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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45709
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-MD-2014-14122
)	
CORY GENE DAVIS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Davis failed to establish that the district court abused its discretion by revoking his probation and executing his underlying unified sentence of seven years, with two years fixed, imposed following his guilty plea to felony DUI?

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

In 2015, Davis pled guilty to felony DUI and the district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.94-98.) After a period of retained jurisdiction the district court placed Davis on probation for six years. (R., pp.102-09.) In August 2017, Davis' probation officer filed a report of violation alleging that Davis had

violated the conditions of his probation by being discharged from drug and alcohol treatment for noncompliance, consuming alcohol, using methamphetamine and marijuana on multiple occasions, driving without a license or insurance, incurring new criminal charges, failing to report to his probation officer, changing residences without permission, and failing to pay his court-ordered financial obligations. (R., pp.110-17.) Davis admitted six of the 18 allegations and the district court revoked his probation and executed the underlying sentence of seven years, with two years fixed. (R., pp.135-38.) Davis filed a notice of appeal timely from the district court's order revoking probation and executing his underlying sentence. (R., pp.139-41.)

Davis asserts that the district court abused its discretion by revoking his probation in light of his difficult childhood, mental health issues, substance abuse issues, and his claim that he was "active in his treatment." (Appellant's brief, pp.4-7.) Davis 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)).

Davis is not a viable candidate for probation in light of his refusal to abide by the conditions of community supervision, continued use of alcohol and drugs, failure to report to his probation officer, and continued criminal offending. While on probation Davis admitted abusing drugs and alcohol multiple times. (R., pp.110-17; PSI, pp.210-230.¹) In fact, Davis was under the influence of alcohol and marijuana when he got into an altercation, resulting his arrest and conviction for disturbing the peace (amended from misdemeanor battery) while he was on probation in this case. (R., p.111; PSI, pp.227-28; Tr., p.15, Ls.1-4.) Davis claims that he was “active in his treatment” while on probation (Appellant’s brief, p.6); however, his continued use of alcohol and illegal substances demonstrates that he was not applying skills from his treatment programs and, according to the prosecutor, he actually failed to complete his treatment (Tr., p.15, Ls.5-8; see also R., p.111 (probation violation allegation, not admitted by Davis, that Davis was discharged from drug/alcohol treatment at Ascent for “non-compliance”)). Davis also failed to be “active in his treatment” when he failed to stay in contact with his probation officer, despite numerous attempts by the probation officer to contact him. (R., p.112.) Davis has previously had treatment for his mental health issues, with the most recent hospital admission occurring in August of 2014. (PSI, p.16.) At that time it was recommended that Davis follow-up for medication management and psychotherapy, abstain from alcohol, and start the Celebrate Recovery program. (PSI, p.16.) Davis was also provided with antidepressants at that time, but he apparently failed to take any steps towards managing his mental health issues and, one month later, was arrested for the felony DUI of which he was convicted in this case. (PSI, pp.9-10, 16.)

¹ PSI page numbers correspond with the page numbers of the electronic file “Davis 45709 psi.pdf.”

While Davis' difficult childhood is unfortunate, it does not outweigh the seriousness of the offense or his failure to rehabilitate while in the community.

At the disposition hearing, the state discussed Davis' continued alcohol and substance abuse, his failure to complete treatment, failure to be compliant with the terms of his probation, and the risk he presents to the community. (Tr., p.14, L.16 – p.17, L.15.) The district court reasonably concluded that Davis was no longer a suitable candidate for probation and that protection of society was paramount. (Tr., p.30, L.22 – p.32, L.2.) The state submits that Davis 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 Davis' probation and executing his underlying sentence.

DATED this 20th day of July, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th 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:

ERIK R. LEHTINEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p>1 information would be gleaned by a new interview.</p> <p>2 THE COURT: Mr. Vogt?</p> <p>3 MR. VOGT: I don't object to that, your</p> <p>4 Honor. I would ask Mr. Loschi if he could provide</p> <p>5 me a copy of the PO notes too. I mean, I can</p> <p>6 subpoena them as well, but if he already has</p> <p>7 them --</p> <p>8 MR. LOSCHI: I'll send them to the Court</p> <p>9 and counsel, Judge.</p> <p>10 THE COURT: Okay. I'll set the matter --</p> <p>11 will not order the PSI. We'll rest on the PO</p> <p>12 notes. And then we'll set this matter for</p> <p>13 disposition. I propose December 8th.</p> <p>14 MR. LOSCHI: December 8 is fine.</p> <p>15 THE COURT: Mr. Vogt?</p> <p>16 MR. VOGT: That's fine, your Honor.</p> <p>17 THE COURT: 9 a.m. Thank you.</p> <p>18 THE DEFENDANT: Thank you, your Honor.</p> <p>19</p> <p>20 (Whereupon the proceedings were concluded at 10:53 a.m.)</p> <p>21 *****</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">13</p>	<p>1 DISPOSITION HEARING PROCEEDINGS</p> <p>2 BOISE, IDAHO</p> <p>3 DECEMBER 8, 2018</p> <p>4 10:05 A.M.</p> <p>5</p> <p>6 THE COURT: I'll now take up State versus</p> <p>7 Davis, CR-MD-14-14122. State by Mr. Vogt, and</p> <p>8 Mr. Davis by Mr. Loschi.</p> <p>9 Mr. Vogt, why am I taking this case out</p> <p>10 of order?</p> <p>11 MR. VOGT: Because it's Mr. Loschi's only</p> <p>12 case here this morning.</p> <p>13 MR. LOSCHI: I appreciate that, Judge.</p> <p>14 THE COURT: That's a good reason.</p> <p>15 Mr. Vogt, your turn.</p> <p>16 MR. VOGT: Thank you. We're here on a</p> <p>17 probation violation disposition. And I'm asking</p> <p>18 the Court today to impose Mr. Davis's underlying</p> <p>19 sentence.</p> <p>20 I won't go through all of the violations,</p> <p>21 but there is the driving without privileges from</p> <p>22 August of this year. That was ultimately</p> <p>23 dismissed as part of a plea deal, but there was</p> <p>24 probable cause to arrest and charge Mr. Davis with</p> <p>25 that driving offense.</p> <p style="text-align: center;">14</p>
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1 Ultimately, a battery was pled out to
2 disturbing the peace in Elmore County. He has
3 pled guilty to that, one of the admissions he made
4 in this case.

