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### State v. Hairston Appellant's Brief Dckt. 48234

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 48234-2020
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-20-6929
v.	)	
	)	
AUDRA LYNN HAIRSTON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, [REDACTED] Audra Lynn Hairston pleaded guilty to felony possession of a controlled substance. The district court imposed a unified sentence of five years, with two years fixed, suspended the sentence, and placed Ms. Hairston on probation for a period of five years. Ms. Hairston filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. Ms. Hairston later admitted to violating the terms of her probation, and the district court revoked probation, executed the original sentence, and retained jurisdiction.

On appeal, Ms. Hairston asserts that the district court abused its discretion when it imposed her sentence, when it denied her Rule 35 motion, and when it revoked probation, executed the original sentence, and retained jurisdiction.

#### Statement of the Facts & Course of Proceedings

Deputy Mouser with the Ada County Sheriff's Office contacted Ms. Hairston in the car she was driving, after verifying the car's registration was expired. (*See Presentence Report (hereinafter, PSI)*, pp.7, 48.)<sup>1</sup> Ms. Hairston told the deputy that she and her husband were homeless and would possibly sleep in the car for the night. (*See PSI*, p.7.) A drug dog alerted on the car, and deputies found a small baggie containing a white, crystalline substance inside a purse in the car. (*See PSI*, pp.7, 48.) Deputies also found syringes and a prescription bottle with Ms. Hairston's name on it. (*See PSI*, pp.7-8, 48.) The substance from the baggie tested presumptively positive for methamphetamine. (*PSI*, p.48.) The deputies arrested Ms. Hairston and took her to the Ada County Jail. (*See PSI*, p.48.)

The State charged Ms. Hairston by Information with felony possession of a controlled substance, and misdemeanor possession of drug paraphernalia. (*R.*, pp.27-28.) In February 2020, Ms. Hairston was granted pretrial release. (*R.*, p.14.)

Pursuant to a plea agreement, Ms. Hairston agreed in May 2020 to plead guilty to the felony possession charge, and the State agreed to dismiss the misdemeanor paraphernalia charge. (*R.*, pp.79, 81-91; 5/4/2020 Tr., p.7, L.12 – p.8, L.3.) The State would recommend a unified sentence of five years, with one year fixed, to be suspended for probation and with the possibility of jail time as a condition of probation. (5/4/2020 Tr., p.7, Ls.18-23.) Ms. Hairston would be

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<sup>1</sup> All citations to "PSI" refer to the 108-page PDF version of the Confidential Exhibits, which includes the Prosecutor Packet Submitted for Sentencing and the Presentence Report.

free to recommend a lesser sentence. (5/4/2020 Tr., p.7, Ls.23-24.) One condition of the plea agreement was that Ms. Hairston could not have any failures to appear or new crimes before sentencing. (5/4/2020 Tr., p.8, Ls.1-3.) The district court accepted Ms. Hairston's guilty plea. (5/4/2020 Tr., p.19, L.16 – p.20, L.5.)

At the July 2020 sentencing hearing, the district court granted the State's request to be relieved from the plea agreement, after the State reported that Ms. Hairston had not complied with the conditions of her pretrial release on numerous occasions. (See 7/13/2020 Tr., p.32, L.2 – p.36, L.5.) The State recommended that the district court impose a unified sentence of five years, with two years fixed, and retain jurisdiction. (7/13/2020 Tr., p.36, Ls.12-17.) Ms. Hairston recommended that the district court place her on probation. (See 7/13/2020 Tr., p.41, L.12 – p.42, L.4.) The district court imposed a unified sentence of five years, with two years fixed, suspended the sentence, and placed Ms. Hairston on probation for a period of five years. (R., pp.134-42.) As a further condition of probation, the district court ordered Ms. Hairston to immediately begin serving 120 days in jail. (See R., p.135.)

