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### State v. West-Doney Appellant's Brief Dckt. 48544

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NOS. 48544-2021, 48545-2021 & 48546-2021
Plaintiff-Respondent,	)	
	)	ADA COUNTY NOS. CR01-17-07437,
v.	)	CR01-20-26633 & CR01-20-14901
	)	
JESSICA JO WEST-DONEY,	)	APPELLANT’S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Jessica West-Doney argues that the district court abused its discretion by failing to retain jurisdiction in her three cases.

Statement of the Facts & Course of Proceedings

Ms. West-Doney entered an *Alford*<sup>1</sup> plea to burglary in June 2017, after she was found in possession of a stolen bicycle. (No. 48544 R., pp.11-18, 25-28, 30-32, 36-42; No. 48544 PSI,

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970) (“An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.”).

pp.77-122.)<sup>2</sup> The district court sentenced her to five years, with two years fixed, and retained jurisdiction (a “rider”). (No. 48544 R., pp.49-52.) At the rider review hearing in February 2018, the district court put her on probation for five years. (No. 48544 R., pp.54-60.)

In March 2020, the State filed a motion for probation violation, alleging Ms. West-Doney committed six offenses in two new cases.<sup>3</sup> (No. 48544 R., pp. 61-64, 70-79.) She was released on her own recognizance pending further proceedings on the alleged probation violations. (No. 48544 R., p.101.)

While on release, Ms. West-Doney committed two burglaries, and in early April 2020, the State charged her with these offenses in a new case.<sup>4</sup> (No. 48545 R., pp.7-8.) After she waived her preliminary hearing in that case, she was bound over to district court and charged by information with two counts of burglary. (No. 48545 R., pp.16-20.) Due to the new charges, the State filed a motion to revoke and increase her bond, as well as an amended motion for probation violation in the 2017 burglary case. (No. 48544 R., pp.102-10, 113-17.)

Pending further proceedings in both cases, the State filed a new complaint against Ms. West-Doney in July 2020 for attempted grand theft, five counts of grand theft, burglary, and malicious injury to property. (No. 48546 R., pp.11-13.) After she waived her preliminary hearing, she was bound over to district court on those charges. (No. 48546 R., pp.26-33.)

In September 2020, two separate entry of plea hearings were held for the April 2020 case and the July 2020 case. (*See* 9/29/20 Tr.; *see also* 9/21/20 Tr.) Pursuant to a global plea agreement, Ms. West-Doney pled guilty to grand theft, burglary, and malicious injury to property

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<sup>2</sup> In this consolidated appeal, there are three separate records. Citations to the Clerk’s Record and the Pre-sentence Investigation Report (“PSI”) will reference the Supreme Court Docket Number.

<sup>3</sup> The new cases, Ada County Case Nos. CR01-20-12097 and CR01-19-45142, are not part of this appeal. (*See* 12/16/20 Tr., p.21, Ls.17-20; No.48545 R., pp.31-32.)

<sup>4</sup> This new case is part of the instant appeal.

in the July 2020 case, and one count of burglary in the April 2020 case. (9/21/20 Tr., p.18, L.1 – p.23, L.14; 9/29/20 Tr., p.12, L.2 – p.13, L.17; No. 48545 R., pp.31-33; No. 48546 R., pp.37-49.) In return, the State agreed to dismiss the remaining counts and recommend a total sentence of twenty years, with seven years fixed.<sup>5</sup> (9/21/20 Tr., p.6, L.14 – p.7, L.18.)

Consequently, a month later, the State filed a second amended motion for a probation violation in the 2017 burglary case. (No. 48544 R., pp.127-29.) At the admit/deny hearing in late October 2020, Ms. West-Doney admitted to violating her probation by committing three new crimes. (10/21/20 Tr., p.12, L.11 – p.13, L.8.)<sup>6</sup>

A consolidated sentencing hearing was held in December 2020. (*See generally* 12/16/20 Tr.) In the July 2020 case, the State recommended ten years, with six years fixed, for burglary; fourteen years, with six years fixed, for grand theft; and five years fixed, for malicious injury to property. (12/16/20 Tr., p.5, L.25 – p.6, L.24.) The State recommended these sentences run concurrently, for a total sentence of fourteen years, with six years fixed. (12/16/20 Tr., p.6, Ls.10-12.) In the April 2020 case, the State recommended six years, with one year fixed, for burglary, to run consecutively to the sentence in the July 2020 case. (12/16/20 Tr., p.6, Ls.1-16.) In the 2017 burglary case, the State requested that the district court revoke Ms. West-Doney's probation and execute her underlying sentence, and run it concurrently with the sentences in the April and July cases. (12/16/20 Tr., p.12, L.3 – p.13, L.13, p.21, Ls.15-20.) Thus, the State recommended an aggregate sentence of twenty years, with seven years fixed. Defense counsel

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<sup>5</sup> As part of the global plea agreement, the State also agreed to dismiss another pending case, Ada County Case No. CR01-20-12097.

<sup>6</sup> There are two separately-paginated Reporter's Transcripts in one electronic document. Each will be cited with reference to its internal pagination. The first transcript, cited as "12/16/20 Tr.," contains the sentencing hearing held on December 16, 2020 (pages one to ten of overall document). The second transcript, cited as "10/21/20 Tr.," contains the admit/deny hearing, held on October 21, 2020 (pages eleven to fourteen of overall document).

recommended probation in order to give Ms. West-Doney an opportunity to participate in a Mental Health Court program. (12/16/20 Tr., p.19, Ls.10-22.) Alternatively, defense counsel recommended that the district court retain jurisdiction, or impose a sentence of one-year fixed, with no recommendation on the indeterminate portion. (12/16/20 Tr., p.20, L.17 – p.21, L.7)

The district court followed the State's recommendations and imposed an aggregate sentence of twenty years, with seven years fixed. (*See* No. 48544 R., pp.142-45; No. 48545 R., pp.40-43; No. 48546 R., pp.55-59.) In the 2017 burglary case, the district court revoked Ms. West-Doney's probation and executed her underlying sentence of five years, with two years fixed. (No. 48544 R., pp.142-45; 12/16/20 Tr., p.24, Ls.1-4.) In the July 2020 case, the district court imposed a concurrent sentence of fourteen years, with six years fixed, for grand theft; ten years, with six years fixed, for burglary; and five years fixed for malicious injury to property. (No. 48546 R., pp.55-59; 12/16/20 Tr., p.24, L.5 – p.25, L.23.) In the April 2020 case, the district court sentenced Ms. West-Doney to six years, with one year fixed, for burglary. (No. 48545 R., pp.40-43; 12/16/20 Tr., p.27, L.6-8.) The district court made the sentences in the 2020 cases consecutive to each other, and concurrent with the sentence in the 2017 case, for an aggregate sentence of twenty years, with seven years fixed. (No. 48543 R., pp.142-45; No.48545 R., pp.40-43; No.48546 R., pp.55-59; 12/16/20 Tr., p.27, L.6-8.)

Ms. West-Doney filed a Criminal Rule 35 motion with no new information in the July 2020 case. The district court denied this motion in April 2020.<sup>7</sup>

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<sup>7</sup> Ms. West-Doney's Rule 35 motion and the district court's order denying her Rule 35 motion are not in the record. Ms. West-Doney does not challenge the denial of her Rule 35 motion in this appeal.

Ms. West-Doney filed notices of appeal timely from the order revoking her probation in the 2017 burglary case (No. 48544 R., pp.146-49), and the judgments of conviction in the two 2020 cases. (No. 48545 R., pp.44-47; No. 48546 R., pp.60-63.)

### ISSUE

Did the district court abuse its discretion when it failed to retain jurisdiction in all three cases?

### ARGUMENT

#### The District Court Abused Its Discretion When It Failed To Retain Jurisdiction In All Three Cases

Idaho’s appellate courts use a two-step analysis to review a district court’s decision to revoke probation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, this Court must determine “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.* After a probation violation has been established, the court may order that the suspended sentence be executed or, in the alternative, the court may reduce the sentence under Idaho Criminal Rule 35. *State v. Morgan*, 153 Idaho 618, 622 (Ct. App. 2012).

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record considering the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). 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) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Ms. West-Doney does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, she 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.*

Appellate courts use a four-part test for determining whether a district court abused its discretion: 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). Ms. West-Doney asserts that the district court's failure to retain jurisdiction in all three cases was an abuse of discretion because the court did not exercise reason in light of the various mitigating factors, including: her tumultuous childhood, her substance abuse and its longstanding impact on her life, and her mental health issues. *See State v. Brunet*, 155 Idaho 724, 729 (2013) (recognizing that the decision whether to retain jurisdiction lies in the discretion of the district court).

Ms. West-Doney had a difficult childhood. (No. 48544 PSI, pp.6-7.) She reported that her mother was a "neglectful drug dealer/addict" and her father was an "abusive alcoholic." (No. 48544 PSI, pp.6, 18.) She stated that her parents lived in different states, and she would go back and forth between the two. (No. 48544 PSI, pp.6, 18.) When she lived with her father, he was often out drinking, and was abusive. (No. 48544 PSI, pp.6-7, 18.) Ms. West-Doney stated that when she lived with her father, she often spent time in a biker club house, and in a shelter until she was a teenager. (No. 48544 PSI, p.6.) She reported that her mother was in prison off and on

throughout her life, until her death in 2016. (No. 48544 PSI, p.6.) When she lived with her mother, she spent a lot of time homeless, and lived in her mother's station wagon. (No. 48544 PSI, p.6.) Ms. West-Doney reported that she was molested by one of her mother's boyfriend's sons when she was around [REDACTED] and raped by a gang member when she was [REDACTED] [REDACTED] (No. 48544 PSI, p.6.) In the presentence investigation report ("PSI"), she stated, "I'm disappointed in myself. I turned out like my parents – I'm an addict. I have room for growth." (No. 48544 PSI, p.7.)

Ms. West-Doney was raised in an environment where drugs and alcohol were readily available to her from a young age. (See No. 48544 PSI, pp.6-7, 18, 22.) She reported that she first consumed alcohol when she was [REDACTED] and began drinking regularly when she was [REDACTED] (No. 48544 PSI, p.15.) She reported that she began using illegal drugs when she was [REDACTED], and stated that since that time, she has abused marijuana, methamphetamine, cocaine, and spice. (No. 48544 PSI, p.15.) She noted that she used spice daily for two years beginning in 2007, and started smoking methamphetamine daily after her mother passed away. (No. 48544 PSI, p.15.) She explained that she participated in intensive outpatient treatment at Box Elder Mental Health in Brigham City, Utah in 2011, and upon completion of the program, she remained sober for one and one-half years. (No. 48544 PSI, p.15.) Ms. West-Doney explained that the longest time she was sober was from 2013 to 2016, and she relapsed when her mother passed away in 2016. (No. 48544 PSI, p.15.) In her mental health assessment, the clinician diagnosed her with Amphetamine Dependence. (No. 48544 PSI, p.26.)

Despite her serious substance abuse problem, Ms. West-Doney has shown a willingness to try to overcome her addiction and has recognized the detrimental effect it has had on her life. During her 2017 rider, Ms. West-Doney attended and completed all programming to the

satisfaction of her group facilitators, and her case manager noted that she matured a lot during her time there. (No. 48544 PSI, p.138.) Upon her release to probation, Ms. West-Doney was able to use the tools she learned during her rider, and enrolled in business classes at College of Western Idaho. (No. 48544 PSI, pp.157, 161.) She began a landscaping business in 2019, and stated that it was so successful that she was able to hire employees. (No. 48544 PSI, pp.138, 157.) She completed all her aftercare programming, and was even able to pay off all her court ordered fines. (No. 48544 PSI, pp.157, 160.) Unfortunately, Ms. West-Doney relapsed, as she struggled to balance both school and work. (No. 48544 PSI, p.157.)

Looking back on her new crimes, Ms. West-Doney said she feels “[appalled] by my actions, these crimes were committed while I was high on meth.” (No. 48544 PSI, p.157.) The 2020 PSI interviewer noted that she was polite and forthcoming during the interview. (No. 48544 PSI, p.162.) Ms. West-Doney admitted that her drug use negatively impacted her education, residence, relationships, and health. (No. 48544 PSI, p.160.) She shared that she eventually became homeless, lost her vehicles, and several personal effects. (No. 48544 PSI, p.160.) Ms. West-Doney expressed an interest in returning to school, inpatient and outpatient treatment at Intermountain Hospital, and ultimately restarting her business. (No. 48544 PSI, p.160.) She stated she attended church on a weekly basis from the time she was released until she began using drugs. (No. 48544 PSI, pp.160-61.)

In addition to substance abuse, Ms. West-Doney reported multiple physical and mental health issues. (No. 48544 PSI, p.19.) She reported that she began receiving Social Security Disability Insurance (“SSDI”) for physical and mental health issues in February 2016. (No. 48544 PSI, p.11.) Ms. West-Doney’s primary diagnosis is bipolar disorder. (No. 48544 PSI, pp.22, 26.) She has a history of mental health treatment with a mental health clinic in Weber,

Utah and through her family practitioner while living in Utah with her father. (No. 48544 PSI, p.22.) She also informed the pre-sentence investigator that her father was diagnosed with schizophrenia. (No. 48544 PSI, p.23.) In the mental health assessment, Ms. West-Doney reported a history of cutting her arms, and stated that she attempted suicide four times between 2012 and 2013. (No. 48544 PSI, p.22.) She explained that after one of her suicide attempts, she was treated at the emergency room, where she had to be resuscitated after overdosing on medications that she mixed with alcohol. (No. 48544 PSI, p.22.) She noted that she has taken multiple medications for mental health from a young age, and stated “I know I need meds.” (No. 48544 PSI, pp.13, 22, 193.) The clinician who conducted the mental health assessment noted that she had a positive attitude toward medication, and reported a history of medication compliance, although she admitted that her drug use has interfered with their efficacy. (No. 48544 PSI, p.22.) Ms. West-Doney acknowledged that she needs mental health counseling. (No. 48544 PSI, p.19.)

Despite Ms. West-Doney’s tumultuous childhood, substance abuse, and mental health issues, she has shown a willingness to try to overcome her addiction and has recognized the detrimental effect it has had on her life. Upon successfully completing a previous period of retained jurisdiction, she used the tools she learned during her rider, and demonstrated her ability to be a productive member of society. She enrolled in business classes at the College of Western Idaho, and even started her own landscaping business. Although she relapsed, Ms. West-Doney has recognized the importance of continuing with substance abuse and mental health treatment.

Proper consideration of these mitigating factors supported a more lenient sentence. In light of these facts, Ms. West-Doney submits that the district court did not exercise reason, and thus abused its discretion, when it failed to retain jurisdiction in all three cases.

CONCLUSION

Mr. West-Doney respectfully requests that this Court vacate the district court's order revoking probation in the 2017 case, and the judgments of conviction in the 2020 cases, and remand those cases to the district court for orders retaining jurisdiction.

DATED this 8<sup>th</sup> day of June, 2021.

/s/ Kiley A. Heffner  
KILEY A. HEFFNER  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8<sup>th</sup> day of June, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

KAH/eas