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State v. Thometz Respondent's Brief Dckt. 44218

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44218
Plaintiff-Respondent,)	
)	Jerome County Case No.
v.)	CR-2013-3632
)	
PATRICK ADAM THOMETZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

In 2013, Thometz pled guilty to felony DUI and the district court imposed a unified sentence of 10 years, with three years fixed, ordered that the sentence in this case run consecutively to Thometz's sentence in Minidoka County case number CR-2010-1326, and retained jurisdiction. (R., pp.119-26.) Following the period of retained

jurisdiction, on March 31, 2014, the district court suspended Thometz's sentence and placed him on supervised probation for five years. (R., pp.136-48.)

Approximately five months later, in September 2014, Thometz tested positive for methamphetamine and cocaine; he was required to serve two days of discretionary jail time. (R., p.163.) On December 19, 2014, the state filed a motion to revoke probation alleging that Thometz had violated the conditions of his probation by again testing positive for methamphetamine and cocaine on December 10, 2014, and by being charged with the new crimes of grand theft, petit theft, and two counts of burglary. (R., pp.166-68.) On January 5, 2015, the state filed an addendum to the motion to revoke probation, alleging that Thometz had also violated the conditions of his probation by leaving his assigned district without permission, testing positive for methamphetamine on two additional occasions, and regularly associating with drug users and individuals with whom he had specifically been instructed to have no contact, even after being warned to cease his contact with these individuals on three separate occasions between September 2014 and December 2014. (R., pp.179-84.) Thometz admitted that he had violated his probation,¹ and the district court revoked his probation, ordered the underlying sentence executed, and retained jurisdiction a second time. (R., pp.196-97, 205-10.) Following the second period of retained jurisdiction, on October 1, 2015, the district court suspended Thometz's sentence and placed him on supervised probation for three years. (R., pp.216-21.)

Approximately four months later, the state filed another motion to revoke probation, alleging that Thometz had violated the conditions of his probation by failing to

¹ The exact allegations to which Thometz admitted are not specified in the record.

report to the probation office weekly as instructed at least seven different weeks between late November 2015 and early January 2016; being fired from his job on November 9, 2015, and failing to maintain employment thereafter; associating with known felons and/or drug users; admitting, on December 7, 2015, that he had been using methamphetamine with Ashley Carter (a known drug user) and that he would test positive for methamphetamine that day as a result; failing to report for weekly drug testing as required “on October 30, November 13, 17, 25, December 4, 11, 16, 23, 29, 2015 and January 7, 2016”; admitting, on January 11, 2016, that he had failed to appear for his UA’s in part “because he had been using meth”; testing positive for methamphetamine “on January 14, 20, and 26, 2016”; testing positive for opiates on January 26, 2016, and admitting “to taking a pain medication that was not prescribed to him”; admitting that he had continued to associate “with Ashley Carter and other people involved in drugs” after testing positive for methamphetamine and after being specifically instructed not to associate with Ashley Carter; failing to attend Rider Aftercare weekly as required; failing to attend 12-step meetings “at least twice a week” as required; and failing to make his monthly payments toward his court-ordered financial obligations. (R., pp.235-41.) Thometz’s probation officer also reported that, in November 2015, Thometz admitted that “his mother purchased a car for him and he had been driving” without a license. (R., p.240.) Thometz admitted all of the allegations, with the exception of the allegation with respect to failing to maintain employment, which the state withdrew. (Tr., p.15, Ls.15-18; p.18, L.23 – p.22, L.17.) The district court revoked Thometz’s probation and ordered executed a reduced unified sentence of 10 years, with two years fixed. (R., pp.277-79.) The district court also reduced Thometz’s

sentence by ordering that it run concurrently with his sentence in Minidoka County case number CR-2010-1326 (rather than consecutively as originally ordered). (R., p.277.) Thometz filed a notice of appeal timely only from the district court's order revoking probation. (R., pp.287-91.)

Thometz asserts that the district court abused its discretion by revoking his probation in light of his performance during his "two riders," claim that he "internalized the rider programming," "life-long" substance abuse issues, and because he continued his education and eventually obtained employment. (Appellant's brief, pp.3-6.) Thometz 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.

