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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45925
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY
)	NO. CR-2008-11895
v.)	
)	
ROBERT DEL CRITCHFIELD,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE SCOTT WAYMAN
District Judge

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

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Robert Critchfield pled guilty to felony injury to a child. He received a unified sentence of ten years, with three years fixed. After a second probation violation, the district court revoked Mr. Critchfield's probation. On appeal, Mr. Critchfield contends that, by overruling counsel's objections and allowing testimony and evidence from Mr. Critchfield's probation officer's supervisor regarding explicit photographs she had obtained from Mr. Critchfield's ex-girlfriend's sister, the district court violated Mr. Critchfield's constitutional due process right to confront witnesses. Mr. Critchfield also asserts that the district court abused its discretion in revoking his probation and by denying his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion to reduce his sentence.

Statement of the Facts & Course of Proceedings

In 2008, Robert Critchfield pled guilty to injury to a child after an investigation of allegations that he inappropriately touched a few teenaged girls while they visited his home and showed them images depicting sexual activity. (R., p.89.) (Presentence Investigation Report (*hereinafter*, PSI),¹ pp.2-3.) Based on these facts, Mr. Critchfield was charged with four counts of lewd conduct with a minor under sixteen and five counts of sexual abuse of a minor. (R., pp.247-250.) After a jury trial, Mr. Critchfield was acquitted of several counts, convicted of two counts, and the jury could not return a verdict on the remaining counts. (R., pp.626, 657-658.) The district court granted Mr. Critchfield's motion for a new trial, and the State appealed. (R., pp.669-671, 675-678.) The Idaho Supreme Court affirmed the decision of the district court

and the matter was remanded for a new trial. (R., pp.704-710.) Prior to a second trial, and pursuant to a plea agreement, Mr. Critchfield entered an *Alford* plea to one count of felony injury to a child. (R., pp.733-737.) The district court sentenced Mr. Critchfield to a unified sentence of ten years, with three years fixed, but suspended the sentence and placed Mr. Critchfield on probation for three years (R., pp.748-757.)

In 2016, a report of probation violation was filed which alleged that Mr. Critchfield formed a romantic interest in a woman without his probation officer's permission, failed to complete sex offender treatment classes, and failed to provide truthful information on polygraph tests. (R., pp.786-802.) Mr. Critchfield admitted to violating some of the terms and conditions of his probation, and the remaining allegations were dismissed, pursuant to an agreement. (R., p.804.) Prior to the court's disposition, an addendum to the report of probation violation was filed which alleged that Mr. Critchfield had initiated contact with a minor female who worked at the front desk of Mr. Critchfield's gym, and that he drank alcohol. (R., pp.815-817.) The district court retained jurisdiction. (R., pp.826-828.) After a successful rider, the district court placed Mr. Critchfield on probation for two years. (R., pp.835-844.)

In 2018, Mr. Critchfield was again accused of violating his probation. (R., pp.852-863.) The State alleged that he violated his probation by possessing a telephone with texting and photo capabilities, by using the internet and email without the permission of his therapist and probation officer, consuming beer, having a sexual relationship with a person who had not been approved by his probation officer (permission was sought by Mr. Critchfield, but denied), for forming an intimate relationship with a person who has custody of a minor child, and for possessing a smart

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

phone containing images depicting nudity. (R., pp.852-863.) Mr. Critchfield admitted to violating some of the terms and conditions of his probation; he admitted to Violations Nos. 1-6 and No. 8. (2/5/18 Tr., p.5, L.8 - p.8, L.23.) Mr. Critchfield denied violating his probation by failing to take a polygraph examination. (2/5/18 Tr., p.8, Ls.7-17.) The district court set the case for an evidentiary hearing on February 22, 2018, on the remaining allegation of probation violation. (2/5/18 Tr., p.10, Ls.15-16.)

At the disposition hearing, Mr. Critchfield's probation officer's supervisor, Myra Howard, testified that she received text messages including images from Mr. Critchfield's ex-girlfriend's sister that were purportedly taken by screenshotting Mr. Critchfield's phone. (2/22/18 Tr., p.12, Ls.1-8.) The images were photographs, some nude or partially nude, of Mr. Critchfield and some partially nude images of a [REDACTED] woman named Michael. (Aug., pp.1-2.) The photographs were admitted as State's Exhibit No. 1, over Mr. Critchfield's counsel's objections to the exhibit as violative of his client's right(s) of confrontation. (2/22/18 Tr., p.12, Ls.9-15; p.13, Ls.9-15; p.15, Ls.11-20.)

