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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45794-2018
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-MD-2016-949
)	
KAMRON TRACE MARTIN,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Martin failed to establish that the district court abused its discretion by revoking his probation and executing his underlying unified sentence of eight years, with three years fixed, imposed following his guilty plea to felony domestic violence?

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

Pursuant to a plea agreement, Martin pled guilty to felony domestic violence and the district court imposed a unified sentence of eight years, with three years fixed, and retained jurisdiction. (R., pp.138-41.) Following the period of retained jurisdiction, the district court

suspended Martin's sentence and placed him on supervised probation for five years. (R., pp.149-53.) Four months later, the state filed a motion for probation violation alleging that Martin had violated the conditions of his probation by committing the new crimes of felony attempted strangulation, misdemeanor domestic violence or battery, and misdemeanor resisting or obstructing an officer; consuming and/or possessing an alcoholic beverage; failing to attend and/or successfully complete CBI-AP treatment; failing to attend and/or successfully complete one year of intensive domestic violence treatment; and failing to pay fines, fees, funds, surcharges and/or costs ordered by the district court. (R., pp.173-75.) Martin subsequently admitted that he had violated the conditions of his probation by failing to attend and/or successfully complete CBI-AP treatment and failing to attend and/or successfully complete one year of intensive domestic violence treatment, and the state dismissed the balance of the allegations. (R., pp.173-75, 185.) The district court revoked Martin's probation and executed the underlying sentence. (R., pp.187-90.) Martin filed a notice of appeal timely from the district court's order revoking probation. (R., pp.192-94.)

Martin asserts that the district court abused its discretion by revoking his probation in light of some of the progress he claims to have made concerning his drinking and mental health, his attendance of weekly aftercare, and his assertion that was achieving his goals related to his career and his daughter. (Appellant's brief, pp.3-4.) Martin 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)). The goal of probation is to

foster the probationer's rehabilitation while protecting public safety. State v. Cheatham, 159 Idaho 856, ___, 367 P.3d 251, 253 (Ct. App. 2016) (citations omitted). 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)).

Martin is not a viable candidate for probation in light of the nature of the underlying offense, his criminal history, his refusal to abide by the conditions of community supervision, and his failure to complete his required rehabilitative treatment while in the community. Martin's conviction in this case occurred after he battered "his former girlfriend and mother of his child" by pushing her, shoving her, "'mush[ing]' her face," and pulling her hair out. (PSI, p.21.) Martin's conduct was in keeping with his criminal history which, as the presentence investigator noted, shows Martin has had "a propensity for violence from age fifteen (15)." (PSI, pp.21-22.) Although his conviction in this case was his first felony, at the time of sentencing he had "misdemeanor convictions for resisting/obstructing (4); providing false information to officers; assault (2); driving without privileges (7); fail to appear; contempt of court (2); fail to notify of accident; fail to provide proof of insurance; and probation violations (4)." (PSI, p.21 (capitalization altered).) He also had a number of charges pending and was wanted on probation violation allegations in a 2016 case. (PSI, p.21.)

Despite the seriousness of the crime and Martin's escalating criminal behavior, the district court retained jurisdiction, thereby giving Martin an opportunity to demonstrate he

should be placed on probation. (R., pp.138-41.) Martin successfully completed the period of retained jurisdiction (PSI, pp.124-41, 149-53) but soon thereafter showed he was not willing or able to comply with the conditions of community supervision. In the four months he was on probation in this case, Martin failed to enroll in his court ordered 52-week domestic violence treatment program and was discharged from CBI-SA aftercare for noncompliance and nonattendance. (R., pp.176-78.) He was also accused of additional domestic violence, having “allegedly put his hands around the front of his wife’s neck, swung at her head while on top of her, and otherwise attempted to intimidate her.” (R., p.177; see also PSI, pp.153-57 (police report of incident).) Although the state ultimately dismissed the allegations that Martin committed new acts of domestic violence and resisting and obstructing officers, it is clear from the entire record that probation was not serving its purpose as Martin persisted in his criminal thinking and continued to place others at risk.

At the disposition hearing, the district court articulated its reasons for revoking Martin’s probation and addressed Martin’s failure to rehabilitate and his unwillingness to abide by the law, court orders, or the terms of community supervision. (12/19/17 Tr., p.18, L.18 – p.20, L.24.) The district court concluded, “This is simply too serious of a crime; it poses too significant of a harm to others if you were to do something like what you have pled guilty to doing in this case again while you’re on probation.” (12/19/17 Tr., p.20, Ls.12-16.) The state submits that Martin 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 Martin's probation and executing his underlying sentence.

