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### State v. Beese Appellant's Brief Dckt. 48387

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

JACOB L. WESTERFIELD  
Deputy State Appellate Public Defender  
I.S.B. #9841  
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,	)	NOS. 48387-2020, 48388-2020, 48389-2020
	)	& 48390-2020
	)	
v.	)	ADA COUNTY NOS. CR-FE-2016-4953,
	)	CR-FE-2016-4954, CR01-17-8426 &
	)	CR01-20-29011
	)	
DEREK DUANE BEESE,	)	
	)	APPELLANT’S BRIEF
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Derek Beese was on probation in both 2016 cases and the 2017 case when he was charged in the 2020 case. The State subsequently filed a motion to revoke his probation in the 2016 and 2017 cases. After Mr. Beese admitted to some of the alleged probation violations in the 2016 and 2017 cases, the district court revoked Mr. Beese’s probation in each case and executed the underlying sentences in those cases. Mr. Beese also pled guilty in the 2020 case to felony eluding, and the district court sentenced him to serve five years, with two years fixed.

Mr. Beese appeals, and he argues the district court abused its discretion by revoking his probation and executing his sentences in the 2016 and 2017 cases and by imposing an excessive sentence in the 2020 case.

#### Statement of Facts and Course of Proceedings

On April 19, 2016, Mr. Beese was charged by two separate criminal complaints with committing robbery and possession of a controlled substance (methamphetamine). (No. 48387 R., pp.13-14; No. 48388 R., pp.12-13.) Mr. Beese pled guilty to an amended charge of grand theft in the first case and to felony possession of a controlled substance in the second case.<sup>1</sup> (No. 48387 R., pp.43-53; No. 48388 R., pp.44-54.) In the first case, Mr. Beese was sentenced to eight years, with two years fixed, and the district court retained jurisdiction (a “rider”). (No. 48387 R., pp.64-67.) In the second case, Mr. Beese was sentenced to six years, with two years fixed, concurrent with the first case and the district court also retained jurisdiction. (No. 48388 R., pp.63-66.) In August 2017, Mr. Beese was released onto probation in both cases after he successfully completed the rider. (No. 48387 R., pp.70-74; No. 48388 R., pp.76-80.)

While Mr. Beese was participating in his riders from the 2016 cases, another criminal complaint was filed in March 2017 alleging that Mr. Beese had, in February 2016, committed grand theft by receiving, retaining, obtaining control over or possession of stolen property. (No. 48389 R., pp.9-10.) Mr. Beese pled guilty to grand theft by possession of stolen property in this case. (No. 48389 R., pp.43-51.) In the 2017 case, Mr. Beese was sentenced to five years, with

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<sup>1</sup> The Information filed in the second case contained additional misdemeanor charges beyond the felony possession of a controlled substance charge. (No. 48388 R., pp.33-35.) Those misdemeanor charges were dismissed pursuant to the plea agreement. (No. 48388 R., pp.52, 73-74.)

two years fixed, concurrent to both 2016 cases and suspended for probation. (No. 48389 R., pp.52-58.)

In February 2020, a motion for bench warrant for probation violation and accompanying report of probation violation was filed in the 2016 and 2017 cases. (No. 48387 R., pp.80-103; No. 48388 R., pp.81-104; Aug. R., pp.1-24.) In those motions and reports of probation violation, Mr. Beese was alleged to have violated his probation by: (1) “purchasing, possessing, or consuming any drug or narcotic unless specifically prescribed by a medical doctor”; (2) failing to complete his G.E.D and/or HSE; (3) failing to report to his supervising officer on three separate occasions; (4) failing to obtain permission from his supervising officer prior to changing residences; and (5) absconding from supervision.<sup>2</sup> (No. 48387 R., pp.80-103; No. 48388 R., pp.81-104; Aug. R., pp.1-24.)

