PROBATION: A HINDER OR A HELPER TO REHABILITATION AND DESISTANCE FROM CRIME?

"PROBATION": UM DANO OU UMA AJUDA À REABILITAÇÃO E À DESISTÊNCIA DO CRIME?

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Abstract
Considering the rise of community sanctions and measures in the criminal justice system, as well as the relevance of understanding the process of desistance from crime and rehabilitation, this study will demonstrate how probation can help individuals to stop offending and what are the obstacles to be tackled. Through researches and studies' findings of Sue Rex, Shadd Maruna, Stephen Farral, Fergus McNeill and Deirdre Healy, probation's role will be critically assessed in terms of quitting a criminal career and reinserting in society.
Keywords
Desistance from crime. Rehabilitation. Probation. Community sanction and measures.

Resumo
Considerando a ascensão da aplicação de sanções e medidas comunitárias no sistema de justiça criminal e a relevância em compreender o processo de desistência do crime e reabilitação, esse estudo demonstrará como o uso da sanção comunitária 'probation' pode contribuir para que indivíduos parem de cometer crimes e quais são os obstáculos a serem vencidos. Através dos resultados de pesquisas e estudos dos autores Sue Rex, Shadd Maruna, Stephen Farral, Fergus McNeill e Deirdre Healy, o papel da 'probation' será avaliado criticamente em relação à desistência da carreira criminal e reinserção na sociedade.
Palavras-chave
Desistência do crime. Reabilitação. "Probation". Sanção e medida comunitária.

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Introduction

The number of people under supervision in community sanctions and measures (CSM) are in constant rise since recent decades. In addition, recidivism concerns the penal system for its social and economic consequences. However, there are still much aspects of it to be explored within the criminological field. Taking into account the 'struggle' to operationalize concepts such as desistance and rehabilitation, this paper aims to explore how the criminal justice system can act in front of recidivism, focusing specifically on probation as a community sanction and measure. Through studies' analysis, it's going to be demonstrated why probation can help individuals to stop offending and what are the obstacles to be tackled.
The first section of this work will explain how desistance and rehabilitation presents an issue regarding its definition on the criminological literature and the relevance that the criminal justice system presents on supporting it. It will briefly discuss what community sanctions and measures main features are and review how probation orders had increased over the last decade, showing the importance of discussing the relationship between CSM and reoffending.
The second section will state how probation has changed in terms of its ideology and credibility and question whether is possible to access the impact it has on individual's life in terms of desistance and rehabilitation: is it a help or a hinder? Following, researchers and studies' findings of writers such as Sue Rex, Shadd Maruna, Stephen Farral, Fergus McNeill and Deirdre Healy will be critically analysed, finally assessing probation's role on desistance and rehabilitation and demonstrating how it acts as helper – as long as some factors are controlled in order to improve the impact it has on probationers' life.

Ultimately, the last section will put emphasizes on the most relevant considered aspects of the researches findings, like probationers' relationship with staff and how the lifetime moment of the individual matters for the desistance process when under probation. It will bring to discussion how life events are interconnected with recognising probation's impact and will conclude that there is no institution capable to 'fix' people. However, most of the times probation positively influenced probationers' life and definitely leaves its impressions, helping on the desistance and rehabilitation process, depending on different factors how effective supervision can be.

1- The context

- Desistance and Rehabilitation

A very relevant matter in the criminological and criminal justice field is the research on why and how people stop offending, whether from a sociological perspective, whether from an economic one. According to statistics, in England and Wales, between April 2013 and March 2014, around 418.000 proven re-offenses were committed over the one-year follow-up period, with those that re-offended committing, on average, 3.12 re-offenses each, which represents 3.8% compared to the previous months (Ministry of Justice, 2016). For its turn, between 2014 and 2015, 3 in 10 offenders in Scotland were reconvicted within a year, which represents a 28% rate of reoffending (Scottish Government, 2017). Moreover, the National Audit Office revealed in 2010 that prisoners reconvicted within a year represent a social cost of £7 billion to £10 billion a year (National Audit Office (NAO), 2010).

One of the enigmas that trouble the topic is the clear definition of rehabilitation, as different writers present different theories around it. Following the idea of Robinson et al., it can be understood both as a general objective or goal in which permeates the idea of returning to

a former status and restoration, changing for the better (2009). Hudson, mentioned by Raynor and Robinson in McNeill (2014), explains that rehabilitative punishment aims to take away the desire to offend and to reintegrate the offender into society after a period of punishment.

