

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45610
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2014-11937
	)	
DESTINY ELIZABETH JEAN DEBBAN,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Debban failed to establish that the district court abused its discretion by revoking her probation and executing her underlying unified sentence of seven years, with three years fixed, imposed following her guilty plea to possession of methamphetamine?

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

In 2014, the state charged Debban with possession of methamphetamine, possession of marijuana, possession of Alprazolam, possession of drug paraphernalia, and illegal possession of alcohol. (R., pp.51-52.) Pursuant to a plea agreement, Debban pled guilty to possession of

methamphetamine and the state dismissed the remaining charges. (R., p.78.) The district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.88-92.) Following the period of retained jurisdiction, the district court suspended Debban's sentence and placed her on supervised probation for seven years. (R., pp.101-07.)

Approximately six months later, the state filed a motion for probation violation alleging that Debban had violated the conditions of her probation by using methamphetamine, heroin, benzodiazepines, and marijuana; failing to participate in rehabilitative treatment; and failing to report for supervision. (R., pp.111-13.) The district court issued a bench warrant; however, Debban was not located and arrested on the warrant until approximately four months later. (R., pp.120-21.) She subsequently admitted that she violated the conditions of her probation by using heroin, failing to participate in rehabilitative treatment, and failing to report for supervision, and the state dismissed the remaining allegations. (R., p.129.) The district court revoked Debban's probation, executed the underlying sentence, and retained jurisdiction a second time. (R., pp.137-40.) Following the second period of retained jurisdiction, on November 2, 2016, the district court suspended Debban's sentence and reinstated her on supervised probation. (R., pp.145-50.)

Approximately one month later, in December 2016, Debban committed – and was charged with – the new crime of driving without obtaining a driver's license. (R., p.170.) In May 2017, she admitted to her probation officer that she had “consumed alcohol and was involved in an accident and left without notifying the police,” and that she “expected to be charged with a felony.” (R., p.172.) Debban was instead charged with misdemeanor “leaving the scene of an accident – duty upon striking fixtures.” (R., p.170.) On May 1, 2017, Debban's probation officer instructed her to report for an office visit, but Debban failed to do so and

instead, on June 23, 2017, she again drove after consuming intoxicating substances and was arrested for DUI. (R., pp.172-73.) When she was booked into the jail, officers found her “in possession of several different prescription drugs for which she did not have a prescription.” (R., p.173.)

On June 30, 2017, the state filed a second motion for probation violation, alleging that Debban had violated the conditions of her probation by committing the new crimes of DUI, leaving the scene of an accident upon striking fixtures, and driving without obtaining a driver’s license; consuming alcohol; failing to report for supervision; and failing to pay her restitution and other court-ordered financial obligations. (R., pp.169-71.) On August 3, 2017, the state filed an amended second motion for probation violation, alleging that Debban had also violated the conditions of her probation by committing the new crimes of possession of cocaine, possession of Hydrocodone, possession of Methylphenidate, introduction of controlled substances into a correctional facility, possession of Buprenorphine, and possession of Alprazolam. (R., pp.183-88.) Debban admitted that she violated the conditions of her probation by committing the new crimes of DUI, leaving the scene of an accident upon striking fixtures, driving without obtaining a driver’s license, and felony possession of a controlled substance, and the state dismissed the remaining allegations. (R., p.190.) The district court revoked Debban’s probation and executed the underlying sentence. (R., pp.194-96.) Debban filed a notice of appeal timely from the district court’s order revoking probation and executing her underlying sentence. (R., pp.211-13.)

Debban asserts that the district court abused its discretion by revoking her probation in light of her acceptance of responsibility and continued willingness to participate in treatment. (Appellant’s brief, pp.2-4.) Debban 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 whether to revoke a defendant’s probation for a violation is within the discretion of the district court. State v. Garner, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017) (quoting State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003)). In determining whether to revoke probation, a court must examine whether the probation is achieving the goal of rehabilitation and is consistent with the protection of society. State v. Cornelison, 154 Idaho 793, 797, 302 P.3d 1066, 1070 (Ct. App. 2013) (citations omitted). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. Id. at 798, 302 P.3d at 1071 (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992)).

