’m a father. I’m a husband.” (Tr., p.12, Ls.7-12.) He had not used drugs in the past year. (Tr., p.13, Ls.3-6.)

Considering this information, Mr. Clarke submits that he district court abused its discretion by revoking his probation and executing his sentence rather than retaining jurisdiction.

CONCLUSION

Mr. Clarke requests that the district court's order revoking his probation be vacated and his case be remanded to the district court for a new disposition hearing hearing.

DATED this 12<sup>th</sup> day of January, 2021.

/s/ Justin M. Curtis  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12<sup>th</sup> day of January, 2021, 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

JMC/eas