The same occurs to the idea of desistance from crime, which can be better understood as the process of ending a period of involvement in offending behaviour (Farrall et al., 2006). As a recent and unfinished topic that have been developing on the last decades, different theories discusses the chronological issue related to the theme (the question of when exactly is the point of desistance in someone's life), what leads to it and why some people cease offending and why others don't (Farrall et al., 2014). The comprehension of factors that promote desistance and identifying which ones don't are crucial for the journey from social exclusion to inclusion (Farrall et al., 2010).

To better distinguish desistance phases, Maruna et al. developed the concept of primary and secondary desistance, being the former the most basic and literal level to refer to any crime-free gap in the course of a criminal career. The focus of desistance research, however, would be on the latter: the movement from the behaviour of non-offending to the assumption of the role or identity of a 'changed person' (2004a). McNeill and Schinkel, based on research evidence, suggested the creation of a tertiary stage, referring not just to shifts in behaviour or identity but to shift in one's sense of belonging to a moral community (2016).

A great number of researchers presents common social and subjective factors, processes that are studied and commonly associated with desistance. Some of them are gaining employment, significant life partnerships, becoming a parent and age maturation (Farrall et al., 2006). Among social factors, it's identified hope and self-efficacy,

shame and remorse, internalizing stigma, alternative identities (LeBel et al., 2008). All of these factors continually interact and develop their own effects individually.

Farral et al. (2006) also mention the criminal justice system as one of the influences for those repeatedly incarcerated. For the author, criminal justice interventions should act in sympathy with broader processes in offender lives that can lead to change. In light of this, LeBel et al. (2008) explains that the experience of incarceration may lead to repeat offending, and mentions Sampson and Laub, who suggests that this cyclical trap is through a variety of 'turning points' in the life course especially the development of cohesive marriages and attachment to the labour force.

That being said, the question that is stressed in this work is: how the criminal justice system can support desistance? Institutions and their methods, risk assessments and sanctions must concern about the individual they will maintain in custody for a certain period and take in consideration that that person will eventually interact with society again. Punishment can cope with theories and efforts to desistance, and researchers and theories will only take place when the criminal justice system really concerns with recidivism rates and rehabilitation (McNeill et al., 2012).

- Community sanctions and measures: a brief overview

Defined by the Council of Europe (2013) as those sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, the term designates any sanction imposed by a court and any measure taken before or instead of a decision on a sanction as well as ways of enforcing a sentence of imprisonment outside a prison establishment, as mentioned by McNeill.

CSM is characterized by a managerial, punitive, rehabilitative and reparative ideal and it is associated with the idea of welfare and a softer way of state punishment, including measures used as alternatives to criminal prosecution which are administered within the community. Its purposes are not usually confined to the punitive or retributive but are oriented towards promoting positive change (McNeill and Robinson, 2013) (Robinson et al., 2013). One of the discussions involving the theme is how community sanctions and measures are seen as an alternative to prison. Prison is the universal symbol of punishment in the public imagination and studies about different forms of punishment had just been neglected by writers. Many scholars fail to agree about what to call community sanctions and, further, there's uncertainty about their penal character, as some don't recognize the instance of punishment in it (Robinson, 2016). In short, sentencers are reluctant to utilise community penalties if they assume that the public would disapprove of these options (Maruna and King, 2004).

Also, community sanctions are about supervision within the community and another discussion is about how it should develop in this context. To support desistance and assess effectiveness regarding CSM, is crucial that supervision engages with rehabilitation aspects of the sanction and show concern for the impact it causes on an individual's life, matching the process from the desistance from crime and the effectiveness of rehabilitative interventions (McNeill et al., 2012).

Considering a scenario of massive incarceration with extremely high costs for governments and agencies, where recidivism after a prison sentence is the norm rather than the exception (LeBel et al., 2008), community-based sanctions have been expanding at the same time the prison population has been rising. In Scotland, Community Service

Orders increased 44% from 4,454 in 2000-01 to 6,429 in 2009-10, while probation orders increased 16% from 7,605 in 2000-01 to 8,838 in 2009-10 (Armstrong and Eski, 2011).

Thoughts on CSM must be reviewed and pictured as one more shape of punishment, instead of being just an alternative, and concerns about its efficiency in terms of reoffending must be discussed. In this paper, the focus will be on the role that probation plays on desistance and rehabilitation.

2- Probation

Overall, probation as a measure has changed across the decades according to political, social and cultural shifts. It changed from a missionary endeavour that aimed to save souls to a professionalized endeavour focused on the cure through rehabilitation and, then, to a custody and practical help for offenders(McNeill, 2006). On the turn of the last century, probation was considered as an unstable institute that posed low credibility to the public and failed to gain trust from society. However, on the early decades of the twentieth century, probation was associated with a scientific discourse more focused on rehabilitation interventions and late-modern community sanctions (Robinson et al., 2013).

Nowadays, probation is about risk-management and tools to identify appropriate levels of interventions. In that sense, the aim is not to 'do good', but to 'prevent harm' (Farrall et al., 2010). As defined by Healy, 'Modern probation is underpinned by a rational choice model of offending, which views offenders as rational actors whose behaviour can be moulded by incentives and deterrents' (2012, p. 380), following Garland's (2001) idea that increased ontological insecurity and higher crime rates have elevated public anxieties about crime destabilizing the penal-welfarism ideal and growing pessimism about the

effectiveness of the penal welfare model. Probation agencies started to present themselves as sources of low-cost community-based punishments, oriented towards the monitoring of offenders and is dominated by a discourse of 'risk' and 'needs' (Maruna et al., 2004).
In order to identify what impact probation can actually exercise on those under the supervision and how this affects desistance and/or rehabilitation, remarkable writers have identified the main arguments around the matter through research, contributing to the relevant debate regarding reoffending. It's going to be explored in the following sub section if there's a balance between those findings and whether probation hinders or helps desistance and rehabilitation.

- Probation: the good and the bad effects

In spite of the fact that probation effects and perceptions are different from country to country and along the years, common factors are identified among studies, from different perspectives. In order to assess the impact of probation on desistance and rehabilitation, it will be analysed a variety of qualitative studies that showed to be very relevant in understanding the topic.
Rex's research, which was published in 1999, discussed the accounts of a group of probationers and their supervisors whom she interviewed in a penal context which was pessimistic about efficacy and propriety of scientific treatment for the probation service's activities. One of her research focus was on the restrictions imposed by straight probation and the relationship with its rehabilitative purpose, under a basis of what probation officers and probationers said about the rehabilitative aspects of probation.

To begin with, one of the negative aspects coming from the observation of probationers regarding supervision was that around two-thirds of the probationers and a half of the probation officers

made reference to officers' monitoring probationers' activities and only three probationers seemed to see monitoring in itself as keeping them out of trouble. Rex (1999) found out that probation officers needed to balance encouragement with probationers' autonomy, as probationers didn't accept how probation officers could become authoritarian. Likewise, Hunter et al. (2017) found out that some probationers saw probation officers as those in charge of monitoring behaviour rather than help and that caused a lack of trust between probationers and officers, on the same sense that Healy's (2012) study indicated that those who noticed probation as monitoring, felt supervision as intrusive and were less positive about their experience. For this reason, individuals felt less engaged and encouraged to cheat the system.

However, a bigger representation of participant's numbers reflects a positive aspect: according to Rex's research 88% of the probationers understood that probation officers were seeking to reduce the likelihood of their reoffending. Equally, Healy (2012) findings demonstrated that probationers attested that most of the probation officers were focused on providing assistance, even though some of them felt they were simply monitoring their activities. Half of the probationers she interviewed manifested feelings of personal loyalty towards their supervisor and remarked that their officers gave them a positive reason to stay out of trouble.

That leads us to reflect about the role probation officers develop as supervisors. If studies demonstrate that a majority of participants do believe in officers' good intentions and only some of them feel perturbed by a possible monitoring behaviour from supervisors, it's possible to conclude that the concern here is on probation officers, and not probation as an institution. Moreover, that's not the only issue raised by the researches regarding officers.

Sainsbury et al. (1982) found that probation officers under-estimated the importance of their encouragement to probationers and the importance of their contribution in people's decision not to re-offend. Also, Healy (2012) demonstrated that officers' attitudes may be affected by the ideological framework behind probation, affirming that harsh judgments made by supervisors about their clients may reduce the likelihood of desistance, as people who view offenders as victims of social circumstances are less punitive.

On the other hand, Rex (1999) proves the relevance of probation officers showing respect to probationers and that they were taken seriously, on the same way their ability to talk convincingly about the consequences of and alternatives to offending. It is clear that what must be aimed for is neutralising the underestimation of probation officers of the importance of their own job and the fundamental need that probationers have to be taken into consideration. For some probationers, the lack of impact from probation was due to the fact that probation officers were unable to deliver what probationers need (Hunter et al., 2017).

