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State v. Estes Respondent's Brief Dckt. 44367

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STATEMENT OF THE CASE

Nature Of The Case

Brandon Wayne Estes appeals from the revocation of his probation.

Statement Of The Facts And Course Of The Proceedings

Estes battered Kimberly Polley by biting her face in the course of a fight. (R., pp. 18-19.) The state charged Estes with felony domestic violence, with a persistent violator enhancement. (R., pp. 55-56, 60-62.) Estes pled guilty to the domestic violence charge and the state dismissed the enhancement, and the parties agreed to sentencing recommendations which included probation and mental health court. (R., pp. 172-73.) The district court accepted the plea, imposed a sentence of six years with two and one-half years determinate, suspended execution of the sentence, and ordered probation. (R., pp. 193, 198-210.) One term of probation was that Estes “enroll in, comply with, and complete all Mental Health Court programming requirements.” (R., p. 208.)

Estes quickly violated the terms of mental health court by missing appointments, making threats, not taking urinalysis tests, violating curfew, and having unapproved associations. (R., pp. 218-20.) The state moved to revoke his probation for being terminated from mental health court and also violating additional conditions of probation. (R., pp. 222-32.)

The district court arraigned Estes on the probation violation allegations, and notified him of his rights. (R., pp. 237-38.) The district court appointed the public defender, Estes denied the allegations, and the court scheduled an evidentiary hearing. (R., p. 240.) The evidentiary hearing was held on two days,

in which the court took evidence from both parties. (R., pp. 256-58, 266, 271-74, 280.) The court thereafter entered a written memorandum opinion and order finding Estes violated the terms of probation. (R., pp. 288-93.) The district court rejected Estes' claim that his termination from mental health court violated due process, concluding that the proceedings on the probation violation in the criminal case complied with due process requirements, and therefore Estes was not entitled to additional process before the mental health court. (Id.)

After a hearing on disposition (R., p. 312), the district court revoked probation and ordered the sentence executed (R., pp. 313-16). Estes filed a motion for reconsideration under Rule 35, which the district court denied. (R., pp. 318-24.) Estes filed a timely notice of appeal. (R., pp. 326-29.)

ISSUES

Estes states the issues on appeal as:

- Issue 1: The Mental Health Court did not provide adequate due process when terminating defendant from diversionary program.
- Issue 2: District Court improperly decided disputed facts when revoking probation and imposing sentence.
- Issue 3: There was not substantial and competent evidence to support the mental health court's decision to terminate defendant from diversionary program.

(Appellant's brief, p. 4 (verbatim).)

The state rephrases the issue as:

Has Estes failed to show that the district court erred when it concluded that Estes had been provided with due process?

ARGUMENT

Estes Has Failed To Show That The District Court Erred When It Concluded That Estes Had Been Provided With Due Process

A. Introduction

The district court concluded that the process afforded in the probation violation proceedings fully complied with due process requirements. (R., pp. 288-93.) The district court first found by a preponderance of the evidence that Estes had violated the terms of his probation by being terminated from mental health court for “threatening behavior, missed curfew, missed appointments, and ... unapproved associations” and by being evicted from “My House” for “aggressive behavior towards other residents.” (R., p. 289.) The district court specifically rejected the argument that the due process requirements for revoking probation had to be complied with prior to, as opposed to after, termination from mental health court. (R., pp. 290-93.)

On appeal Estes claims the district court erred, arguing that he had a separate right to be in mental health court and therefore a separate due process right to notice and an opportunity to be heard prior to termination from that program. (Appellant’s brief, pp. 7-11.) Review of applicable law shows that Estes was provided due process prior to deprivation of his probation liberty interest.

B. Standard Of Review

“Due process issues are generally questions of law.” Idaho Historic Preservation Council, Inc. v. City Council of the City of Boise, 134 Idaho 651,

654, 8 P.3d 646, 649 (2000). The standard of appellate review applicable to constitutional issues is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Bromgard, 139 Idaho 375, 380, 79 P.3d 734, 739 (Ct. App. 2003); State v. Smith, 135 Idaho 712, 720, 23 P.3d 786, 794 (Ct. App. 2001).

C. Estes Was Provided Due Process

“The right to procedural due process guaranteed under both the Idaho and United States Constitutions requires that a person involved in the judicial process be given meaningful notice and a meaningful opportunity to be heard.” State v. Blair, 149 Idaho 720, 722, 239 P.3d 825, 827 (Ct. App. 2010). A probationer “has a protected liberty interest in continuing probation, and is therefore entitled to due process before probation may be revoked.” State v. Rose, 144 Idaho 762, 766, 171 P.3d 253, 257 (2007). This “process is to be flexible, does not need to be equated to a separate criminal prosecution and may be informal,” but generally requires written notice, disclosure of evidence, an opportunity to be heard and present evidence, the right to confront opposing evidence, a neutral and detached decision-maker, and written statements as to the basis for revoking probation. State v. Rogers, 144 Idaho 738, 743, 170 P.3d 881, 886 (2007).