DATED this 9th 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 9th 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:

MAYA P. WALDRON
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

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1 this. We're going to ask the Court to consider that a
2 significant enough sanction for this new crime of
3 resisting and obstructing, and for his compliance with
4 his classes.

5 Now, Kamron tells me that he was going to his
6 classes, at least his aftercare, and that he was
7 discharged after he was arrested. I can't swear -- the
8 P.O.'s comment said he was discharged before his arrest
9 with the allegations in the FV, which was that he was
10 discharged on the date of his arrest.

11 Kamron tells me that he was going to classes.
12 He was also working, had a good job. He hadn't tested
13 positive for any illegal substances at that particular
14 point. So, I don't know that it's fair to say that his
15 probation was a total failure. Obviously, he needs to
16 avoid law enforcement interaction.

17 What I would encourage the Court is to adopt
18 the view that this 91 days that he's been in custody is a
19 significant enough sanction for not thoroughly engaging
20 in his treatment and for having police contact. I don't
21 know that his probation -- it -- it certainly, in my
22 experience, his probation didn't fall off the bus like
23 I've seen others. I think that he was just starting to
24 get a little traction and all this stuff happened.

25 I'm not sure where it would have gone. But I

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1 think Kamron, after serving three months in jail,
2 deserves the opportunity to try to make one more go out
3 of it. And so, that's what we would ask the Court to do,
4 Judge.

5 Thank you.

6 THE COURT: Mr. Martin, you have the right to
7 speak with the Court; you're not required to. Is there
8 anything you would like to say?

9 THE DEFENDANT: Honestly, before these
10 charges, I felt like I was doing a good job on probation.
11 I was working, I was staying at the residence I got Court
12 ordered to go to. I was going to aftercare weekly, so I
13 don't know why they say I got discharged before. I got
14 discharged the day I got arrested. So, I feel like I was
15 doing good out there on probation. I was seeing my
16 daughter every weekend.

17 I mean, I think I was on task, honestly.

18 THE COURT: All right, Mr. Martin. Thank
19 you.

20 Well, Mr. Martin, your feelings are
21 inconsistent with your testimony in this case. You
22 admitted willfully having violated the conditions of your
23 probation. And so, that's -- that's kind of the point I
24 start at.

25 You know, this -- sometimes the language that

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1 the lawyers use is different than how I view my decision.
2 I'm not here to punish you for violating the conditions
3 of your probation; I'm not here to punish you for this
4 resisting and obstructing offense.

5 I understand Mr. Lorello's arguments
6 essentially to be that you've learned your lesson. That
7 whatever you did to get yourself in this position,
8 you've -- this 90 days in jail has motivated you to
9 behave differently if I release you. You know, I
10 understand that argument.

11 From my perspective, Mr. Martin, this is more
12 of a risk calculation. When I sentenced you originally,
13 I sent you to prison for the rider because I thought that
14 you were some risk to commit another crime of domestic
15 violence if you didn't have some treatment to address
16 substance issues, treatment to address violence issues.
17 You got some of that in the penitentiary, and I thought
18 you -- the risk of you engaging in some incident that's
19 similar to your crime in this case went down.

20 Now you're back before the Court, and you got
21 arrested for -- when the police showed up because there
22 was a report that is shockingly, in my view, similar to
23 what lead you to be convicted in this case, involving,
24 you know, a different person.

25 If I recall, you got married while these

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1 original charges were pending. This is now your current
2 wife, and it -- I'm not saying that I believe what she
3 says to the police. I'm simply saying that her
4 allegations to the police, and her sister's allegations
5 to the police, are a good view of what I'm concerned that
6 you might do on probation. That's what I was worried
7 about happening placing you on probation in the first
8 place after your rider.

9 Where you have now admitted not following the
10 conditions of your probation, the question for me is
11 whether I'm willing to take that risk again. And I
12 conclude that I'm not, Mr. Martin. This is simply too
13 serious of a crime; it poses too significant of a harm to
14 others if you were to do something like what you have
15 pled guilty to doing in this case again while you're on
16 probation.

17 I was willing to give you an opportunity to
18 make that work in the community, and you didn't take
19 advantage of it. I'm simply not willing to take that
20 risk again.

21 For that reason, I'm going to revoke
22 probation, I'm going to impose your previously suspended
23 sentence. You will get credit for the time that you have
24 spent in custody to date on this charge.

25 Mr. Lorello, questions about the disposition?