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### State v. Williams Appellant's Brief Dckt. 48223

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 48223-2020
	)	
v.	)	ADA COUNTY NO. CR-FE-2014-8461
	)	
DON DAVID WILLIAMS,	)	
	)	APPELLANT’S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Don D. Williams appeals from the district court’s order revoking his probation and executing his fifteen-year sentence, with four years fixed, for aggravated battery. Mr. Williams moved for reconsideration of his sentence under Idaho Criminal Rule 35 (“Rule 35”). The district court denied his motion. Mr. Williams appealed. He argues the district court abused its discretion by revoking his probation and by denying his Rule 35 motion.

Statement of Facts and Course of Proceedings

In March 2015, the district court sentenced Mr. Williams to fifteen years, with four years fixed, for aggravated battery. (R., p.99.) The district court also retained jurisdiction (“a rider”).

(R., p.99.) After a rider review hearing, in October 2015, the district court suspended execution of Mr. William's sentence and placed him on probation for fifteen years. (R., pp.109–12.)

In January 2020, the State moved for a probation violation. (R., pp.163–64.) In March 2020, Mr. Williams admitted to violating his probation by having a romantic relationship without getting his probation officer's approval. (R., pp.164, 258; Tr., p.228, L.1–p.229, L.7.)

In June 2020, the district court held a disposition hearing. (R., p.297.) The State recommended the district court revoke Mr. Williams's probation and execute his fifteen-year sentence. (Tr., p.243, Ls.1–2.) Mr. Williams requested the district court reinstate probation. (Tr., p.263, Ls.11–13.) The district court agreed with the State and revoked Mr. Williams's probation. (Tr., p.268, Ls.18–22; R., pp.298–300.)

In mid-July 2020, Mr. Williams moved for a reduction in his sentence pursuant to Rule 35. (R., p.302.) He filed a memorandum in support. (R., pp.304–11.) The district court denied the motion. (R., pp.328–29.) Mr. Williams timely appealed from the district court's order revoking his probation and its order denying his Rule 35 motion. (R., pp.335–37.)

### ISSUES

- I. Did the district court abuse its discretion when it revoked Mr. Williams's probation and executed his fifteen-year sentence for aggravated battery?
- II. Did the district court abuse its discretion when it denied Mr. Williams's Rule 35 motion?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion When It Revoked Mr. Williams's Probation And Executed His Fifteen-Year Sentence For Aggravated Battery

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. Williams does not challenge his admission to violating his probation. Tr., p.228, L.1-p.229, L.7.) "[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. Williams submits the district court did not exercise reason and therefore 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. *Roy*, 113 Idaho at 392.

In this case, Mr. Williams submits the district court did not exercise reason by revoking his probation because his probation was achieving its rehabilitative objective. For example, Mr. Williams had spent over four years on probation before the instant violation allegation.<sup>1</sup> (R., pp.109–112 (October 2015 judgment), 163–64 (January 2020 motion for probation violation).) Notably, the violation was not the commission of a new offense. Mr. Williams had an extramarital relationship with an adult woman without first getting his probation officer’s approval. (PSI Vol. I, pp.257–59.) He was not fully honest with the woman because he did not want her to find out about his past. (PSI Vol. I, pp.2, 257–59.) This was a serious lapse in judgment, but it was not criminal.

Moreover, Mr. Williams demonstrated that he could continue his rehabilitation in the community with adequate protection for society. He completed a year-long outpatient program with H&H Treatment Programs and another year of a maintenance program. (R., p.307; Tr., p.253, Ls.16–24; *see* Presentence Investigation Report (“PSI”) Vol. I,<sup>2</sup> pp.262–304 (probation officer notes).) An updated psychosexual evaluation (“PSE”) found that Mr. Williams was a low-risk to reoffend and highly amenable to treatment. (PSI Vol. II, pp.1, 3.) This was an improvement from his first PSE at the time of sentencing where he was found to be a moderate risk. (PSI Vol. I, p.68.) Mr. Williams hoped to continue counseling in the community. (Aug.

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<sup>1</sup> In 2018, the State moved for a probation violation, (R., pp.134–35), but the district court dismissed the motion after an evidentiary hearing, (R., p.150.)

<sup>2</sup> The confidential exhibits, cited here as “PSI,” are contained in two separate electronic files. The first, cited as Volume I, is titled “Appeal Confidential Exhibits 11-9-2020 08.27.21 41690508 0B434AB7-A61C-4A4F-BF15-1232EA0FF614” and contains 355 pages. The second, cited as Volume II, is titled Appeal Confidential Exhibits 11-9-2020 08.27.21 41690657 AF015401-6563-4D77-9A60-E1BFAE91D1FC, and contains 49 pages.