In July 2020, a criminal complaint was filed charging Mr. Beese with felony eluding a peace officer and misdemeanor possession of drug paraphernalia. (No. 48390 R., pp.7-8.) According to the probable cause affidavit, the police were searching for Mr. Beese because of his outstanding warrants for the aforementioned probation violations. (No. 48390 R., p.11.) Officer Jairo Villasano attempted to stop Mr. Beese’s vehicle by activating his emergency lights and sirens. (No. 48390 R., p.11.) The officer engaged in a high speed chase with Mr. Beese. (No. 48390 R., p.11.) Ultimately, Mr. Beese’s vehicle ran off the road into a canal, where he was apprehended by the police. (No. 48390 R., p.11.) The police discovered paraphernalia during a subsequent search of Mr. Beese’s vehicle. (No. 48390 R., p.11.)

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<sup>2</sup> In the 2017 case, Mr. Beese was not alleged to have violated his probation by failing to obtain his G.E.D. and/or HSE since that was not a term or condition of his probation in that case. (No. 48389 R., pp.52-58; Aug. R., pp.1-24.)

Mr. Beese subsequently pled guilty to the felony eluding a peace officer charge.<sup>3</sup> (No. 48390 R., pp.33-43; Tr. Vol. III,<sup>4</sup> p.17, L.5—p.18, L.24.) The motions for probation violations in the 2016 and 2017 cases were subsequently amended to include allegations that Mr. Beese violated his probation by committing the felony eluding and misdemeanor possession of drug paraphernalia charges.<sup>5</sup> (No. 48387 R., pp.111-18; No. 48388 R., pp.112-19; No. 48389 R., pp.65-71.) Mr. Beese subsequently entered admissions in the 2016 and 2017 cases to having violated his probation by absconding from supervision and committing the crime of felony eluding. (Tr. Vol. I, p.11, Ls.3-11; Tr. Vol. II, p.8, L.23—p.11, L.1.)

At the joint sentencing and probation violation disposition hearing, the State recommended that the district court revoke Mr. Beese's probation and execute the underlying sentences in the 2016 and 2017 cases and impose a five year sentence to serve, with two years fixed, concurrent with the other cases in the 2020 case. (Tr. Vol. II, p.20, Ls.2-12.) Mr. Beese's defense attorney requested that the district court place Mr. Beese onto probation in all four cases. (Tr. Vol. II, p.22, L.24—p.23, L.1.) For the 2016 and 2017 cases, the district court revoked Mr. Beese's probation and executed the underlying sentences. (No. 48387 R., pp.127-29; No.

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<sup>3</sup> The possession of drug paraphernalia charge was dismissed pursuant to the plea agreement. (R., p.42.) The State also agreed not to pursue a persistent violator enhancement as part of the plea agreement. (R., p.42; Tr. Vol. III, p.6, Ls.4-6.)

<sup>4</sup> There are three transcripts that have been prepared for this appeal. Only the electronic document prepared in the 2020 case, titled "48390 - Appeal Transcripts 1-7-2021 10.34.1 43428171 8D70878F-37DF-4799-875F-36D5618DA8D9", contains all three transcripts. Therefore, a citation to a transcript will refer to the transcript as it appears in the 2020 case. Citations to "Tr. Vol. I" refer to the transcript for the entry of admissions hearing held on September 30, 2020. Citations to "Tr. Vol. II" refer to the transcript for another entry of admissions hearing held on October 2, 2020 and for the joint disposition and sentencing hearing held on October 16, 2020. Citations to "Tr. Vol. III" refer to the transcript for the entry of plea hearing held on September 16, 2020.

<sup>5</sup> While an order for leave to file amended motion for probation violation was not entered in the 2017 case, the court minutes from an August 26, 2020 hearing indicate that Mr. Beese was arraigned on the amended motion for probation violation in that case. (R., p.73.)

48388 R., pp.126-28; No. 48389 R., pp.78-81; Tr. Vol. II, p.26, Ls.9-21.) In the 2020 case, Mr. Beese was sentenced to serve five years, with two years fixed, concurrent with the 2016 and 2017 cases. (No. 48390 R., pp.46-49; Tr. Vol. II, p.26, L.22—p.27, L.5.)

