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State v. Grover Appellant's Brief Dckt. 43298

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43298
)	
v.)	BONNEVILLE COUNTY NO. CR 2013-9484
)	
JEFFERY EUGENE GROVER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jeffery Eugene Grover was on probation for possession of a controlled substance. After Mr. Grover admitted to violating his probation, the district court revoked his probation and imposed the underlying sentence of seven years, with two years fixed. Mr. Grover now appeals to this Court, contending the district court abused its discretion by revoking probation and imposing his sentence.

Statement of the Facts & Course of Proceedings

In October of 2013, Mr. Grover was sentenced to seven years, with two years fixed, for possession of a controlled substance, methamphetamine. (R., pp.48–51.) The district court suspended his sentence and placed him on probation. (R., pp.45–81.)

Following a probation violation in December of 2013, the district court revoked Mr. Grover's probation, but retained jurisdiction. (R., pp.65–66, 67–70.) Mr. Grover participated in the Correctional Alternative Placement Program ("CAPP rider"). (Addendum to the Presentence Investigation Report ("APSI"),¹ pp.1–7.) After the period of retained jurisdiction, the district court again suspended Mr. Grover's sentence and placed him on probation for three years, beginning in April of 2014. (R., pp.75–78.)

About eleven months later, on March 9, 2015, a Report of Probation Violation was filed with the district court. (R., pp.97–99.) Mr. Grover admitted to ten violations for failing to complete community service, the use, possession, and sale of controlled substances, driving without privileges, a new misdemeanor charge, and other violations of additional supervision rules. (R., pp.97–98, 105; Tr., p.8, L.1–p.11, L.9.) Mr. Grover also informed the district court that he submitted an application for problem-solving court. (R., p.106; Tr., p.11, Ls.10–16.) Due to the pending application, the district court set the disposition hearing out three weeks. (Tr., p.15, Ls.1–3.)

At the disposition hearing on April 13, 2015, the district court stated that it received notice that Mr. Grover's application for mental health court was denied. (R., pp.110–11; Tr., p.17, Ls.5–7.) The State recommended that the district court revoke Mr. Grover's probation and impose the underlying sentence of seven years, with two years fixed. (Tr., p.17, Ls.18–20.) Mr. Grover requested that the district court impose discretionary jail time and place him in the Work Release program. (Tr., p.18, Ls.2–3, p.19, Ls.5–7.) The district court followed the State's recommendation, revoking

¹ Citations to the APSI refer to the ten-page electronic document titled "Addendum to the Presentence Investigation (APSI) dated March 17, 2014."

Mr. Grover's probation and imposing the seven-year sentence, with two years fixed. (R., p.111; Tr. Vol. I, p.23, L.16.)

The district court entered a Judgment and Commitment on Conviction on a Probation Violation on April 14, 2015. (R., pp.112–14.) Mr. Grover timely appealed. (R., pp.121–23.)

On May 15, 2015, Mr. Grover moved for reconsideration of his sentence, which the district court denied after a hearing.² (R., pp.119, 128.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Grover's probation and executed his underlying sentence of seven years, with two years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Grover's Probation And Executed His Underlying Sentence Of Seven Years, With Two Years Fixed

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 proceeding. *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.*

² Mr. Grover does not challenge the district court's denial of his motion for reconsideration on appeal.

Here, Mr. Grover does not challenge his admissions to the alleged probation violations. (Tr., p.8, L.1–p.11, L.9.) “When a probationer admits to a direct violation of her probation agreement, no further inquiry into the question is required.” *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Grover submits that the district court abused its discretion by revoking his probation.

“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 judge cannot revoke probation arbitrarily,” however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). “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). The court may consider the defendant’s conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

In this case, Mr. Grover submits that the district court erred by revoking his probation. As requested by Mr. Grover’s counsel, the district court should have imposed discretionary jail time, followed by a reinstatement of probation.

Mr. Grover acknowledges the severity of his probation violations. But he contends that these probation violations were the result of his poor management of the stress and anxiety in his life, not an indication of a criminal or violent nature. When thirty-four-year-old Mr. Grover was initially placed on probation, he lived with two of his children and his mother and stepfather in St. Anthony, Idaho. (Letter from Brenda

Archibald, p.1.) During that time, Mr. Grover obtained full-time employment. (APSI, p.6; Tr., p.12, Ls.11–12, p.20, Ls.20–22; Letter from Mr. Grover.) After six months with his mother and stepfather, Mr. Grover and his two children moved into their own residence. (Letter from Brenda Archibald, p.1.) It was at this time that Mr. Grover had difficulty with his substance abuse and mental health issues.³ (Letter from Brenda Archibald, p.1.) Once Mr. Grover moved out of his parents' house, he had too many responsibilities "too fast" and resorted to drug use to cope with the stress and anxiety. (Tr., p.19, Ls.12–19; Letter from Brenda Archibald, p.1.) Mr. Grover discussed these issues with his probation officer, but Mr. Grover did not obtain the treatment and medication that Mr. Grover believed was necessary. (Tr., p.18, Ls.13–22, p.19, Ls.17–18; Letter from Brenda Archibald, p.1.) Unable to deal with the stress and anxiety, Mr. Grover unfortunately chose to self-medicate with drugs. (Tr., p.19, Ls.17–19, p.22, Ls.6–17; Letter from Brenda Archibald, p.1.) Mr. Grover submits that the probation violations were a result of his lifelong struggle with drug addiction and mental health problems, not evidence of a violent or criminal nature.

Although Mr. Grover made poor decisions on how to deal with the stress and anxiety in his life, his probation in general was achieving its rehabilitative objective. Mr. Grover has shown a commitment to rehabilitation. For example, Mr. Grover took the initiative to apply to a problem-solving court. (Tr., p.11, Ls.15–16.) After his application for problem-solving court was denied, Mr. Grover visited with Rex Thornley of the Wood

³ Mr. Grover has been diagnosed with amphetamine and opioid dependence with physiological symptoms. (Presentence Investigation Report ("PSI"), pp.16, 58–60.) He also has been diagnosed with anxiety and depression. (PSI, pp.12, 72.) Further, Mr. Grover and his mother stated that he has bipolar disorder. (Letter from Brenda Archibald, p.1; Tr., p.11, L.25–p.12, L.2.)

Pilot Program to learn about the different intensive outpatient treatment options. (Tr., p.19, Ls.7–11.) His mother is also involved in his treatment—she discussed the Walker Center treatment options with Mr. Grover, and he expressed interest in their inpatient program. (Tr., p.20, Ls.9–12.) Mr. Grover also has a support system to help with his treatment. (Tr., p.19, L.20–p.20, L.1.) He can live with his grandparents if he is placed on probation. (Tr., p.19, L.23.) His children will be cared for by his mother and stepfather until he gets a “good foundation.” (Tr., p.19, L.25–p.20, L.1.) In addition, Mr. Grover can likely obtain employment while on probation. He has a journeyman’s license and a couple job options. (Tr., p.20, Ls.20–23.) If reinstated on probation, Mr. Grover has all the tools for rehabilitation while under proper control and supervision.

Based on the above information, Mr. Grover submits that the district court’s decision to order into execution his sentence of seven years, with two years fixed, was an abuse of discretion. He submits that the district court should have sentenced him to discretionary jail time and reinstated probation.

CONCLUSION

Mr. Grover respectfully requests that this Court vacate the district court’s order revoking probation and reinstate probation. Alternatively, he requests that his case be remanded to the district court for a new probation violation hearing.

DATED this 27th day of October, 2015.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of October, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JEFFERY EUGENE GROVER
INMATE #84495
BONNEVILLE COUNTY JAIL
605 N CAPITAL
IDAHO FALLS ID 83402

JOEL E TINGEY
DISTRICT COURT JUDGE
E-MAILED BRIEF

JOHN THOMAS
ATTORNEY AT LAW
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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas