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State v. Grover Respondent's Brief Dckt. 43298

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43298
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2013-9484
)	
JEFFREY EUGENE GROVER ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Grover failed to establish that the district court abused its discretion by revoking his probation?

Grover Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Grover pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with two years fixed, suspended the sentence, and placed Grover on supervised probation for three years. (R., pp.41-47.) Less than one month later, Grover violated his probation by using marijuana and

methamphetamine with a known felon on several occasions. (R., pp.52, 60.) The district court revoked Grover's probation, ordered the underlying sentence executed, and retained jurisdiction. (R., pp.60-64.) Following the period of retained jurisdiction, the district court suspended Grover's probation and placed him on supervised probation for three years. (R., pp.68-83.)

Less than 11 months later, Grover violated his probation by failing to complete his community service hours; using Oxycodone without a prescription; using methamphetamine on at least four separate occasions; obtaining marijuana and smoking it "daily;" selling methamphetamine on two separate occasions; driving an unregistered and uninsured vehicle without privileges in October 2014; continuing to drive without privileges with his child in the vehicle in March 2015; possessing a "Drug Scale" that he intended to sell; being charged with possession of drug paraphernalia; possessing and selling altered/"clean" urine samples to others; and attempting to obtain Hydrocodone pills with the intention of selling the pills to another individual. (R., pp.90-92, 105.) The district court revoked Grover's probation and ordered the underlying sentence executed. (R., pp.105-08.) Grover filed a notice of appeal timely from the district court's order revoking probation. (R., pp.114-17.)

Grover asserts that the district court abused its discretion by revoking his probation in light of his claim that his 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," his purported "commitment to rehabilitation," and because he "can likely obtain employment while on probation." (Appellant's brief, pp.3-6.) Grover has failed to establish an abuse of discretion

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider “whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society.” Drennen, 122 Idaho at 1022, 842 P.2d at 701.

At the disposition hearing for Grover’s second probation violation, the district court set forth its reasons for revoking Grover’s probation and ordering the underlying sentence executed. (Tr., p.21, L.1 – p.22, L.3; p.23, Ls.4-18.) The state submits that Grover has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court’s order revoking Grover’s probation.

DATED this 24th day of November, 2015.

/s/ _____
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of November, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ _____
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 THE COURT: All right. Well, I appreciate the
2 comments and the argument on this. Again, there were probation
3 violations. And I'll just indicate, those were very, very
4 serious probation violations. They go right back to the heart of
5 the original charge which brought you here.

6 Mr. Grover, I -- you know, when I start seeing
7 multiple probation violations and particularly when I look at
8 your file and your case, I am thinking, "Okay. What haven't we
9 tried to help you be successful on probation?" I understand
10 you've got complaints about the probation officer, but there's
11 not an awful lot I can do about that. But, you know, we tried
12 certain things. You've done -- in your history you've done the
13 drug court, the problem-solving court. We looked at a Rider when
14 you were first sentenced. I gave you a shot at probation. And I
15 don't know. It wasn't 30 days after sentencing that you're back
16 to using. So we did a Rider at that point in time, and I think I
17 recommended a Therapeutic Community Rider. You didn't get that.
18 You did something else. But then back on probation and then
19 back -- I mean, not just using. You're distributing. You're
20 dealing. So that's a huge deal.

21 I don't know. You've reached the point where
22 there's not much left. I mean, there's nothing left to do. I
23 don't necessarily disagree with you that, okay, well, what do we
24 accomplish through prison other than just sitting -- getting you
25 off the streets. And maybe that's the best we can hope for is

21

1 recommending Therapeutic Community at the prison. That will
2 hopefully help him in a secure environment to succeed when he
3 gets out of prison on parole. Thank you.

4 THE COURT: Well, that's -- like I say, you look
5 at the options available and you start checking them off and
6 pretty soon you're -- you've got nothing left. I would -- I
7 think we're looking at inpatient treatment, and hopefully that's
8 part of a Therapeutic Community. But you've done the Rider
9 program. I'm not going to do that again. You've had a chance
10 with a problem-solving court. I don't know. I would like to
11 think that your kids would be motivated enough to where when you
12 got a chance at probation, you would do well at it; and that
13 hasn't happened not once but twice.

14 I'm sorry. I just don't see probation being an
15 option at this point. I'm not doing another Rider. We went that
16 route. So I am revoking probation, imposing sentence, will
17 recommend Therapeutic Community. We'll see where that -- maybe
18 that'll make a difference. I don't know.

19 You have the right to appeal this decision; and if
20 you want to appeal, you should do that within 42 days. You have
21 the right to an attorney on appeal. If you cannot afford an
22 attorney, one would be appointed for you.

23 We're in recess.

24 (Proceedings concluded)

25

23

1 that you're not out using, you're not out dealing drugs. But I
2 look at, okay, are you qualified for probation? You're not. I
3 mean, you've kind of burned that bridge.

4 THE DEFENDANT: Can I say one more thing?

5 THE COURT: Yeah, go ahead.

6 THE DEFENDANT: And I know there's no excuse for
7 selling meth, but basically the drug-dealing that I was doing was
8 to enable me to illegally obtain Suboxone, which I was taking. I
9 don't know if you understand like what the Suboxone program is.
10 It's kind of like methadone. It's something that they use to
11 treat withdrawals and to keep you from using opiates, which is
12 heroin, Oxycodone, all that. And, you know, once I was told that
13 I couldn't go about it the right way, through a physician, like,
14 yeah, I chose the wrong way; and that's why I was doing what I
15 was doing, distributing meth, was, you know, I was trading it for
16 Suboxone and obtaining funds to buy Suboxone off the street
17 illegally.

18 I understand, you know, where you're at, looking
19 at imposing my sentence; and if that's what you have to do,
20 that's what you have to do. But I'd really appreciate a shot at
21 giving this another try.

22 THE COURT: Have you got something,
23 Mr. Bevilacqua?

24 MR. BEVILACQUA: It seems like everyone is falling
25 to mention -- I don't know if the Court was going to -- but

22