At the disposition hearing, the State asked for imposition of the suspended sentence. (2/22/18 Tr., p.29, Ls.8-18.) Mr. Critchfield's counsel asked the court to close the case. (2/22/18 Tr., p.30, L.25 - p.33, L.2.) The district court revoked Mr. Critchfield's probation. The district court ultimately revoked Mr. Critchfield's probation. (2/22/18 Tr., p.36, Ls.5-8; p.37, Ls.9-14; R., pp.887-889.) Mr. Critchfield filed a Rule 35 motion, which was denied after a hearing. (4/2/18 Tr., p.50, Ls.7-10; R., pp.890-891.) Mr. Critchfield filed a timely Notice of Appeal. (R., pp.892-895, 910-914.)

ISSUES

- I. Did the district court violate Mr. Critchfield's constitutional right to due process when it denied him the right to confront witnesses against him?
- II. Did the district court abuse its discretion when it revoked Mr. Critchfield's probation?
- III. Did the district court abuse its discretion by denying Mr. Critchfield's Rule 35 motion?

ARGUMENT

I.

The District Court Violated Mr. Critchfield's Right To Due Process When It Denied Him The Right To Confront Witnesses

A. Introduction

In order to deny probationers their due process right to confront witnesses, the district court must specifically find good cause for not allowing confrontation. *State v. White*, 158 Idaho 827, 829 (Ct. App. 2015). Courts are required to employ a process of balancing the defendant's right to confrontation against the State's good cause for denying it. *Id.* 158 Idaho at 831 (quoting *State v. Farmer*, 131 Idaho 803, 806-807 (Ct. App. 1998)). In evaluating good cause, courts look to both the "difficulty and expense of procuring witnesses," and the reliability of the evidence. *White*, 158 Idaho at 831. On the other side of the balancing process, the court should weigh the defendant's right to confrontation under the specific circumstances presented in that case. *Id.*

After Mr. Critchfield admitted that he violated some of the terms and conditions of his probation, a disposition hearing was held where the State introduced testimony and evidence relating to some explicit photographs given to probation and parole from Mr. Critchfield's ex-girlfriend's sister. (2/5/18 Tr., p.5, L.8 - p.8, L.23; 2/22/18 Tr., p.11, L.18 - p.15, L.20.) Mr. Critchfield's probation officer's supervisor testified that these photographs were allegedly in Mr. Critchfield's possession while he was on probation. (2/22/18 Tr., p.14, L.20 - p.15, L.3.) The district court permitted the testimony and admitted the photographs over defense counsel's repeated confrontation objection. (2/22/18 Tr., p.12, Ls.9-15; p.13, Ls.9-15; p.15, Ls.11-20.) However, the State never provided any cause, let alone, good cause for its failure to produce witnesses at the February 22, 2018 hearing in this case; thus, the district court was unable to engage in a good cause analysis. The district court ultimately revoked Mr. Critchfield's

probation. (2/22/18 Tr., p.36, Ls.5-8; p.37, Ls.9-14; R., pp.887-889.) By allowing the testimony of Mr. Critchfield's probation officer's supervisor regarding the content of the photographs, and admitting the photographs absent any findings of good cause, reliability, or balancing Mr. Critchfield's right to confrontation, the district court violated Mr. Critchfield's constitutional due process right to confront witnesses.

B. Standard Of Review

“The determination of whether constitutional requirements have been satisfied in a probation revocation hearing is subject to free review.” *State v. White*, 158 Idaho 827, 828 (Ct. App. 2015) (citations omitted).

C. The District Court Violated Mr. Critchfield's Right To Due Process When It Denied Him The Right To Confront Witnesses

The minimal due process protections which are required during parole and probation revocation proceedings were set forth in *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). In *Morrissey*, a case dealing with parolees,² the United States Supreme Court held that revocation of parole entailed the loss of a liberty interest. *Morrissey*, 408 U.S. at 482. Since the loss of a liberty interest was at stake, the Court went on to hold that due process entitles parolees to some formal process before parole can be revoked. *Id.* at 485. The United States Supreme Court then held that this process includes “the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation).” *Id.* at 489.

² *Gagnon* extended the holdings from *Morrissey* to probationers and, as such, the same conditions applicable to parole revocation proceedings are applicable to probation revocation proceedings. *State v. Scraggins*, 292 Idaho 867, 871 (2012).