The district court issued a bench warrant against Ms. Hairston two days after the sentencing hearing, for failure to report to jail as ordered. (See R., p.146.) About two weeks later, she was arrested and taken into custody. (See R., pp.146-47.) Ms. Hairston subsequently filed a Notice of Appeal timely from the district court's Judgment of Conviction, Suspended Sentence, Order of Probation and Commitment. (R., pp.152-54.)

Ms. Hairston also filed a Motion for Reconsideration of Sentence, pursuant to Idaho Criminal Rule 35. (R., p.151.) She later filed two addenda with information in support of the Rule 35 motion. (R., pp.157-58, 167-77.) The district court, after noting that Ms. Hairston had

not begun to serve her sentence because she had not served the 120 days jail time required by the judgment, denied the Rule 35 motion without conducting a hearing. (Aug. R., pp.1-5.)

Meanwhile, the State filed a Motion for Bench Warrant for Probation Violation, alleging that Ms. Hairston had violated the terms of her probation. (R., pp.160-66.) Ms. Hairston admitted to violating her probation by not serving the 120 days jail time. (10/19/2020 Tr., p.6, L.15 – p.13, L.13.) In exchange, the State agreed to dismiss the other alleged probation violations. (10/19/2020 Tr., p.9, L.18 – p.10, L.3.) The parties agreed to open sentencing, and the State would not object to a drug court screening for Ms. Hairston, although the State was not agreeing to her actual admission to drug court and would reserve the right to object. (10/19/2020 Tr., p.6, L.23 – p.7, L.14, p.9, L.23 – p.10, L.2.) The district court accepted Ms. Hairston's admission. (10/19/2020 Tr., p.13, Ls.14-15.)

During the disposition hearing, Ms. Hairston informed the district court that she had been found appropriate for drug court. (See 11/23/2020 Tr., p.15, L.21 – p.16, L.9.) Ms. Hairston recommended that the district court reinstate her on probation, with the condition that she complete drug court. (11/23/2020 Tr., p.19, Ls.9-12.) The State recommended that the district court retain jurisdiction to place Ms. Hairston on a "rider." (See 11/23/2020 Tr., p.16, L.17 – p.19, L.6.) The district court revoked probation, executed the original sentence, and retained jurisdiction. (Aug. R., pp.7-10.)

## ISSUES

- I. Did the district court abuse its discretion when it imposed a unified sentence of five years, with two years fixed, upon Ms. Hairston following her plea of guilty to possession of a controlled substance?
- II. Did the district court abuse its discretion when it denied Ms. Hairston's Idaho Criminal Rule 35 motion for a reduction of sentence?
- III. Did the district court abuse its discretion when it revoked Ms. Hairston's probation, executed her original sentence, and retained jurisdiction?

## ARGUMENT

### I.

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Five Years, With Two Years Fixed, Upon Ms. Hairston Following Her Plea Of Guilty To Possession Of A Controlled Substance

Ms. Hairston asserts that the district court abused its discretion when it imposed her unified sentence of five years, with two years fixed. The district court should have instead imposed a lesser sentence, and should have refrained from imposing the further condition of probation requiring Ms. Hairston to serve 120 days in jail.

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving "due regard to the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Strand*, 137 Idaho 457, 460 (2002).

The Idaho Supreme Court has held 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. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Further, a trial court "generally has the discretion to commute a felony prison sentence and confine a defendant in the county jail." *State v. Brooks*, 131 Idaho 608, 609 (Ct. App. 1998)

(citing I.C. §§ 19-2601 & 19-2513). Ms. Hairston does not assert that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Hairston must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* An appellate court, “[w]hen reviewing the length of a sentence . . . consider[s] the defendant’s entire sentence.” *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will “presume that the fixed portion of the sentence will be the defendant’s probable term of confinement.” *Id.*

Ms. Hairston asserts her sentence is excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, while Ms. Hairston has some criminal history, and she was on misdemeanor probation for driving under the influence at the time of her arrest, the instant charge is her first felony conviction. (*See* PSI, pp.48-50; 7/13/2020 Tr., p.41, Ls.21-24.) Ms. Hairston started using methamphetamine when she was [REDACTED] years old, and more recently she would inject methamphetamine several times a week. (*See* PSI, pp.55-56.) She reported that she has been diagnosed with bipolar disorder, depression, and anxiety. (PSI, p.55.) Her GAIN-I Recommendation and Referral Summary contained a diagnosis of stimulant use disorder – amphetamine type, severe, as well as provisional diagnoses for major depressive disorder, single episode, moderate, generalized anxiety disorder, and attention-deficit/hyperactivity disorder. (PSI, p.62.) Further, Ms. Hairston stated during the presentence investigation that she has Crohn’s disease, colorectal cancer, and spinal stenosis. (PSI, p.55.)

Additionally, Ms. Hairston related that she had been homeless for about five months at the time of the presentence investigation, and she and her boyfriend had been living in a van outside her boyfriend's aunt's residence for about two months. (*See* PSI, p.51.) At the sentencing hearing, Ms. Hairston informed the district court that she had reached out to Allumbaugh House to notify her when a bed became available for two weeks, and after that she was lined up with Brick House Recovery for outpatient treatment. (*See* 7/13/2020 Tr., p.42, Ls.14-19.)

Ms. Hairston's counsel told the district court at the sentencing hearing that Ms. Hairston had been successful on her furlough for her mother's funeral. (*See* 7/13/2020 Tr., p.39, L.20 – p.40, L.7.) However, Ms. Hairston's mother's funeral took place in the Wood River Valley in March 2020, before the courts shut down due to the coronavirus, and Ms. Hairston had been worried that she had the coronavirus. (*See* 7/13/2020 Tr., p.40, Ls.1-9.) Defense counsel thought that Ms. Hairston had more and more difficulties with the case as it dragged on due to the coronavirus countermeasures, and that Ms. Hairston might not have incurred so many pretrial release violations "if we have gotten this done back in March and April." (*See* 7/13/2020 Tr., p.40, L.23 – p.41, L.11.) Ms. Hairston's counsel stated, "I think we almost did this guilty plea before we shut down the courts for coronavirus, but she was so anxious that day, we had to give it another try another day. And then everything shut down." (7/13/2020 Tr., p.40, L.23 – p.41, L.2.)

Because the district court did not adequately consider the above mitigating factors, Ms. Hairston's sentence is excessive considering any view of the facts. Accordingly, the district court abused its discretion when it imposed her unified sentence of five years, with two years fixed. The district court should have instead imposed a lesser sentence, and should have

refrained from imposing the further condition of probation requiring Ms. Hairston to serve 120 days in jail.

## II.

### The District Court Abused Its Discretion When It Denied Ms. Hairston's Rule 35 Motion For A Reduction Of Sentence

Ms. Hairston asserts the district court abused its discretion when it denied her Idaho Criminal Rule 35 motion for a reduction of sentence. “A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe.” *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994) (citation omitted). “The denial of a motion for modification of a sentence will not be disturbed absent a showing that the court abused its discretion.” *Id.* “The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable.” *Id.* “If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction.” *Id.*

Ms. Hairston asserts that her sentence is excessive in view of the new and/or additional information presented in support of her Rule 35 motion. For instance, in a letter to the district court attached to one addendum to the Rule 35 motion, Ms. Hairston asked to be allowed to move back to Hailey upon her release. (*See R.*, p.158.) She wrote that she had the support of her family, friends, and church in Hailey, and, “I realize now that moving to Boise was a huge mistake.” (*R.*, p.158.) Ms. Hairston also stated, “leaving my support group and children have to be the biggest regret[s] of my life.” (*R.*, p.158.) She was “fully confident” that she could

“maintain sobriety and do what the courts ask me to do.” (R., p.158.) Further, Ms. Hairston stated, “My people in Hailey love me unconditionally and it’s with their help and GOD[’s] that I can be made whole again.” (R., p.158.)

