

8-23-2016

## State v. Still Respondent's Brief Dckt. 43988

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43988
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2008-256
	)	
TRAVIS RAY STILL,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

Still pled guilty to forgery and, on May 5, 2008, the district court withheld judgment and placed Still on supervised probation for five years. (R., pp.33-37.) In September 2008, Still transferred his supervision to the State of Texas “through the Interstate Compact.” (R., p.42.)

Approximately a year and one-half later, on May 4, 2010, Still tested positive for methamphetamine. (PSI, pp.13, 94, 134.<sup>1</sup>) Immediately thereafter, he stopped reporting to his probation officer and absconded supervision. (R., pp.42-44, 48.) On November 1, 2010, the state filed a motion for probation violation alleging that Still had violated the conditions of his probation by failing to report to his supervising officer for several months, absconding supervision, and failing to pay his costs of supervision, public defender reimbursement, and surcharges, fines, fees, and/or costs as ordered by the court. (R., pp.38-40.) The district court issued a warrant for Still's arrest, which was served on June 16, 2011 – over one year after Still absconded supervision. (R., pp.55-56.) Still subsequently admitted that he had violated the conditions of his probation by absconding supervision and failing to pay his court-ordered costs, and the state dismissed the remaining allegations. (R., p.65.) On August 22, 2011, the district court revoked Still's probation and the withheld judgment, imposed a unified sentence of five years, with two years fixed, and retained jurisdiction. (R., pp.67-69.) On December 19, 2011, following the period of retained jurisdiction, the district court suspended Still's sentence and reinstated him on supervised probation for five years. (R., pp.72-75.) In February 2012, Still again transferred his supervision, via the Interstate Compact, to the State of Texas. (R., p.79.)

Approximately 15 months later, on June 3, 2013, Still was stopped by a San Antonio police officer for failing to use his turn signal. (R., pp.79, 114, 116.) The officer

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "STILL 43988 psi.pdf."

noted that Still's vehicle registration was expired, he had no current proof of insurance, his Texas driver's license was expired and his Idaho driver's license had been tampered with (the expiration date was "scratched out"), and he was overly talkative, his hands were shaking, and he was "sweating profusely even though it was a cool comfortable night." (R., pp.114-15.) Still consented to a search of his vehicle, in which the officer found two black bags containing a cotton ball and a spoon with methamphetamine residue; a debit card, Visa gift card, and Texas driver's license that did not belong to Still; and "a bunch of needles and small plastic baggies with what appeared to be Methamphetamine residue ... Some used, some not." (R., pp.114-15.) On June 25, 2013, Still's Texas probation officer sent an Offender Violation Report to Idaho, reporting the incident and requesting a warrant. (R., pp.116-17.)

On September 29, 2013, a deputy from the Bexar County, Texas, Sheriff's Office responded to a complaint that Still was "urinating on the sidewalk area" outside of an apartment building. (R., pp.106-07.) When the deputy contacted Still and requested his identification, Still "immediately became offensive and argumentative," claimed he had no identification to prove his identity, and provided the deputy with a false name. (R., p.107.) Still subsequently consented to a search of his bags, in which the deputy found credit cards, debit cards, personal bank account information, bank deposit slips, checks, club membership cards, a college identification card, and employee identification cards, none of which had been issued to Still, but instead contained the names of at least 22 different individuals and at least 27 different establishments. (R., pp.106-08.) Still was arrested for fraudulent use or possession of identifying information, and his Texas probation officer subsequently sent an Offender Violation Report to Idaho,

recommending that Still be returned to Idaho. (R., pp.80, 101-02, 107.) Still later pled guilty, in Bexar County, to felony fraudulent use or possession of identifying information, and, on January 22, 2014, the Bexar County district court placed him on community supervision for two years. (R., pp.80, 85-86.)

Approximately three months later, in April 2014, Still stole a wallet from a residence in Blanco, Texas, where he had been hired to “do some work.” (R., pp.80, 89-90.) He used the victim’s credit card to purchase items at a local store, and later attempted to use the card to make a withdrawal at an ATM. (R., pp.89-90.) Officers located Still at his residence at approximately 12:30 P.M. on May 8, 2014; however, Still refused to answer the door and “locked all the doors and windows[,] barricading himself inside.” (R., p.98.) When officers announced that they would force entry if Still did not surrender himself, Still attempted to sneak out of his residence through the sliding glass door. (R., p.98.) He subsequently jumped the backyard fence and fled on foot, disregarding the pursuing officers’ orders to stop and eventually disappearing into a heavily wooded area near a local middle school. (R., p.98.) The district schools were placed in lock-down, while officers set up a perimeter and deployed K-9 units to search the area. (R., p.98.) The K-9 units eventually lost Still’s trail, and the search was ultimately called off at approximately 4:00 P.M. (R., pp.98-99.)

At 4:42 P.M., officers received a report that Still had broken in to a pickup truck, ransacked it while “looking for keys,” and stolen cash and several other items before being caught in the act by a neighbor. (R., pp.97, 99.) The neighbor contacted the truck’s owner, who confronted Still, at which time Still “took off running” again. (R., p.99.) Officers responded and again set up a perimeter and deployed K-9 units to

search for Still. (R., p.99.) The fire department and air support were also brought in to fly over the area with a thermal imager in an attempt to locate Still; however, the search was again called off approximately two and one-half hours later because Still had not yet been located. (R., p.99.)

On May 9, 2014, Still was arrested by the Comal County Sheriff's Department. (PSI, p.6.) He was subsequently charged (in Texas) with credit or debit card abuse/elderly, evading arrest, and burglary of a vehicle. (PSI, p.4.) On July 29, 2014, Still's probation in the Bexar County case was revoked and a two-year sentenced was imposed. (PSI, p.4.) On September 23, 2014, Still's Texas probation officer sent an Offender Violation Report to Idaho, reporting the new crimes, requesting a warrant, and indicating that Idaho's "retaking obligation" was mandatory. (R., pp.83-84.)

On October 2, 2014, the state finally filed a second motion for probation violation in the instant case, alleging that Still had violated the conditions of his probation by committing the new crimes of fraudulent use/possession of identifying information in September 2013, credit card or debit card abuse in April 2014, and evading arrest and burglary of a vehicle in May 2014, and by failing to pay his court-ordered costs, fees, and public defender reimbursement. (R., pp.76-78.)

In January 2015, Still was convicted of credit or debit card abuse/elderly in Texas and was sentenced to three years of incarceration. (PSI, p.4.) Approximately eight months later, on October 5, 2015, the Texas Department of Correction placed Still on parole for both of his Texas cases (fraudulent use/possession of identifying information and credit card or debit card abuse). (PSI, pp.4, 6.) Two days later, Still was charged with "Fail to Identify Fugitive from Justice by the Comal Count, Texas Sheriff's Office.

On 10/07/2015 this charge was dismissed, however he was found guilty of misdemeanor Evading Arrest Detention, and was ordered 30 days of jail.” (PSI, pp.5-6.)

Still eventually returned to Idaho, in approximately December 2015, after which he admitted that he had violated the conditions of his probation in this case by committing the new crimes of fraudulent use/possession of identifying information and credit or debit card abuse, and the state dismissed the remaining allegations. (R., p.124, 131; Tr., p.5, Ls.8-12.) The district court revoked Still’s probation and ordered his underlying sentence executed. (R., pp.138-40.) Still filed a notice of appeal timely from the district court’s revoking probation and ordering his underlying sentence executed. (R., pp.141-43.)

Still asserts that the district court abused its discretion by revoking his probation in light of his moderate risk to reoffend, high school diploma, lack of mental health issues, and purported remorse. (Appellant’s brief, pp.4-5.) Still 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.

Contrary to Still’s claim, Still’s conduct while on probation does not indicate that probation was achieving its rehabilitative purpose. Still was initially placed on probation

in this case in 2008, at the age of 39. (PSI, p.112; R., pp.33-37.) At that time, his criminal history included only three misdemeanor convictions (with the instant forgery offense being his first felony conviction), he reported that he had “never used any drugs, controlled substances,” and he had only two identified risk factors on the LSI risk assessment. (PSI, pp.113, 116-17, 170, 177, 179.) While on probation in the instant case, Still began using methamphetamine and cocaine; he absconded supervision (during which time he was unsupervised for approximately one year); he drove without a valid driver’s license, with no insurance, and with an expired vehicle registration; he was found in possession of methamphetamine, drug paraphernalia, a government record that had been “tampered with,” and a debit card, Visa gift card, and Texas driver’s license that did not belong to him (for which no charges appear in the PSI); and he was charged with at least five new crimes, resulting in two new felony convictions (fraudulent use/possession of identifying information and credit or debit card abuse/elderly) and one new misdemeanor conviction (evading arrest detention). (R., pp.42-43, 55-56, 114-15; PSI, pp.4-5, 13-14.) Still’s risk level also increased while he was on probation, as he now has at least seven identified risk factors on the LSI risk assessment, which places him in the moderate risk category. (PSI, pp.15-16.)

In reviewing Still’s period of probation in this case – including his absconding behavior, commencement of illegal drug use, repeated violations of the law and the conditions of community supervision, and increased risk level, it is apparent that his criminal behavior steadily escalated, which plainly does not support his claim that probation was achieving its rehabilitative purpose. At the disposition hearing for Still’s second probation violation in this case, the state rightly noted that Still “has been a

categorical failure on probation.” (Tr., p.8, Ls.6-9.) Even Still’s counsel acknowledged that “it’s clear that probation was kind of a bust.” (Tr., p.9, L.25 – p.10, L.1.) The presentence investigator recommended “a period of penal incarceration,” concluding:

It appears that Mr. Still has established quite a pattern of victimizing hard working people for his own personal gain. In speaking with Mr. Still, it appears that some of the information he provided was less than accurate, or completely omitted until I questioned him in person. Mr. Still claims to be remorseful for his actions, just as he said he was remorseful after committing his initial Forgery offense. However, his actions prove to have been deceitful and manipulative yet again. Additionally, Mr. Still’s mother revealed that she and her husband located more financial transaction cards hidden in the fuse box area of his vehicle following his last arrest in Texas. I seriously question Mr. Still’s seriousness and desire in making positive changes in order to lead a pro-social life at this time.

(PSI, p.18.) Likewise, Still’s probation officer stated:

As can be seen from the defendant’s continued disregard to obey the laws of society, as well as the terms and conditions of probation, it appears he does not appreciate the opportunity of probation awarded to him, nor has he shown he is ready to be a productive member of society. Furthermore the defendant’s continued anti-social/criminal behavior demonstrates he is not capable of being a law abiding, productive member of society at this time. Therefore, it is the opinion of this officer that the defendant is in need of a greater level of supervision and treatment at this time and would benefit from a more structured environment, free from any outside distractions or temptations.

(R., p.80.)

The district court considered all of the relevant information and reasonably concluded that Still was no longer an appropriate candidate for community supervision, particularly in light of Still’s ongoing criminal offending, unwillingness to abide by the conditions of probation, failure to demonstrate adequate rehabilitative progress, and the risk he presents to society. Given any reasonable view of the facts, Still has failed to establish that the district court abused its discretion by revoking his probation.

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Still's probation and ordering his underlying sentence executed.

DATED this 23rd day of August, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of August, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
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