According to the *Morrissey* Court, the minimal due process protections afforded to probationers and parolees include:

(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Morrissey, 408 U.S. at 489 (emphasis added). The Confrontation Clause requires the State to produce witnesses and the Compulsory Process Clause provides the defendant the ability to call witnesses. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 313-314, 324-325 (2009). *Morrissey* provides parolees and probationers analogues to these two rights under the Due Process Clause of the Fourteenth Amendment. *Morrissey*, 408 U.S. at 489.

The right to confront witnesses at a probation revocation hearing is not an absolute right and is not co-extensive with a criminal defendant’s Sixth Amendment right to confront witnesses at a jury trial. *State v. Rose*, 144 Idaho 762, 766-767 (2007). As such, probationers have a limited due process right to confront witnesses which can be denied in the event the district court makes a “specific finding of good cause.” *Id.* at 768. That is, a probationer maintains the “right to confront and cross-examine adverse witnesses” unless the district court “specifically finds good cause for not allowing confrontation.” *Morrissey*, 408 U.S. at 489; *State v. White*, 158 Idaho 827, 829 (Ct. App. 2015).

In *White*, the probationer contended that his right to confrontation was violated at his probationary proceeding where the State solely relied on the preliminary hearing minutes and order finding probable cause from the new case. *White*, 158 Idaho at 829. The State asserted that the court was not required to engage in a good cause analysis and the right to confront

evidence was not implicated because the district court did not prevent Mr. White from calling any witnesses. *Id.* The Idaho Supreme Court found the State's arguments unavailing, and vacated the district court's order revoking probation and remanded the case. *Id.* 158 Idaho at 829-832. The *White* Court, quoting the Idaho Court of Appeals' decision in *State v. Farmer*, set forth the applicable analysis:

In analyzing whether the defendant's right to confrontation was violated, courts employ a process of balancing the defendant's right to confrontation against the state's good cause for denying it. In evaluating good cause, courts look to both the "difficulty and expense of procuring witnesses," *Gagnon v. Scarpelli*, 411 U.S. 778, 782 n.5 (1973), and the reliability of the evidence. On the other side of the balancing process, the court should weigh the defendant's right to confrontation under the specific circumstances presented in that case.

White, 158 Idaho at 831 (quoting *State v. Farmer*, 131 Idaho 803, 806-807 (Ct. App. 1998)) (internal citations omitted). In *Morrissey*, the United States Supreme Court held that good cause could be found if the witness "would be subject to risk of harm if his identity were disclosed." *Morrissey*, 408 U.S. at 487. In *Young v. United States*, 863 A.2d 804, 808 (D.C. 2004), good cause was found when a witnesses invoked the Fifth Amendment privilege against self-incrimination. After the district court has found that the State provided a legitimate reason for failing to produce witnesses, the district court must then determine if the evidence which is being proffered *in lieu* of live testimony bears some *indicia* of reliability. *Farmer*, 131 Idaho at 807. Finally, the State's reason for not producing witnesses and the reliability of the substitute evidence must be balanced against the probationer's "right to confrontation under the specific circumstances in that case." *Id.* This is a mandatory inquiry which must be conducted in order for a trial court's good cause determination to be upheld on appeal. *Id.* at 807 n.4.

At Mr. Critchfield's revocation proceeding, the prosecutor showed the State's witness documents marked for identification purposes as Plaintiff's Exhibit No. 1. The State's witness, a

supervisor at the probation department but not Mr. Critchfield's assigned officer (2/22/18 Tr., p.8, Ls.20-25), testified:

These are the photographs that were forwarded to me that Mr. Critchfield's girlfriend, Nicole Morgan, had sent to her sister because they had -- were in the middle of an argument and his girlfriend, Nicole Morgan, was concerned that he wouldn't let her go back into the house and get her belongings. Because he said he was gonna throw it out onto the curb. And so she texted her sister --

(2/22/18 Tr., p.12, Ls.1-8.) Defense counsel objected:

[DEFENSE COUNSEL]: Your Honor, I'm gonna object at this point. My client has a right to confrontation pursuant to State V. White and this is gettin' pretty far afield.

THE COURT: Your objection is noted for the record and I will overrule it.
You may continue.