The record establishes that this basic process was provided in the probation proceedings before the district court. (R., pp. 222-32 (written notice of the probation violation allegations), 237-38 (arraignment and appointment of counsel), 256-58, 266 (day one of the evidentiary hearing), 271-74, 280 (day two

of the evidentiary hearing), 288-93 (district court written findings of fact).) The district court rejected Estes' argument that due process demanded this process be provided in the mental health court instead of (or in addition to) the criminal court. (R., pp. 289-90.) Application of the relevant law shows the district court's decision was correct.

In State v. Rogers, 144 Idaho 738, 739, 170 P.3d 881, 882 (2007), Rogers was placed in drug court as a diversionary program after pleading guilty, meaning that the state would dismiss the case if Rogers successfully completed drug court. Rogers violated several program rules, so the drug court judge terminated Rogers from the program without a formal hearing and then proceeded to sentencing. Id. at 740, 170 P.3d at 883. The Court articulated the due process issue relative to diversionary programs as follows:

[w]here a defendant enters a diversionary program prior to entering a plea he maintains his right to assert his innocence and has no liberty interest at stake as expulsion from the program will leave him in the exact same position as he was before entering it. However, when a defendant pleads guilty in order to enter a diversionary program he has a liberty interest at stake as he will no longer be able to assert his innocence if expelled from the program.

Id. at 741, 170 P.3d at 884. Concluding that Rogers' expulsion from the drug court diversionary program would result in a loss of his liberty, the Court then determined that "the liberty interest involved is akin to that in probation and parole revocation hearings" and therefore the same process as in those proceedings was due. Id. at 742, 170 P.3d at 885.

The district court distinguished Rogers on the basis that mental health court in this case was not a diversionary program, as drug court was in Rogers,

but was instead a condition of probation. (R., p. 290.) The Court found “no cognizable reason” why due process requirements could not be afforded in the criminal case, as opposed to in the mental health court. (R., pp. 290-91.)

The district court’s analysis is correct. In Rogers the drug court was a diversionary program, meaning that upon his discharge Rogers went immediately to sentencing without any additional process. In this case, because mental health court was a condition of probation, discharge put Estes back before the criminal court where he was afforded due process before any liberty interest was rescinded. Because the record shows Estes was afforded the full due process rights to which he was entitled before he lost his liberty, there was no violation of due process.

Estes argues that his case is identical to Rogers because he too was “placed in a diversionary program” and his termination from mental health court “resulted in his being criminally sentenced and having a felony conviction appear on his record.” (Appellant’s brief, pp. 7-9.) This argument is based on a false representation of the procedural history of this case. As noted above, Estes was not put in mental health court as a diversionary program with the promise that the case would be dismissed. Rather, he pled guilty and was placed in mental health court as a condition of probation. (R., pp. 172-73, 193, 198-210.) Because this case was a straight-up probation violation case, and the process due a probation violation was provided, Estes has failed to show error.

Estes next argues that because the district court lacked the authority to order him reinstated in mental health court that the proceedings in the criminal

court could not provide him due process. (Appellant's brief, pp. 9-10.) This argument confuses what liberty interest Estes had. As noted above, a probationer "has a protected liberty interest *in continuing probation*, and is therefore entitled to due process before probation may be revoked." Rose, 144 Idaho at 766, 171 P.3d at 257 (emphasis added). Because the criminal court had authority to continue Estes on probation or to revoke that probation, Estes was afforded due process prior to losing his liberty interest.

Estes finally argues the district court lacked "substantial and competent evidence to substantiate the mental health court judges [sic] decision to terminate him from the program" because one of his several mental health court violations was missing an appointment scheduled prior to sentencing (compare R., p. 218 (Estes missed appointment on "the week of September 24, 2015") with R., p. 198 (sentenced on September 28, 2015)). (Appellant's brief, pp. 10-11.) Estes has failed to show error. First, Estes has failed to establish the relevance of this argument. The relevant condition of probation was that Estes "enroll in, comply with, and complete all Mental Health Court programming requirements." (R., p. 208.) Evidence that he missed an appointment just prior to sentencing was relevant to whether he had complied with this term of probation. Second, Estes was not found in violation of his probation for a single missed appointment. The district court found Estes' various failures regarding mental health court proved by a preponderance of the evidence. (R., p. 289.) Even excluding the single missed appointment, there was a plethora of evidence showing that Estes'

expulsion from mental health court was justified for failure to obey the applicable rules. (R., pp. 218-20.)

The district court concluded that Estes' was provided due process. Because Estes was provided all the process due prior to terminating his probationary liberty interest, Estes has failed to show error by the district court.

CONCLUSION

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

DATED this 20th day of July, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 20th day of July, 2017, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

BRANDON WAYNE ESTES
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S.I.C.I. – NORTH DORM
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/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd