

## SUMMARY STATEMENT

*State v. Rose*  
Docket No. 52062

In this criminal appeal, Misty Dawn Rose appealed the district court's order revoking her probation and imposing her ten-year unified prison sentence. After completing two successful rider programs, the district court placed Rose on probation. As a condition of her probation, the district court required that Rose be admitted to a treatment court. When Rose was not admitted to any treatment court, the district court instituted probation revocation proceedings.

At the probation revocation hearing, Rose presented testimony and evidence demonstrating that due to circumstances beyond her control, she did not qualify for either drug court or mental health court. For example, the local drug court was a "pre-plea" court and would not accept a defendant who had already pleaded guilty, while the mental health court would not accept her because she did not have a qualifying diagnosis. Despite this evidence, the district court revoked Rose's probation, finding she willfully violated probation by not being admitted to a treatment court. Alternatively, the district court reasoned that it was revoking Rose's probation due to her absence at a prior probation review hearing. Rose appealed.

This case was initially assigned to the Court of Appeals, which affirmed the district court in part, reversed it in part, and refused to assign a different district judge on remand. Rose filed a petition for review with the Idaho Supreme Court, which granted the petition.

On review, the Supreme Court reversed the district court's order revoking Rose's probation. The Court first ruled that the district court abused its discretion in revoking Rose's probation based on her non-acceptance to a treatment court because the State failed to prove that her nonacceptance was "willful"—a prerequisite for revoking probation. Addressing the district court's secondary rationale for revoking Rose's probation, her absence from an earlier probation review hearing, the Supreme Court held that Rose had not been provided notice that probation might be revoked on this ground. Since Rose had not been apprised that her absence might be used as another basis for revoking her probation, this could not serve as an after-the-fact justification for revoking her probation. Finally, given the trial court's abuse of discretion and multiple errors in applying probation revocation standards, the Supreme Court ordered that any future proceedings in Rose's case should occur before a different judge.

***\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\****