Thometz has not shown that he was an appropriate candidate for probation, particularly in light of his ongoing criminal offending and substance abuse, his blatant disregard for the terms of community supervision, and his failure to demonstrate rehabilitative progress despite the multitude of treatment programs afforded him. Thometz has a long history of criminal offending. At the time of sentencing for the instant offense, 33-year-old Thometz's record included juvenile adjudications for battery and two petit thefts (one of which was amended from grand theft), at least 14 traffic

infractions, and criminal convictions for DWP, petit theft (amended from forgery), a second petit theft (amended from grand theft), felony eluding, and five convictions for DUI. (PSI, pp.7-10.) When he committed the instant offense, Thometz was on supervised probation for felony eluding (during which he was also driving under the influence), had been terminated from Mental Health Court a month earlier for “continued drug use” – after approximately two and one-half years in the program, and had committed a DUI approximately six hours earlier, wherein he was stopped for “swerving between the center line and fog lines” on Interstate 84 and was arrested after submitting to a breath test that revealed a BAC of .037/.038. (PSI, pp.9-10, 25.) Thometz bonded out of jail and, several hours later – apparently after taking at least 12 Xanax pills – he again drove while under the influence and with an open container of alcohol in his vehicle, collided with a trailer, and “drove into a crop field, driving over and destroying several irrigation pipes.” (PSI, pp.3-4, 7, 25.)

In the nine months after he was placed on probation in this case, Thometz repeatedly used methamphetamine and cocaine, refused to cease his continued contact with known drug users, left the district without permission, and was arrested for, and charged with, the new crimes of burglary, grand theft, and two counts of petit theft. (R., pp.181-83.) Probation officers also found messages on Thometz’s phone indicating his ongoing involvement with drugs, one of which “indicated that he was in possession of large amounts of cocaine,” and, in another message, “he was asking a person if she had any drugs that he can sell.” (R., p.183.)

Despite Thometz’s continued criminal offending and abysmal performance on probation, the district court granted Thometz a second opportunity to participate in the

retained jurisdiction program, after which it again placed him on probation. (R., pp.205-10, 216-21.) Within the first few weeks, Thometz resumed his unlawful conduct by driving without a license. (R., pp.237, 240.) Shortly thereafter, he was fired from his job and disregarded his probation officer's instructions to report weekly to review his job search progress, failing to report to the probation office nearly every week for two months. (R., p.237.) Although Thometz claims that he "internalized the rider programming" (Appellant's brief, p.5), he again refused to abide by his probation officer's directive that he not have contact with known drug users, and instead maintained his contact with specifically prohibited individuals, with whom he repeatedly used methamphetamine. (R., pp.238-39.) He also consistently refused to report for drug testing and failed to attend Rider Aftercare and 12-step meetings. (R., p.239.) Thometz's probation officer concluded that Thometz's "behavior indicates he is unable or unwilling to abide by the terms of his probation," as Thometz had "already been afforded the opportunity for treatment through CAPP twice, Probation and Parole, Mental Health Court, and in the community. However, he continues to choose not to use the tools gained in programming to comply with the rules of felony probation." (R., pp.240-41.)

At the disposition hearing for Thometz's second probation violation, the district court noted that Thometz was already on probation for the felony eluding charge when he committed the instant offense, and that while he was on probation in this case, he again "committed additional felonies." (Tr., p.32, Ls.4-8.) The court also noted that Thometz "had the benefit of mental health court" and "multiple retained jurisdiction

programs,” and concluded that “it is clear that the goal of rehabilitation has not been attained.” (Tr., p.32, Ls.9-18.)

The district court considered all of the relevant information and properly concluded that Thometz was no longer a viable candidate for community supervision. The court’s decision to revoke Thometz’s probation was appropriate in light of Thometz’s ongoing criminal offending, incessant substance abuse, complete disregard for the terms of probation, and his failure to demonstrate rehabilitative progress while on probation, despite the plethora of rehabilitative opportunities he has been granted. Given any reasonable view of the facts, Thometz 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 Thometz’s probation.

DATED this 28th day of October, 2016.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of October, 2016, 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
LORI A. FLEMING
Deputy Attorney General