Additionally, the documents attached to the second addendum indicate that Ms. Hairston was not receiving some of her prescribed medications while in jail. (*See* R., pp.168, 175.) One communication form stated, “Ms. Hairston our psychiatric provider has stopped you[r] Wellbutrin because this is a non formulary medication at ACJ. You have an appointment to follow up with a social worker.” (R., p.175.) A “Recovery/Addiction Plan” document, apparently written by Ms. Hairston, stated, “Jail is withholding 9 of my meds now,” and, “Won’t give me my inhalers.” (*See* R., pp.176-77.) The Recovery/Addiction Plan further stated, “Jail diagnosed me w/ COPD have a kite stating I need an at home regimen.”<sup>2</sup> (R., p.177; *see* R., p.174.) Moreover, “Auto immune and COPD puts me at higher risk for covid . . . 70 cases now and jail is filling up fast.” (R., p.177.)

The second addendum also had a letter attached from Rising Sun Sober Living, stating that Rising Sun had accepted Ms. Hairston into their program. (R., p.178.) The letter stated that Rising Sun “is a recovery residence and does not allow doctor prescribed controlled substances to be used while in housing,” and, “All Guests are required to submit and pass a urine analysis upon moving into housing.” (R., p.178.)

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<sup>2</sup> While this was not expressly stated in the Recovery/Addiction Plan, for the Court’s information, “COPD” is short for chronic obstructive pulmonary disease, which “refers to a group of diseases that cause airflow blockage and breathing-related problems.” *See* Centers for Disease Control and Prevention, Chronic Obstructive Pulmonary Disease (COPD), <https://www.cdc.gov/copd/index.html> (page last reviewed Feb. 22, 2021).

Ms. Hairston's sentence is excessive in view of the above new and/or additional information presented in support of her Rule 35 motion. Thus, the district court abused its discretion when it denied her Idaho Criminal Rule 35 motion for a reduction of sentence.

### III.

#### The District Court Abused Its Discretion When It Revoked Ms. Hairston's Probation, Executed Her Original Sentence, And Retained Jurisdiction

Ms. Hairston asserts that the district court abused its discretion when it revoked her probation, executed her original sentence, and retained jurisdiction. The district court should have instead followed Ms. Hairston's recommendation by placing her back on probation, with the condition that she complete drug court. (*See* 11/23/2020 Tr., p.19, Ls.9-12.)

A district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, 19-2603 & 20-222. "A district court's decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion." *State v. Sanchez*, 149 Idaho 102, 105 (2009). In reviewing a district court's discretionary decision, appellate courts conduct an inquiry to determine whether the district court correctly perceived the issue as one of discretion, acted within the boundaries of its discretion, acted consistently with the applicable legal standards, and reached its decision by an exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

Appellate courts use a two-step analysis in reviewing a probation revocation proceeding. *Sanchez*, 149 Idaho at 105. First, the appellate court determines "whether the defendant violated the terms of his probation." *Id.* "If it is determined that the defendant has in fact violated the terms of his probation, the second question is what should be the consequences of that violation." *Id.*

Ms. Hairston concedes she admitted to violating her probation. (*See* 10/19/2020 Tr., p.6, L.15 – p.13, L.13.) When 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). Thus, this Court may go to the second step of the analysis and determine whether the district court abused its discretion when it revoked Ms. Hairston’s probation. *State v. Hoskins*, 131 Idaho 670, 672 (Ct. App. 1998) (internal citations omitted). As Idaho’s appellate courts have held, “[i]f a knowing and intentional probation violation has been proved, a district court’s decision to revoke probation will be reviewed for an abuse of discretion.” *Sanchez*, 149 Idaho at 106 (quoting *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001)).