Rex (1999) realised that when probationers were engaged in the supervisory relationship, the efforts on the desistance process were more likely and this was generated by the commitment, both personal and professional, shown by probation officers. Eighty-seven percent of probationers referred to the need of probation officers to demonstrate empathy and sixty-five percent commented that supervisors' ability to listen and to show interest and understanding enables them to talk.

Again, it was demonstrated by Hunter et al. (2017), that when officers were a source of advice, help and a receptive ear, it was recognised the impact of probation was positive, making a difference, independently of whether these insights were used later on or their impacts were

realised immediately. Their findings support the idea that probationers and their officer should build a good and reliable relationship so that more practical interventions on the part of the officer can take place. Regarding the practical work of officers, the research noted that whenever officers showed support in unexpected manners it had a positive impact on probationers. Using the definition of Lofland (2017), the authors identified that in some cases probation officers acted as 'normal-smiths', which means that they can communicate to 'deviants' that they are capable of change. By allowing probationers to act themselves, probation officers tried to implement change, making probationers felt accepted. Even for desisters, probation presented low impact when staff was aggressive and hostile, perceiving probation as one more obstacle to overcome, especially when officers acted as deviant-smiths – that is, those who believe in the immutability of the deviant's bad character.

That is completely supported by Healy (2012) on her research. The author assured that the most important feature of rehabilitation programmes was the relationship formed between staff and peers and pointed out that probationers believed that the impact of probation was directly connected to the relationship between them and the supervisor officer. Also, whenever officers acted as advocates for probationers, they felt that desistance was possible.

Although the Liverpool Desistance Study (LDS) did not examine probation itself, but spontaneous desistance, the research revealed that they need to 'discover' agency in order to rise above the structural forces that bear down upon them, demonstrating the importance of the good relationship between probationer and probation officer (McNeill, 2004).

It's undeniable how staff influences directly on probation experience. In conclusion, some probationers indeed have bad experiences with

supervisors, but that doesn't act properly as a hinder on the process of desistance or rehabilitation – instead, the concern must be in how to better prepare this staff, considering the great numbers achieved with positive influence when staff cooperates.

Another point to stress here is how some probationers that deny the probation's impact, feel that they must be the ones responsible for stopping offending (Rex, 1999). It's emphasized the importance of personal responsibility in attempting to desist when they were already motivated to change, and, on that case, probation presented a low impact, being recognized as simply one more tool to assist desistance.

Rehabilitation was considered a collaborative endeavour in which participants played an active role and emphasized the importance of their own cooperation when taking advantage of the opportunities offered, mentioning that without it, probation officer's work would be in vain (Healy, 2012).

This observation, nonetheless, does not address probation as a hinder in the desistance process. What it is possible to infer from those findings is that individuals must be encouraged to improve their own skills and really perform a role in the desistance process, finding motivation and strength on themselves. Instead of being 'something to be treated', probationers can search for their own reasons to take the decision to quit offending by looking for possibilities ahead of them.

On the Liverpool Desistance Study, it was notorious how important the language of personal redemption, overcoming challenges and empowering were to desisting participants, and one of the features that distinguished desisting offenders was the lack of a future-orientation (McNeill, 2004). That indicates that probation work should focus on one's future rather than past mistakes (Maruna, 2001).

Another point that emerges from the studies examined in this paper is the fact that probation positive impacts may not be realised at the very moment the experience is happening, or even right after. According to the studies, a combination of interventions during probation and lifetime moments are factors accounted for the desistance process at some point.

Hunter et al. (2017) prove that probation can 'sow the seeds' of change in probationers' minds, but that could effectively happen before the change occurs. It also demonstrated the importance of officers being someone to talk to, a source of advice and support. The study has identified that whilst on probation, some probationers came to realizations about themselves, accompanied by a desire to change, being something like a 'wake-up call' for them.

However, the study also recognized that for some probationers, probation officer's interventions led only to a partial move away from offending, making clear that their impact did not make desistance something inevitable (2017). What must be argued, still, is that even though there are relapses after probation experience identified in the study, it must be highlighted that something has changed and this considered partial move away from offending must be credited. It must be recognized that probation, in this case, has acted as a helper as the situation got better instead of worse.