(2/22/18 Tr., p.12, Ls.9-15.) Defense counsel objected again after the prosecutor asked, "How did they come into the possession of the Department of Correction?" (2/22/18 Tr., p.13, Ls.9-10.) To which the State's witness, Marla Howard, responded, "They were provided to me by his then girlfriend's sister." (2/22/18 Tr., p.13, Ls.11-12.) After his second, renewed objection based on the confrontation clause, the district court said, "It's noted for the record." (2/22/18 Tr., p.13, L.15.) The prosecutor continued to question Ms. Howard about the photographs. (2/22/18 Tr., p.13, L.16 – p.15, L.10.) When the prosecutor moved to offer into evidence the photographs identified as Plaintiff's Exhibit No. 1, defense counsel objected a third time, again identifying the confrontation clause as the basis for his objection. (2/22/18 Tr., p.15, Ls.11-17.) The district court overruled the objection and admitted the exhibit. (2/22/18 Tr., p.15, Ls.18-20.)

The district court did not determine whether good cause existed to deny Mr. Critchfield the right to confront the witness against him. (See 2/22/18 Tr.) The district court did not balance Mr. Critchfield's confrontation right against the State's reasons for denying it, and did not even conduct a reliability determination before denying Mr. Critchfield the right to confront witnesses.

(*See* 2/22/18 Tr.) The State failed to assert any reasons as to why it was particularly onerous to produce the necessary witnesses and, due to that failure, the district court did not make any factual findings as to the State's difficulty in producing the witness. (*See* 2/22/18 Tr.)

In order to deny probationers their due process right to confront witnesses, the district court must specifically find good cause for not allowing confrontation. *White*, 158 Idaho at 829. Courts are required to employ a process of balancing the defendant's right to confrontation against the state's good cause for denying it. *Id.* 158 Idaho at 831. In evaluating good cause, courts look to both the "difficulty and expense of procuring witnesses," and the reliability of the evidence. *Id.* On the other side of the balancing process, the court should weigh the defendant's right to confrontation under the specific circumstances presented in that case. *Id.*

In this case, the district court failed to make any findings or determination regarding the existence of good cause. Although courts have suggested that a risk of harm to the witness, the invocation of a testimonial privilege, significant expense, and other significant difficulty could be the basis for finding good cause, no justification was provided in this case. The State provided no reason why the witness was unavailable to testify at Mr. Critchfield's revocation hearing, and the district court made no factual findings indicating the witness was unavailable to testify. Due to that failure, the district court never engaged in the mandatory balancing of the State's interests versus Mr. Critchfield's right to confront witnesses.

Since the State failed to provide any reason why the necessary witness was unavailable to testify, the district court was unable to make requisite factual findings as to that issue, which also prevented the district court from conducting the mandatory balancing of State's interest against Mr. Critchfield's right to confront witnesses. As the Idaho Supreme Court held in *Rose, supra*, this is a mandatory analysis which requires a specific finding of good cause tailored to the facts

of each case. *Rose*, 144 Idaho at 768. The district court failed to balance Mr. Critchfield's right to confrontation against the State's cause for denying it, and the order revoking Mr. Critchfield's probation must be vacated and the case remanded for a new probation violation disposition hearing in front of a different district court judge.

II.

The District Court Abused Its Discretion When It Revoked Mr. Critchfield's Probation

A. Introduction

After the district court heard Mr. Critchfield's admissions and the testimony and evidence presented at the February 22, 2018, hearing, the district court revoked Mr. Critchfield's probation. (2/5/18 Tr., p.5, L.8 - p.8, L.23; 2/22/18 Tr., p.36, Ls.5-8; p.37, Ls.9-14.) However, the district court erred in revoking Mr. Critchfield's probation where he had committed no violations of the law and had showed good insight into his addiction issues.

B. Standard Of Review

The decision to revoke probation is a two-step process. *State v. Garner*, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017). The two steps are as follows:

First, a court may not revoke probation without a finding that the probationer violated the terms of probation. The trial court's factual findings in a probation revocation proceeding, including a finding that a violation has been proven, will be upheld if they are supported by substantial evidence. Second, once a probation violation has been proven, the decision of whether to revoke probation is within the sound discretion of the court.

State v. Le Veque, 164 Idaho 110 (2018) (quotation marks, brackets, and citations omitted).

C. The District Court Abused Its Discretion When It Revoked Mr. Critchfield's Probation

Mr. Critchfield asserts that the district court abused its discretion when it revoked his probation. He asserts that his probation violations did not justify revoking probation, especially in light of the goals of rehabilitation and the fact that the protection of society could be best served by his continued supervision under the probation department.