Debban has clearly demonstrated that she is not a viable candidate for community supervision. She has been committing crimes and abusing illegal substances on an ongoing basis for the past decade, despite having been afforded numerous opportunities on probation and despite the extensive treatment she has been provided. (PSI, pp.5-9, 15-17, 59, 145.<sup>1</sup>) Debban reported that she began drinking alcohol at age nine and progressed to daily alcohol consumption by age 11, that she “has been smoking marijuana on a daily basis since age 11,” and that she began abusing prescription medications and methamphetamine at age 13, cocaine and ecstasy at age 14, hallucinogens and synthetic cannabinoids at age 15, inhalants and designer stimulants at age 16, and heroin at age 18. (PSI, pp.15-16, 175-76.) She has previously participated in Juvenile Drug Court, “[substance abuse] rehabilitation services during and after her incarceration

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file “Debban 45610 psi.pdf.”

at St. Anthony's juvenile correctional center," inpatient substance abuse treatment, two separate periods of retained jurisdiction, an inpatient detoxification treatment program at Allumbaugh House, intensive outpatient treatment, and multiple other outpatient treatment programs, and she has also resided at the Harmony House rehabilitation facility. (PSI, pp.17, 59, 145; R., p.115.) Nevertheless, Debban admitted that she "lived 'strung out' ... using 'the needle'" for a large portion of the time that she was in the community on probation in this case, and that she consumed alcohol and used methamphetamine, marijuana, benzodiazepines, and heroin. (PSI, pp.2, 176; R., pp.112, 170.) Also while on probation in this case, Debban failed to attend rehabilitative treatment, failed to report for supervision on more than one occasion, absconded, and was charged with the new crimes of driving without obtaining a driver's license, leaving the scene of an accident upon striking fixtures, DUI, possession of cocaine, possession of Hydrocodone, possession of Methylphenidate, introduction of controlled substances into a correctional facility, possession of Buprenorphine, and possession of Alprazolam. (R., pp.111-13, 120-21, 169-71, 183-88.) Debban's continued substance abuse, criminal offending, and unwillingness to abide by the terms of community supervision in this case demonstrate that probation was not achieving the goals of rehabilitation or protection of the community.

At the disposition hearing for Debban's second probation violation in this case, the state addressed Debban's ongoing substance abuse and criminal behavior, refusal to abide by the conditions of probation, failure to rehabilitate, and high risk to reoffend. (10/11/17 Tr., p.8, L.19 – p.10, L.25 (Appendix A).) The district court subsequently articulated its reasons for revoking Debban's probation. (10/11/17 Tr., p.13, L.9 – p.14, L.10 (Appendix B).) The state submits that Debban has failed to establish an abuse of discretion, for reasons more fully set forth in the

attached excerpts of the October 11, 2017 disposition hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Debban's probation and executing her underlying sentence.

DATED this 23rd day of July, 2018.

/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 July, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

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

# APPENDIX A

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
Plaintiff-Respondent,	)	Supreme Court Docket
	)	45610
vs.	)	
DESTINY DEBBAN,	)	
Defendant-Appellant.	)	

I-N-D-E-X

<u>PROCEEDINGS</u>	<u>PAGE</u>
Sentencing Hearing -- October 11, 2017 ....	1

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on February 5, 2018, I lodged a transcript 14 pages in length for the above-referenced appeal with the District Court Clerk of Ada County in the Fourth Judicial District.