For some probationers, the combination of having a family, a persistent officer and a supportive wife were part of the desistance process and, in spite of the fact that support offered by a probation officer may not lead straight to desistance, it definitely supports their change efforts and shapes their lives. The work of the probation officer may be enforced later, when individuals start a family, marry and increase maturity (Rex, 1999, Hunter et al., 2017). Probation, for some, can have long-term impacts, which is also corroborated by

Healy (2012). That explains how some probationers may not recognise the positive effects that come from probation – some life events may just not have happened yet to add up to the probation experiences they've been through and finally leads to a desistance and rehabilitative process

A controversial point identified in the studies analysed is how Healey concludes her findings, stating that probation supervision did not appear to lead to substantial long-term improvements in participants' social circumstances, for a significant proportion of participants continued to face barriers to reintegration and to be dependent on the probation officer's assistance (2012). On the contrary, Rex study demonstrated that 68% of probationers said that they were less likely to offend as a result of the supervisory experience and concluded by pointing out how probation officers must improve their performance, recognising the difficulties that this may signify.

Nevertheless, this paper still argues that probation can effectively impact most of the probationers considering all the scientific work that clearly demonstrates that, indeed, is not possible to completely correlate probation with desistance and rehabilitation and the former doesn't necessarily lead to the latter, but it has definitely been proven that probation can touch lives positively, somehow, acting as a wake-up call, a seed to be sown (Hunter et al., 2017). It has also been proven that probation officers and probationers do face obstacles during supervision, but whenever officers greatly assist their clients, the greater the proportion of cases who successfully tackled employment and family-related issues. The experience of probation helps probationers to find motivation in themselves, avoiding further offending. Therefore, this paper stands with Farral when he affirms that the answer to whether probation 'works' is a qualified yes (2002).

3- Final discussion

The concern about probation's utility in processes of desistance of crime and rehabilitation seems to be focused on whether the experience of supervision is capable or not to straighten deviants. The characterization of contemporary probation, based on a risk assessment and in what Garland identified as control theories (2002), highlighting past misdeeds and possible future dangers, has been demonstrated to be one of the issues when thinking about probation and reoffending. What should address probation is recognizing individual's strength, support, and encouragement, the use of past to enforce rehabilitative processes, refusing to delimit a person by the mistakes that have been already committed (McNeill et al., 2012, Farrall, 2002).

The decision to quit a criminal career is difficult and, what clearly emerged from the studies' analysis is that support and self-motivation are key points to achieve the desistance pathway. Its strongly evidenced how probation officers have a difficult but sometimes decisive performance to be developed and improved, which most of the times is therapeutic. When the supervisor can act more as an advisor than a monitoring figure, the positive aspects that come from it are notably seen, even that not immediately, is an important aspect of probation work being successful (Hunter et al., 2017). Officers can touch probationers' life and the aim must be on how to improve their actions, focusing on better develop the positive factors already recognised on researches' findings (encouragement, respect, advice and listen), rather than observing the minority of cases in which probation officers failed. This duty is not easy and may not come naturally. However, is definitely an aspect that can evolve, through specialised training and lessons.

As explained by McNeill et al. (2012), desistance cannot be seen as a direct outcome of interventions such as probation. There's no intervention capable of generating desistance, as it exists 'before, beyond and behind' interventions. The fact is, no desistance factor acknowledged can act on its own. Sampson and Laub, mentioned by LeBel et al. (2008), emphasizes that employment by itself doesn't support desistance; rather, employment coupled with job stability, commitment to work, and mutual ties binding workers and employers' reduces criminality.

The same applies when thinking about probation as a hinder or a helper in rehabilitation and desistance process. An individual's personal moment, maturity, who his/hers peers (including supervisors), how their problems are treated and even the environment- it all reflects on when an offender will decide to stop offending. The impact of probation may emerge several years later, for the reason that other desistance factors do not follow a strict causal sequence. Such events are iterative, feeding back to one another as part of the process of change (Hunter et al., 2017). That's why probation's positive impact may be hidden sometimes: there's no specific timing for it to be felt and some probationers are just not in the desistance process.

Findings on the studies analysed here had proven that probation it's not always the right solution, and it doesn't seem plausible to imagine that it would. Not all risks are predictable and not all harms are preventable. Even being excellent at assessing and managing risks most of the time would not protect probation from occasional, spectacular failures and the political costs they carry (McNeill, 2013). Moreover, Farral noted the importance of an individual to be within the community to (re-) establish social bonds. A part of probation is allowing probationers to remain in the community and for them to

develop techniques for tackling obstacles in a community context (Farrall, 2002). For all this, probation as a community sanction helps individuals on desistance and rehabilitation process, for allowing the reconstruction of social bonds, be capable of present a motivation to change, be an experience of self-recognition and overcoming challenges. Developing a better approach to the measure, with specialized training for staff and focused on a better future for those under supervision, is fundamental to enlarge and assure the positive affects already noticed.

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