However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). The purpose of probation is to provide an opportunity to be rehabilitated under proper control and supervision. *Peterson*, 123 Idaho at 50. Thus, 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 district court may revoke probation if it reasonably concludes from the defendant’s conduct that probation is not achieving its rehabilitative purpose. *Adams*, 114 Idaho at 1055. The district court may consider the defendant’s conduct both before and during the probationary period. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

Here, Ms. Hairston’s counsel informed the district court that Ms. Hairston had been found appropriate for drug court. (11/23/2020 Tr., p.15, Ls.21-24.) Defense counsel also clarified that the drug court had ruled out two of the medications Ms. Hairston had reported taking, namely pain pills and Ambien, but Ms. Hairston “is willing to not take those medications in order to participate in drug court.” (11/23/2020 Tr., p.15, L.25 – p.16, L.14.)

Ms. Hairston's counsel also told the district court, "Audra doesn't deny that she did go against the court orders, and she's apologized for that, and she ultimately served her 120 days." (11/23/2020 Tr., p.19, Ls.22-24.) Defense counsel explained, "When she was first ordered to do those days, she did have a lot of medical issues that were coupled with COVID concerns and hysteria going into the jail when the jail was considered a hot spot for COVID." (11/23/2020 Tr., p.19, L.25 – p.20, L.4.) The district court had ordered Ms. Hairston to immediately begin serving the 120 days jail time on July 14, 2020. (R., pp.134, 136.) Ms. Hairston's counsel stated that Ms. Hairston's COPD "does make it more difficult for her to be able to combat COVID if that was something that were to manifest itself when she was taken into jail." (11/23/2020 Tr., p.20, Ls.4-7.) Defense counsel was "concerned for Audra's health if she was sent to the rider program," considering counsel understood that "the jail, the prison also, is running rampant with COVID, as well as general population, but she would be in much closer quarters." (11/23/2020 Tr., p.22, L.22 – p.23, L.2.)

Defense counsel additionally explained that Ms. Hairston had been confused about not checking in with her probation officer, because she thought she was supposed to do so only after she completed the 120 days jail time. (See 11/23/2020 Tr., p.20, Ls.8-23.) According to Ms. Hairston's counsel, "The 120 days that she's been in custody has been a great reset for her." (11/23/2020 Tr., p.21, Ls.21-22.) Ms. Hairston had been able to maintain her pain while in jail with just Tylenol. (See 11/23/2020 Tr., p.21, L.22 – p.22, L.7.) While Ms. Hairston had not completed the classes the district court had directed her to finish in jail, defense counsel explained, "She did get far in the classes, and then there was an issue with some of her classmates and the instructor . . . ." (See 11/23/2020 Tr., p.22, Ls.8-12.) Ms. Hairston had looked into sober living and an inpatient program, and her counsel asked "for the opportunity for

her to attend drug court as part of her program and start that process now versus six months down the road . . . .” (11/23/2020 Tr., p.23, Ls.2-9.)

Ms. Hairston’s counsel reiterated that Ms. Hairston “has really hit the reset button and understands that this is an opportunity that is really a once-in-a-lifetime for her; that if she comes back before the Court with a violation of drug court rules or drug court treatment, that’s she’s looking at prison.” (11/23/2020 Tr., p.23, Ls.11-17.) Ms. Hairston apologized for not turning herself in, and told the district court, “I’ve had a good reset, and if you give me another chance, I promise you, you won’t see me again with another charge.” (11/23/2020 Tr., p.23, L.24 – p.24, L.3.)

In light of the above, the district court abused its discretion when it revoked Ms. Hairston’s probation, executed her original sentence, and retained jurisdiction. The district court should have instead followed Ms. Hairston’s recommendation by placing her back on probation, with the condition that she complete drug court.

#### CONCLUSION

For the above reasons, Ms. Hairston respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 11<sup>th</sup> day of March, 2021.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of March, 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

BPM/eas