A timely motion for reconsideration of sentence pursuant to Idaho Criminal Rule 35 was filed in each of Mr. Beese's cases. (No. 48387 R., pp.132-33; No. 48388 R., pp.131-32; No. 48389 R., pp.84-85; No. 48390 R., pp.52-53.) In the 2016 and 2017 cases, Mr. Beese requested that the district court commute his sentences in each case. (No. 48387 R., pp.132-33; No. 48388 R., pp.131-32; No. 48389 R., pp.84-85.) In the 2020 case, Mr. Beese requested that the fixed portion of his sentence be reduced to one year. (No. 48390 R., pp.52-53.) The district court subsequently denied Mr. Beese's motions for reconsideration in the 2016 and 2017 cases.<sup>6</sup> (No. 48387 R., pp.142-44; No. 48388 R., pp.141-43; No. 48389 R., pp.94-96.) Mr. Beese timely appealed from the district court's orders revoking his probation in the 2016 and 2017 cases and from the judgment of conviction in the 2020 case. (No. 48387 R., pp.134-36; No. 48388 R., pp.133-35; No. 48389 R., pp.86-88; No. 48390 R., pp.54-56.)

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<sup>6</sup> Since no new information was presented in support of the motions for reconsideration in the 2016 and 2017 cases, Mr. Beese does not challenge the district court's orders denying those motions on appeal. However, in the 2020 case, there is no order denying Mr. Beese's motion for reconsideration in the clerk's record. Upon reviewing the iCourt entry for the 2020 case, it would appear that the district court has not entered an order on Mr. Beese's motion for reconsideration for that case. Since there has not been a judgment or order entered on this motion in the district court, there is not an appealable issue regarding the motion for reconsideration of sentence at this time. Since the motion has not yet been addressed by the district court, Mr. Beese reserves the right to appeal any adverse judgment or order entered on his motion for reconsideration in the 2020 case.

## ISSUES

- I. Did the district court abuse its discretion when it revoked Mr. Beese's probation and executed his underlying sentences?
- II. Did the district court abuse its discretion when it sentenced Mr. Beese to five years, with two years fixed, for felony eluding?

## ARGUMENT

### I.

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

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 decision. *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. Beese does not challenge his admissions to violating his probation. "[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. Beese submits that the district court did not exercise reason, and therefore abused its discretion, by revoking his probation in the 2016 and 2017 cases.

"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 district court's decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion.” *Sanchez*, 149 Idaho at 105.

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

*Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

“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). Just as is the case when reviewing the original imposition of sentence, the appellate court will independently review the entire record, “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.” *State v. Pierce*, 150 Idaho 1, 5, 244 P.3d 145, 149 (2010). The court may consider the defendant’s conduct before and during probation. *Roy*, 113 Idaho at 392.

Mr. Beese successfully completed his programming while participating in his rider at the North Idaho Correctional Institution for his 2016 cases. (Supp. PSI,<sup>7</sup> pp.1-15.) The addendum to the presentence investigation noted that Mr. Beese: (1) had “made some positive changes in his thinking patterns, attitudes, and beliefs”; (2) was “amenable to correction and can control his action and behavior”; (3) “should be able to follow the rules of probation should he choose to do

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<sup>7</sup> Citations to the “Supp. PSI” refer to the 23-page electronic document included with the confidential sentencing materials titled “Appeal Supplemental Confidential Exhibits.”



so”; and (4) completed various optional programs that “should enhance his ability to be successful on probation and in the workforce.” (Supp. PSI, pp.6-7.)

From August 2017 until December 2019, Mr. Beese had been participating in his probation without any significant issues. (No. 48390 PSI,<sup>8</sup> pp.4-5.) While on probation during this period of time, Mr. Beese was employed with construction companies, graduated from his CBI Advanced Practice course, completed his one-hundred hours of court ordered community service, and “remained compliant with probation and tested negative for substances.” (No. 48390 PSI, pp.4-5.) As noted by the presentence investigation in the 2020 case, however, Mr. Beese began to have issues on probation in December 2019. (No. 48390 PSI, p.5.) Ultimately, Mr. Beese admitted to violating his probation by absconding from supervision and committing the crime of felony eluding. (Tr. Vol. I, p.11, Ls.3-11; Tr. Vol. II, p.9, L.1—p.11, L.1.)

Mr. Beese’s defense counsel explained at the disposition hearing that Mr. Beese had been “doing really well” on probation prior to his violations, including Mr. Beese completing his after-care treatment, paying off his fines and fees, and maintaining employment. (Tr. Vol. II, p.21, Ls.2-7.) Defense counsel stated that Mr. Beese felt “very bad about what he decided to do” and that Mr. Beese wanted to maintain his sobriety, work full time, marry his fiancée, establish more stability in his life, and keep in contact with his probation officer. (Tr. Vol. II, p.22, Ls.1-10.) Defense counsel further indicated that Mr. Beese planned to reenroll in an after-care program. (Tr. Vol. II, p.22, Ls.11-17.)

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<sup>8</sup> Citations to “No. 48390 PSI” refer to the 55-page electronic document included with the confidential sentencing materials, titled “48390 - Appeal Confidential Exhibits 1-7-2021 10.34.1 43428707 9B8ABF0E-809D-47CF-94C0-9F320A1D4C79”.

In light of these facts, Mr. Beese submits that the district court did not exercise reason, and thus abused its discretion, by revoking his probation. Mr. Beese had previously demonstrated that he could be successful in the community under proper control and supervision, and Mr. Beese indicated that if he was released back onto probation, that he would “maintain good contact with his PO and put probation first.” (Tr. Vol. II, p.22, Ls.1-10.) The district court should have reinstated his probation as requested at the disposition hearing.

## II.

### The District Court Abused Its Discretion When It Sentenced Mr. Beese To Five Years, With Two Years Fixed, For Felony Eluding

“Where the sentence imposed by a trial court is within statutory limits, ‘the appellant bears the burden of demonstrating that it is a clear abuse of discretion.’” *State v. Windom*, 150 Idaho 873, 875 (2011) (quoting *State v. Stevens*, 146 Idaho 139, 148 (2008)).

When this Court reviews an alleged abuse of discretion by a trial court the sequence of inquiry requires consideration of *four* essentials. Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

*Lunneborg*, 163 Idaho at 863. In the 2020 case, Mr. Beese’s sentence for felony eluding does not exceed the statutory maximum. *See* I.C. §§ 49-1404 & 18-112 (five-year maximum). Accordingly, to show that the sentence imposed was unreasonable, Mr. Beese “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).

“‘[R]easonableness’” implies that a term of confinement should be tailored to the purposes for which the sentence is imposed.” *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982).

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).

In the 2020 case, Mr. Beese asserts that the district court did not exercise reason, and therefore abused its discretion, by imposing a sentence that is excessive under any reasonable view of the facts. Specifically, Mr. Beese contends the district court should have sentenced him to probation in light of the mitigating factors, including his work history, remorse for his actions, and support in the community.

First, Mr. Beese’s employability and positive work history are mitigating factors that would support a more lenient sentence. According to the Presentence Investigation (“PSI”) reports, Mr. Beese had worked for Glenn Electric for ten years previously and started a cleaning company business as well. (No. 48387 PSI,<sup>9</sup> p.10.) While on probation, Mr. Beese had been employed by HMH Construction and L2 Construction. (No. 48390 PSI, pp.4-5.) According to a letter from Mr. Beese’s father, the owner of HMH Construction was willing to rehire Mr. Beese upon his release because Mr. Beese “was one of the best workers he had as long as he was drug free.” (No. 48390 PSI, p.55.) Mr. Beese’s positive work history and potential employability are mitigating factors in support his request to be released onto probation. *See State v. Mitchell*, 77 Idaho 115, 118 (1955) (recognizing gainful employment as a mitigating factor); *see also State v.*

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<sup>9</sup> Citations to “No. 48387 PSI” refer to the 118-page electronic document included with the confidential sentencing materials, titled “48387 - Appeal Confidential Exhibits 1-7-2021 10.32.10 43427546 D6A0D5C2-5C75-4EAA-B66F-D6DD22704B21”.