5 I think it's important to point out that
6 he's failed to complete treatment, continued to
7 use alcohol and methamphetamine and marijuana
8 while on probation.

9 The State is alleging he was driving
10 without a license or insurance and he's moved
11 without permission. And those things are
12 important, I think, for the Court to consider in
13 that this is a felony probation for a DUI. And so
14 we have somebody that continues to drive, who
15 continues to use substances, who is not licensed,
16 not insured.

17 The police reports that were attached to
18 the report of violation give a strong indication
19 that he was drinking at the time that he drove in
20 that Elmore County case.

21 Mr. Davis has a significant criminal
22 history. Felonies include a second-degree
23 burglary out of Oregon in '92; multiple felony
24 joyriding offenses, two in '93, one in '92; a PCS
25 out of Oregon in '96; and then, of course, the

15

1 instant case. He also has multiple misdemeanor
2 convictions. I'll highlight: assault and
3 harassment, criminal mischief.

4 In the 2014 PSI, it indicates that
5 Mr. Davis had a very high LSI. Given the number
6 of violations, I understand a new LSI wasn't done,
7 but I cannot see his risk of reoffending is
8 reduced in any way.

9 He's been diagnosed with antisocial
10 personality disorder. That is a disorder that is
11 persistent through time and resistant to treatment
12 and leads, actually, to multiple of these crimes.

13 As indicated in the original PSI, the
14 defendant couldn't be compliant with rules even
15 while he was in the custody of the Ada County
16 Jail. The PSI highlights multiple efforts at
17 no-contact order violations while he was in
18 custody.

19 The reports attached to the report of
20 violation indicate that Mr. Davis is a true risk
21 to the community when he drinks, as evidenced by
22 the violence he meted out to his victims in that
23 case. He shows little or no concern about
24 drinking and driving, as evidenced by this case,
25 and that was also evidenced by the reports

16

1 attached to the report of violation.

2 Mr. Davis is an individual who has had

3 repeated opportunities for both community-based

4 treatment and treatment in the institution. He

5 was sentenced to a rider as part of this case, yet

6 he continues to use. He continues to be violent;

7 he refuses to program; and he continues to violate

8 the laws and orders of this court.

9 From the State's view, Mr. Davis is

10 dangerous and he's unwilling or incapable of

11 complying with treatment orders and opportunities.

12 And at this point it's the State's position that

13 the community deserves to be protected from

14 Mr. Davis, so I am asking you to impose the

15 underlying sentence.

16 Thank you, your Honor.

17 THE COURT: Thank you, Mr. Vogt.

18 Mr. Loschi?

19 MR. LOSCHI: Judge, this probation

20 violation, the allegations that were originally

21 listed, there were two in there that I couldn't,

22 through the reports that we read and the PO notes,

23 find any backing for. One is that it said that he

24 was terminated from Ascent treatment in March

25 2017. He denies that. It wasn't one of the

17

1 allegations he pled to, and I didn't see that in

2 the PO notes.

3 The other is the allegation that he

4 admitted that he'd been driving for the past six

5 months. He denies that. I don't see that

6 admission in the PO notes -- and maybe it's

7 somewhere that Mr. Vogt has seen it and I

8 haven't -- nor in the police report. He, in fact,

9 denies that.

10 But at the time that this incident

11 happened in the back woods there in Elmore County,

12 someone else had driven them up there. So I just

13 wanted to start with that.

14 So, Judge, Cory -- we're asking you today

15 to consider placing him back on probation. So he

16 has two prior felonies from '92 and '95, and then

17 he has a misdemeanor history after that, which,

18 when you look at his original PSI in this case, is

19 not terribly surprising because he was basically

20 drinking himself to death, by his own admission.

21 Then my guess is every one of these misdemeanors

22 was related to substance abuse, drinking too much.

23 He got placed on probation here after

24 doing a rider. At the time he got placed on

25 probation, he had about 313 days of credit,

18