(Signature of Reporter)

Penny L. Tardiff CSR

2-5-2018

Hearing Date: 10/11/17

5

1 BOISE, IDAHO  
2 OCTOBER 11, 2017  
3 ENTRY OF PLEA HEARING  
4  
5  
6  
7  
8 THE COURT: First case is State versus Destiny  
9 Debban. This is 2014-11937.  
10 Mr. DeANGELO, do you need to confer with your  
11 client?  
12 MR. DeANGELO: No, Your Honor.  
13 THE COURT: This case was scheduled for a final  
14 disposition at this date and time after admissions by  
15 the defendant. The court did have the PSI that was  
16 prepared for Judge Devon.  
17 MR. DeANGELO: Baskin.  
18 THE COURT: Or Judge Baskin, and I understand  
19 that she has been sentenced. Apparently, was placed on  
20 probation.  
21 MR. DeANGELO: With the condition of doing Ada  
22 County Drug Court, she'll be, if she's given probation  
23 in this case or reinstated, she would be in Judge  
24 Norton's Ada County Drug Court program. That's what I  
25 believe Judge Baskin sentenced her to, 2 plus 5 with

1 drug court.  
2 THE COURT: I'll take recommendations from the  
3 state. And I do have one question. I was showing that  
4 she served 574 days at the time she was sentenced; is  
5 that correct?  
6 MR. HUNT: Probably not. That's probably all  
7 together.  
8 MR. DeANGELO: Yes. To this point?  
9 THE COURT: Because she's been on probation.  
10 MR. DeANGELO: I think at this point; yes. She  
11 has served that much time total in the case.  
12 THE COURT: Yeah; that's what I'm showing.  
13 MR. HUNT: I don't have it.  
14 MR. DeANGELO: I don't have that count in front  
15 of me, but I don't think that's necessarily wrong.  
16 THE DEFENDANT: I've done two riders, Your  
17 Honor.  
18 THE COURT: Go ahead, Counsel.  
19 MR. HUNT: Thank you, Your Honor.  
20 I realize that given Ms. Debban's sentence in  
21 Judge Baskin's court, the court may today be likely to  
22 not want to undercut that and just put her back on  
23 probation. I think, however, that given Ms. Debban's  
24 probation in this case, the state's recommendation has  
25 to be that her probation be revoked and her sentence



1 imposed.

2 Defendant has admitted to four of 13 alleged

3 violations. These are not mere technical violations.

4 She admitted to committing new crimes while on probation

5 following two back to back riders. She admitted to DUI,

6 leaving the scene and felony possession of controlled

7 substance. For defendant to commit these crimes while

8 on felony probation after completing two riders leaves

9 the state little choice but to conclude she's simply not

10 a candidate for probation, and, therefore, not a

11 candidate for drug court. She was undeterred from

12 felony drug use even with suspended prison time.

13 She is married to a convicted felon and drug

14 addict. The drug court screening recommendation was "no

15 contact with her husband if she's to participate in drug

16 court." Frankly, the state doesn't believe that's

17 practical. She has an LSI score of 33 which puts her in

18 the high risk category. Defendant herself stated in the

19 PSI that 2 plus 5 prison recommendation in the new case

20 is fair, and that's not what she got. Obviously, that

21 is what the state asked for at that sentencing.

22 I just want to read one selection from -- two

23 selections from the PSI. One regarding the possession

24 charge and the DUI charge. This is on page 4.

25 (Begin reading report.)

1 On June 23, 2017, suspect Destiny Basco,

2 (phonetically spelled) aka Debban, was in the Ada County

3 Jail booking area following a DUI arrest. After being

4 in the jail facility for several hours, she was found to

5 be in possession of cocaine, methylphenidate,

6 hydrocodone, all Schedule II controlled substances. She

7 was also in possession of marijuana, Alprazolam,

8 Zolpidem. These items were hidden in Basco's underwear

9 and were found by Deputy Kelly Tuttle while changing her

10 into jail clothing.

11 Your Honor, this is, of course, unacceptable

12 behavior for someone on felony probation.

13 And to page 15, just one of the final lines

14 here, starting in the middle of the last full paragraph.

15 (Begin reading report.)

16 Apart from a few new tattoos, the main

17 difference between Destiny-2014 and Destiny-2017, is the

18 fact that she's now married to a felony drug addict. Is

19 she prepared to have no contact with him and her mother,

20 which is the drug court screening recommendation.

21 Your Honor, given the place that Ms. Debban's in

22 in her life with her relationships, with her continued

23 drug use and hiding that drug use, leaving the scene of

24 a DUI accident, the state has to recommend to this court

25 revoke and impose her probation. Thank you.