*Shideler*, 103 Idaho 593, 594–95 (1982) (employment and desire to advance within company were mitigating circumstances).

Second, Mr. Beese has expressed great remorse for his actions and accepts responsibility for the crime. Acceptance of responsibility, remorse, and regret are all factors in favor of mitigation. *Shideler*, 103 Idaho at 595. In the PSI for the 2020 case, Mr. Beese explained that his actions were “[s]tupid, dumb, selfish, awful.” (No. 48390 PSI, p.3.) Mr. Beese also apologized to the district court for his bad decisions and “awful thinking pattern” at the time of the offense. (PSI, p.3.) Mr. Beese’s fiancée explained, in a letter to the district court, that Mr. Beese “expressed to me his remorse and his disappointment with himself; he understands that someone could be seriously injured or dead. I’ve always known Derek to step up and take accountability for his actions and this time is no different.” (No. 48390 PSI, p.53.) At sentencing, Mr. Beese’s defense counsel explained that Mr. Beese “feels very bad about what he decided to do” and that Mr. Beese “was on a good path for a while, for a long while.” (Tr. Vol. II, p.22, Ls.1-10.) Mr. Beese’s defense counsel further stated that Mr. Beese “apologizes to the Court for this conduct and apologizes to society as well.” (Tr. Vol. II, p.22, Ls.18-23.) These statements of acceptance, remorse, and regret stand in favor of mitigation and support Mr. Beese’s request to be released onto probation.

Third, the support and good character letters from Mr. Beese’s family and friends stand in favor of mitigation. *Shideler*, 103 Idaho at 594–95 (reducing defendant’s sentence upon a finding of family support and good character as mitigation); *see State v. Ball*, 149 Idaho 658, 663–64 (Ct. App. 2010) (finding that the district court acknowledged family and friend support as mitigating circumstances). Prior to sentencing in the 2016 cases, Mr. Beese’s father, mother, and sister all submitted statements in support of Mr. Beese. (No. 48387 PSI, pp.6-8, 115-17.)

Mr. Beese's fiancée and his father also submitted letters in support of him as part of the presentence investigation for the 2020 case. (No. 48390 PSI, pp.52-55.) Mr. Beese's fiancée explained that Mr. Beese has "a good solid support team willing to go above and beyond" to ensure that Mr. Beese "has everything he needs to be successful." (No. 48390 PSI, p.53.) Mr. Beese's father explained in his letter that "Derek is a productive person and would be a productive member of society and would be an asset to the community" and requested that the district court show some leniency when sentencing Mr. Beese. (No. 48390 PSI, p.55.) Mr. Beese's community support is a mitigating factor that supports his request to be released onto probation.

In sum, Mr. Beese maintains that the district court did not exercise reason at sentencing in the 2020 case because it failed to give adequate weight to the mitigating factors in his case. Proper consideration of these factors supports his request for probation. Mr. Beese submits that the district court abused its discretion by imposing an excessive sentence.

### CONCLUSION

On the 2016 and 2017 cases, Mr. Beese respectfully requests this Court vacate the district court's orders revoking his probation and remand his cases to the district court with an instruction that he be sentenced to probation or a lesser sentence. On the 2020 case, Mr. Beese respectfully requests this Court reduce his sentence as it deems appropriate. In the alternative, he respectfully requests this Court vacate the district court's judgment of conviction and remand his case for a new sentencing hearing.

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

/s/ Jacob L. Westerfield  
JACOB L. WESTERFIELD  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<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:

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

JLW/eas