There are generally two questions that must be determined by the district court in addressing allegations of probation violations: first, the court must determine whether the defendant actually violated the terms and conditions of his probation; and second, if a violation of probation has been found, the trial court must then decide the appropriate remedy for the violation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). "The determination of whether a probation violation has been established is separate from the decision of what consequence, if any, to impose for the violation." *Id.* (quoting *State v. Thompson*, 140 Idaho 796, 799 (2004)). 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). However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). 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). If 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. I.C. § 20-222; *Leach*, 135 Idaho at 529.

In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

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).

Only if the trial court determines that alternatives to imprisonment are not adequate in a particular situation to meet the state's legitimate interest in punishment, deterrence, or the protection of society, may the court imprison a probationer who has made sufficient, genuine efforts to obey the terms of the probation order. *State v. Lafferty*, 125 Idaho 378, 382 (Ct. App. 1994). Mr. Critchfield asserts that the district court abused its discretion by failing to reach its decision to revoke his probation by the exercise of reason, where the case was initially filed over ten years ago, and Mr. Critchfield had not been charged with violating any laws since being placed on probation in 2014. (R., pp.37, 786-802, 815-817, 852-863.) Mr. Critchfield asserts that by revoking his probation, the district court abused its discretion by failing to reach its decision by the exercise of reason.

Here, Mr. Critchfield showed good insight into his addiction issues and his criminal thinking—as he told the court, he had proactively reached out to his probation officer for alcohol treatment:

Your Honor, I'd just like to apologize to the Court, for my probation officer Mr. Keeler, for wasting your time after just finishing a Rider six months ago. I know that I needed to think about my behavior and consequences before I act. I didn't use good judgment and make good choices. I let my emotions override my common sense after my wife and I divorced and that's when I started a relationship with Mrs. Morgan since I've been out.

...

But I started – you know I got lonely after six months. I got off my Rider. I was working 55 hours a week up until December I got laid off. And I just – one of the things you learn on a Rider is just coping with your emotions and your stress, which then I started slipping.

I was asking for – I needed alcohol support because I’m an alcoholic and I just made bad choices, started drinking, weird, you know. I just wish I’d of coped with my stress and my emotions a lot better.

(2/22/18 Tr., p.33, L.7 – p.34, L.10.) Mr. Critchfield was honest with his probation officer about his alcoholism and sought permission to attend a recovery meeting; however, permission was not granted because Mr. Critchfield asked to attend the recovery meeting with a person with whom his probation officer did not want him associating. (R., p.857.)

Mr. Critchfield asserts that the district court abused its discretion in finding that his probation violations justified revocation in light of his rehabilitative potential and his progress toward correcting the issues that brought him before the district court. In light of all of the mitigating evidence that was presented to the district court that demonstrates Mr. Critchfield’s significant rehabilitative potential, the district court abused its discretion by failing to reach its decision by the exercise of reason when it revoked his probation.

III.

The District Court Abused Its Discretion By Failing To Reduce Or Suspend Mr. Critchfield’s Sentence In Response To The New And Additional Information Submitted In Support Of His Rule 35 Motion

Although Mr. Critchfield contends that the district court abused its discretion by revoking his probation (*see* Part II, *supra*), he asserts that the abuse of discretion is even more apparent in light of the new information submitted in conjunction with his Rule 35 motion. Mr. Critchfield asserts that the district court’s denial of his motion for a sentence modification represents an abuse of discretion.

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). “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.*”

In support of his motion for a sentence reduction, Mr. Critchfield submitted information that he wanted to be placed on probation so that he could go to work to support his children. (4/2/18 Tr., p.47, Ls.9-11.) He had been working for the past seven years at the Idaho Fence Company. (4/2/18 Tr., p.47, Ls.12-15.) Mr. Critchfield also intended to continue with his counseling and get into a more rigorous alcohol treatment program. (4/2/18 Tr., p.47, Ls.19-25.)

In light of Mr. Critchfield’s desire to continue to work so that he could support his children, and his plan to obtain additional programming to better himself, the district court should have suspended his sentence. Based on the foregoing, it is clear the district court abused its discretion in failing to suspend or reduce Mr. Critchfield’s sentence in response to his Rule 35 motion.

CONCLUSION

Mr. Critchfield respectfully requests that this Court vacate the order revoking his probation and remand to the district court for a new hearing on his probation violation. Alternatively, Mr. Critchfield requests this Court reduce his sentence as it deems appropriate or remand his case to the district court for a new hearing on his probation violation and his Rule 35 motion.

DATED this 27th day of June, 2019.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2019, 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

SJC/eas