1 THE COURT: Thank you.

2 I'll allow the defense to respond.

3 MR. DeANGELO: Judge, I'm asking that the court

4 reinstate probation and make it a condition that she

5 participate in the Ada County Drug Court program. I

6 think when you look at Destiny's life here and her

7 options, it is really just, do we impose a prison

8 sentence for her, and have her serve out her term and

9 get parole, or do we use what we probably have the best

10 programming and supervision that we can offer her, to

11 remain out in the community and try to get sober out in

12 the community and get on her feet, and I am asking this

13 court to allow her to embrace the Ada County Drug Court

14 program. She has done programming while in custody.

15 She has still had problems with substance abuse. I'm

16 asking this court to allow her to, essentially, have the

17 training wheels with the Ada County Drug Court program

18 to give immediate sanctions, limit her interactions with

19 individuals, as the drug court program places no contact

20 orders on members of her family, on her husband.

21 I will just inform the court that I don't

22 believe her husband will be getting out of custody for

23 probably the next 25 years. I think he's in federal

24 custody now and is facing, I think, a minimum of around

25 15 to 20 years, so her associations with him would be

1 minimal, and, obviously, we understand the importance of

2 having, essentially, at this point in time, no

3 communications so that she can work on her sobriety and

4 get that underneath her.

5 When you look at Judge Baskin's sentence, she

6 did give Destiny one more chance to prove herself. I'm

7 asking this court to also give her that chance to prove

8 herself. Like I said, she's just 21 years old. This is

9 really her last go, especially, in this case, of being

10 able to prove that she is a candidate to complete

11 probation in the community but with the support and the

12 accountability and programming in drug court, I think

13 she can be successful. I think she is somebody who

14 wants to be successful. Thank you.

15 THE COURT: Thank you.

16 Did you want to make statements to me before I

17 decide how to proceed?

18 THE DEFENDANT: Yes. I just want to say that

19 I'm willing to take accountability, and I have a lot of

20 willingness and readiness to change, and I was clean for

21 a year, and I relapsed. It was wrong of me to use while

22 I was on probation, but I want to take accountability

23 and only I can be accountable for my actions. It

24 doesn't matter, like, if I had NCOs, I'm not going to

25 break them because that's what I'm doing to better my

## APPENDIX B

<p>1 life: do you know what I mean? But I don't feel like I 2 should be persecuted for people in my life, like, my 3 husband. That's all I have to say.</p> <p>4 THE COURT: This has nothing to do with your 5 husband.</p> <p>6 THE DEFENDANT: I know.</p> <p>7 THE COURT: I'm not considering that.</p> <p>8 THE DEFENDANT: Okay.</p> <p>9 THE COURT: In sentencing procedures, the 10 highest priority for me is protection of society, safety 11 of the public, and, Ms. Debban, you've been given 12 chance, after chance, after chance. I was surprised 13 when I learned that Judge Baskin had placed you on 14 probation and that made me wonder, you know, what I was 15 going to do on this, and I take no joy in this, but I 16 don't see any reason to give you one more chance. I 17 will say this however. You got to figure it out. You 18 are the only one who can quit using, and if you quit 19 using, you'd probably quit doing these other things.</p> <p>20 And every time I come into these courts, I'm 21 sending somebody like you, who was given a lot of 22 chances, to prison, not because I like doing it, and the 23 only thing that I could say to you is that you've got to 24 do something while you're in there because you're not 25 going to be in there that long and you're going to be</p>	<p>1 back out here, and if you don't do something, it just 2 becomes a revolving door. I see it all the time.</p> <p>3 And I know -- I couldn't believe the amount of 4 drugs you had with you, and I know they get a hold on 5 you, but at this point in time, I am going to go ahead 6 and reimpose the sentence in this matter, a 7-year 7 sentence, 3 years fixed, 4 years indeterminate. I will 8 hereby order that the sheriff deliver you to the Idaho 9 State Board of Corrections to begin serving your 10 sentence. I'm going to take about a 5-minute recess.</p> <p>11 (Proceedings concluded.)</p> <p>12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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