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### State v. Briggs Appellant's Brief Dckt. 48210

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ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

EMILY M. JOYCE  
Deputy State Appellate Public Defender  
I.S.B. #10410  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 48210-2020
	)	
v.	)	ADA COUNTY NO. CR-FE-2015-13884
	)	
CODY ROBERT BRIGGS,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

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STATEMENT OF THE CASE

Nature of the Case

Cody Briggs was on probation when he admitted to violating his probation by consuming alcohol. Based on his admissions, the district court revoked Mr. Briggs’s probation and executed a unified sentence of seven years, with two years determinate. Mr. Briggs now appeals. He argues the district court abused its discretion when it revoked his probation.

Statement of the Facts & Course of Proceedings

In September 2015, Mr. Briggs was charged with possession of a controlled substance. (R., p.12.) Pursuant to a plea deal, Mr. Briggs pleaded guilty to the charge and was sentenced to seven years, with two years determinate. (R., pp.35, 39-40.) The district court retained

jurisdiction. (R., pp.39-40.) In September 2016, after Mr. Briggs successfully completed the rider program, the district court suspended Mr. Briggs's sentence and placed him on probation for seven years. (R., pp.43-44.) Two and one-half years later, Mr. Briggs admitted to a probation violation and the district court revoked and reinstated his probation. (R., p.104.) A year after that, the State alleged Mr. Briggs violated his probation, in part, by consuming alcohol on three occasions. (R., pp.122-23.) Mr. Briggs admitted to consuming alcohol and the remainder of the alleged violations were dismissed. (Tr., p.7, Ls.12-15.) Following his admissions, the district court revoked Mr. Briggs's probation and executed his underlying sentence of seven years, with two years determinate. (Tr., p.26, Ls.11-14.) Mr. Briggs timely filed a notice of appeal from the order revoking his probation.<sup>1</sup> (R., pp.145-46; Aug., p.1.)

### ISSUE

Whether the district court abused its discretion when it revoked Mr. Briggs's probation and executed his underlying sentence.

### ARGUMENT

#### The District Court Abused Its Discretion When It Revoked Mr. Briggs's Probation And Executed His Underlying Sentence

The district court abused its discretion when it revoked Briggs's probation because probation was achieving its rehabilitative objective. The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The district court uses a two-step analysis to determine whether to revoke probation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the district court determines "whether the defendant violated the terms of his probation." *Id.* Second, "[i]f it is determined that the defendant has in fact

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<sup>1</sup> A Motion to Augment the Record with the Notice of Appeal has been filed contemporaneously with Appellant's Brief.

violated the terms of his probation,” the district court examines “what should be the consequences of that violation.” *Id.* The finding of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Briggs admitted to violating his probation. (R., p.143.) Once a probation violation has been found, the district court must determine whether it is of such seriousness as to warrant revoking probation. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). If a knowing and intentional probation violation has been proven, a district court’s decision to revoke probation will be reviewed for an abuse of discretion. I.C. § 20-222; I.C.R. 33(f); *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). In reviewing a district court’s discretionary decision, appellate courts determine whether the district court: “(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with legal standards applicable to the specific choices available to it; and (4) reached its decision by an exercise of reason.” *State v. Bodenbach*, 165 Idaho 577, 591 (2019) (citation omitted).

“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). The district court must decide whether probation is achieving the goal of rehabilitation and whether probation is consistent with the protection of society. *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). In determining whether to revoke probation 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. Briggs asserts the district court failed to exercise reason, and therefore abused its discretion, by revoking his probation because his probation was achieving its

rehabilitative objective. Even though Mr. Briggs had a turbulent time during the end of 2019 and throughout 2020, he has made significant progress since being placed on probation.

Mr. Briggs successfully completed a rider program, developing many skills to be successful in the community. (PSI, p.108.) For over two and one-half years, Mr. Briggs had very positive performance on probation. (*See, e.g.*, R., pp.76-83, 85-93.) He had steady employment. (R., p.133; Tr., p.21, Ls.10-11.) He was in good contact with his probation officer. (*See* pp.76-93) He was attending AA meetings. (R., p.7.) He was working on getting off parole for an earlier, unrelated offense. (R., p.90.) In fact, the only mishap during these first years of his probation was when, after requesting 48 hours-notice for an appointment, his probation officer only provided 22 hours and Mr. Briggs was unable to attend the meeting due to work. (R., pp.81-82.) Mr. Briggs's Level of Service Inventory ("LSI") score dropped from 21 to 15. (R., p.90.) In addition, Mr. Briggs was offered a promotion at work, however, he needed to be able to drive in order to get the promotion. (R., p.90.) He requested his probation officer fill out paperwork for him to get his driver's license restriction modified, (R., p.90), yet nothing happened for over a month. (R., pp.90-92.) Mr. Briggs became frustrated, and like many with substance abuse issues, relapsed. (R., p.112.) When in treatment, Mr. Briggs was successful. (R., p.133.)

Mr. Briggs took responsibility and showed remorse for the admitted violations. (R., p.120; 6/5/20 Tr., p.15, Ls.2-7, p.16, L.24 – p.17, L.6.) "In reviewing the propriety of a probation revocation, the focus of the inquiry is the conduct underlying the trial court's decision to revoke probation." *State v. Morgan*, 153 Idaho 618, 621 (Ct. App. 2012). Mr. Briggs does significantly well on probation, however, because of his issues with substance abuse he has had his share of struggles (PSI, p.9), this year in particular. His substance abuse "got its hooks into him" and he just could not stop drinking. (Tr., p.20, Ls.16-17.) Amidst his relapse, the COVID-

19 pandemic struck, and he began struggling with his mental health. (Tr., p.20, Ls.24-25.) While not an excuse, his relapse explains his probation violation. His probation violations were caused by his substance abuse problem and *not* new crimes. (Tr., p.21, L.14.) Between his probation violations, which were a year apart, he had employment (Tr., p.21, Ls.10-11), housing, and he was compliant for a lengthy period of time. (Tr., p.21, Ls.12-13.)

In addition to having substance abuse issues, Mr. Briggs suffers from mental health issues (R., p.136) and like many, found the trials and tribulations of the past year difficult, to say the least. For those with substance abuse issues, the road to rehabilitation and sobriety is rarely a straight smooth road. And while Mr. Briggs has had a few rough patches in his years to recovery, he has had very good stretches of success on probation. In light of these facts, Mr. Briggs maintains the district court did not exercise reason and therefore abused its discretion by revoking his probation because it was achieving its rehabilitative objective. The district court should have reinstated his probation.

CONCLUSION

Mr. Briggs respectfully requests that this Court vacate the order revoking his probation and remand his case to the district court for him to be returned to probation. Alternatively, he requests that his case be remanded to the district court for a new probation violation disposition hearing.

DATED this 7<sup>th</sup> day of January, 2021.

/s/ Emily M. Joyce  
EMILY M. JOYCE  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<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

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

EMJ/eas