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### State v. Karadza Appellant's Brief Dckt. 48178

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 48178-2020 & 48179-2020
Plaintiff-Respondent,	)	
	)	ADA COUNTY NOS. CR01-18-54346
v.	)	& CR01-20-15079
	)	
MIGDAD KARADZA,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Migdad Karadza appeals from his judgment of conviction for grand theft (docket number 48179) in which the district court imposed a sentence of nine years, with two years determinate, and the district court’s order revoking his probation and executing a sentence of ten years, with two years determinate (docket number 48178). Mr. Karadza asserts that the district court abused its discretion by imposing an excessive sentence and by revoking his probation.

## Statement of the Facts & Course of Proceedings

While on probation for burglary in docket number 48178, Mr. Karadza was charged with four counts of burglary and four counts of grand theft. (R., no. 48179, p.27.) He pleaded guilty to one count of grand theft. (R., no.48179, p.44.) He also admitted to violating the terms of his probation. (R., no. 48178, p.121.) At a joint sentencing/disposition hearing, the district court revoked Mr. Karadza's probation in docket number 48178 and executed the underlying sentence of ten years, with two years determinate. (R., no. 48178, p.129.) The court imposed a sentence of nine years, with two years determinate for Mr. Karadza's conviction for grand theft in docket number 48179. (R., no. 48179, p.44.) Mr. Karadza appealed in both cases. (R., no. 48178, p.135, no. 48179, p.53.)

## ISSUE

Did the district court abuse its discretion when it imposed a unified sentence of nine years, with two years fixed, for Mr. Karadza's conviction for grand theft, and when it revoked his probation and executed his underlying sentence for burglary?

## ARGUMENT

### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Nine Years, With Two Years Fixed, For Mr. Karadza's Conviction For Grand Theft, And When It Revoked His Probation And Executed His Underlying Sentence For Burglary

“It is well-established that ‘[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.’” *State v. Pierce*, 150 Idaho 1, 5 (2010) (quoting *State v. Jackson*, 130 Idaho 293, 294 (1997) (alteration in original)). Here, Karadza's sentence does not exceed the statutory maximum. Accordingly, to show that the sentence imposed was unreasonable, Mr. Karadza

“must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002).

“‘Reasonableness’ of a sentence implies that a term of confinement should be tailored to the purpose for which the sentence is imposed.” *State v. Adamcik*, 152 Idaho 445, 483 (2012) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

In examining the reasonableness of a sentence, the Court conducts an independent review of the entire record available to the trial court at sentencing, focusing 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.

*Stevens*, 146 Idaho at 148. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *State v. Delling*, 152 Idaho 122, 132 (2011).

Further, 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. Karadza 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). “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).

At the joint sentencing/disposition hearing, counsel for Mr. Karadza emphasized that Mr. Karadza knew that he had had a lot of chances, but “the important thing about [Mr. Karadza] is that he keeps trying.” (6/3/20 Tr., p.10, Ls.1-3.) Counsel noted that Mr. Karadza was first arrested at the age of ■ was a Bosnian refugee whose second language was English, but “despite that, he was able to complete classes at CWI as – a surgical technician is what he’d like to do, or auto body repair.” (6/3/20 Tr., p.10, Ls.4-9.) When counsel asked Mr. Karadza why he had relapsed after all of his previous chances, he stated that he “started with marijuana and just fell back into some old habits. He and a girlfriend broke up, and that kind of spiraled him out of control.” (6/3/20 Tr., p.10, Ls.10-14.) Counsel noted that the new crime of grand theft was related to Mr. Karadza’s drug addiction. (6/3/20 Tr., p.11, L.16-17.) For the new crime, counsel recommended a sentence of eight years, with one and one-half years fixed. (6/3/20 Tr., p.11, Ls.18-20.)

Counsel noted that Mr. Karadza had been incarcerated at the Ada County Jail in the honor dorms, which are a “system where the men in that dorm are selected by the deputies to, in a way, run themselves.” (6/3/20 Tr., p.10, Ls.19-21.) Mr. Karadza had role models at the honor dorms, “particularly for hopefulness, knowing that he needs to own up to these crimes and that

there is going to be a punishment, but that he's finally been surrounded by people that aren't just doing their time and not being constructive, but using that time to reflect on their history and how to better themselves." (6/3/20 Tr., p.10, L.22 – p.11, L.5.) Mr. Karadza had been screened for the SAP and ABC program and was just waiting on books. (6/3/20 Tr., p.11, Ls.6-9.)

Further, Mr. Karadza addressed the district court at the hearing. He wanted to inform the court "how deeply sorry I am for wasting your time and letting you down, along with my family as well. I know that I'm not perfect, and I believe my addiction started and took place in my life when I started surrounding myself with other people who were doing things that I thought was no big deal." (6/3/20 Tr., p.12, Ls.9-15.) He continued,

As I started to use drugs, I realized that my life slowly started to go downhill which led to incarceration not just once but four times now. I understand I'm powerless over my drug use. It's not anybody's fault that I'm in jail. It's my fault that I kept using drugs, and for that I take responsibility and accountability for all my actions and choices I made.

My family has been very successful and they are drug free. I feel in my life, I shamed the Karadza family name.

Your Honor, I know that I'm not court ordered to take any classes, however, I realize that I do need help. I not only want to better myself as a man not only for my family, but for society as well. I take it upon myself to pay out of pocket to take the classes that they have there available.

Since I've been in Dorm 1, which is a program dorm, I've been able to not only work on myself, but I'm also attending AA group meetings along with surrounding myself with those who want to change their life as well. This dorm is changing and showing me how to apply the structure so that I am – I know how to handle myself in society.

I am currently looking for a mentor to help guide me on this journey, that way I don't come back to jail and have to visit you again. I know that I don't deserve another chance, but, your Honor, I believe people can change for the better.

Once I graduate this program, will you please find it in your heart to grant me one last chance to get my life on track and possibly reduce my sentence so I can be the person my family wants me to be clean and sober and happy?

(6/3/20 Tr., p.12, L.16 – p.14, L.1.) Finally, Mr. Karadza emphasized that he had been taking this course at the county jail in order to work on his addiction, “and no matter if I get imposed or whatever happens, I’m still going to be working on my addiction, because that is what is ruining my life right now. (6/3/20 Tr., p.14, Ls.8-15.)

Considering that Mr. Karadza’s crimes are driven by his addiction, and that he serious about dealing with addiction and had been taking steps to confront that addiction during his stay in the Ada County Jail and would continue working on his addiction regardless of the sentence imposed and that he wished for outpatient programming following his release, Mr. Karadza submits that the district court abused its discretion by imposing an excessive sentence and by revoking his probation without modification of his sentence.

#### CONCLUSION

Mr. Karadza respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing/disposition hearing.

DATED this 12<sup>th</sup> day of May, 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 May, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

JMC/eas