R.,<sup>3</sup> p.20.) In addition to his rehabilitative efforts, Mr. Williams maintained steady employment and owned a company. (PSI Vol. I, pp.11, 33, 264; R., p.166; Aug. R., pp.19–20.) He also had a stable residence with his wife and four children. (PSI Vol. I, pp.30, 258; Aug. R., p.19.) He did not consume alcohol or drugs and was an active member of his church. (R., p.166; PSI Vol. I, p.51; PSI Vol. II, p.18.) This information shows that Mr. Williams was working hard to be a contributing member of society, and he should have been given another opportunity at probation.

Finally, Mr. Williams felt remorse for his violation and accepted responsibility for his pattern of behavior. He apologized for his decisions:

But to the Court, I want to apologize. I want to apologize for my behavior. I want to apologize to [the woman]. She deserved an honest approach with me. I should not have lied about my name. I should have let her know about my past. I should have been honest with my probation officer. I want to apologize to my family, to my wife, to my kids. They've been through a lot because of my behavior and I feel awful for what I've put them through.

(Tr., p.264, L.18–p.265, L.1.) He recognized that he “knew the rules” and “broke them” (Tr., p.265, L.2.) Mr. Williams also explained that he had been talking with his wife, family, and friends and going through the PSI and PSE, and he was seeing “the pattern from my original crime to my probation offense, and I want these patterns to stop.” (Tr., p.265, Ls.6–11.) He was “ready to change.” (Tr., p.265, L.13.) Mr. Williams stated:

I feel strongly that given the opportunity to approach, address these issues that I . . . would improve and I would get better. I want to break this pattern. I want to be a better man. I don't want to hurt anyone else. I'm truly sorry for my behavior.

(Tr., p.265, Ls.14–18.) Mr. Williams made similar remarks in a letter to the district court. (*See generally* Aug. R., pp.1–20.) He understood that what he did was wrong and deceptive. (Aug. R., pp.1–9.) He also wrote that he was remorseful and ashamed of his actions. (Aug. R., pp.10–

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<sup>3</sup> Citations to “Aug. R.” reference the augmented confidential exhibit on appeal, a twenty-page handwritten letter by Mr. Williams.

11.) Mr. Williams’s insight on his poor decision-making, acceptance of responsibility, and commitment to treatment also support another chance at probation.

In light of these facts, Mr. Williams submits the district court’s decision to revoke his probation and execute his fifteen-year sentence was an abuse of discretion. He maintains the district court should have reinstated his probation in order for him to continue his rehabilitation in the community.

## II.

### The District Court Abused Its Discretion When It Denied Mr. Williams’s Rule 35 Motion

“A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v. Carter*, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). “Where an appeal is taken from an order refusing to reduce a sentence under Rule 35,” the Court’s scope of review “includes all information submitted at the original sentencing hearing and at the subsequent hearing held on the motion to reduce.” *State v. Araiza*, 109 Idaho 188, 189 (Ct. App. 1985). “When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” *State v. Huffman*, 144 Idaho 201, 203 (2007).

Although much of Mr. Williams’s Rule 35 memorandum summarized information already known to the district court, (R., pp.305–10), he included new information about the

covid-19 pandemic in Idaho's correctional facilities. (R., pp.310–11.) As a constantly evolving situation, this information about the state of the pandemic in mid-July 2020 (when Mr. Williams filed his Rule 35 motion) was not available to the district court in late June 2020 (when the district court revoked Mr. Williams's probation). Mr. Williams informed the district court that, by mid-July 2020, the number of inmates testing positive for covid-19 was rapidly increasing, as reported by the Idaho Statesman. (R., pp.310, 316–17.) Another news article from mid-July 2020 reported that inmates were 5.5 times more likely to get infected and 3 times more likely to die from covid-19 than the general public. (R., pp.310, 324.) In light of this new information on the severity of the pandemic, especially for inmates, Mr. Williams argued that the district court should reduce his sentence. (R., pp.310–11.)

Due to the increasing severity of the covid-19 pandemic, Mr. Williams argues the district court did not exercise reason and thus abused its discretion by denying his Rule 35 motion. He submits the district court should have reduced his sentence.

#### CONCLUSION

Mr. Williams respectfully requests this Court vacate the district court's order revoking his probation and remand his case to the district court for a new probation violation disposition hearing. Alternatively, he respectfully requests this Court reverse or vacate the district court's order denying his Rule 35 motion and remand this case to the district court for a new Rule 35 motion hearing.

DATED this 26<sup>th</sup> day of February, 2021.

/s/ Jenny C. Swinford  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of February, 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

JCS/eas