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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45848
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-2016-31426
	)	
NATHAN DEAN CECIL,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Cecil failed to establish that the district court abused its discretion by revoking his probation and retaining jurisdiction?

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

Cecil pled guilty to two counts of video voyeurism, and the district court imposed consecutive, unified sentences of five years, with two years fixed, and three years, with zero years fixed, suspended the sentences, and placed Cecil on probation for eight years. (R., pp.101-05.) In December of 2017, the state filed a motion for bench warrant for probation violation

alleging that Cecil had violated the conditions of his probation by committing three new crimes: violation of a protection order and two counts of violation of a no contact order. (R., pp.166-72.) Cecil admitted to having violated his probation by violating a protection order and committing one of the alleged no contact order violations, and the district court revoked his probation, executed his underlying sentence, and retained jurisdiction. (R., pp.181-86.) Cecil filed a notice of appeal timely from the district court's order revoking probation and retaining jurisdiction. (R., pp.187-90.)

Cecil argues that the district court abused its discretion by revoking his probation<sup>1</sup> in light of his purported remorse, acceptance of responsibility, support of family and friends, employment aspirations, desire for treatment, lack of drug or alcohol concerns, minimal prior criminal history, and his claim that his "conduct underlying the probation violations was not severe," despite the victims' statements that they feared for their safety. (Appellant's brief, pp.3-8.) Cecil 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

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<sup>1</sup> Cecil erroneously states that the district court simply executed his sentence (Appellant's brief, p.3), but the district court actually retained jurisdiction (R., pp.181-86; 2/16/18 Tr., p.31, Ls.16-21).

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)).

Cecil is not an appropriate candidate for probation. Cecil has not shown that he is remorseful, nor has he taken responsibility for his actions, as he continued to contact his victims after no contact orders were issued at the time of sentencing. (R., pp.85-98.) Cecil was also incarcerated when he contacted his victims. (R., pp.103, 143-45, 148, 152, 160-62, 166-72.) Additionally, Cecil also contacted his ex-wife, Merriann Cecil, despite an active protection order requested by Merriann. (PSI, p.230.<sup>2</sup>) Cecil completed the Active Behavior Change – Moral Recognition Therapy, Inmate Worker, and Workforce Readiness programs while incarcerated at the Ada County Jail; however, his on-going attempts to contact his victims demonstrates his failure to rehabilitate or be deterred. (R., pp.118-19, 164.)

Despite having a minimal criminal history, Cecil's actions in this case are very serious and he has clearly not been deterred from continuing his criminal behavior as he was committing new crimes while still incarcerated. Contrary to Cecil's claim that his "conduct underlying the probation violations was not severe," his victims' statements demonstrate how his continued criminal conduct has affected their lives. In her statement at the disposition hearing, Marissa Hill stated, "He [Cecil] finds new ways to contact us. We, as victims, are a game for Nathan. Even though he's said he's sorry to us for his actions, in the end it's not enough. He feels in control." (2/16/18 Tr., p.14, Ls.13-16.) Rikki Smithee also made a statement at the disposition

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<sup>2</sup> PSI page numbers correspond with the page numbers of the electronic file "Cecil 45848 psi.pdf."

hearing, noting the many times that Cecil had violated the terms of the no contact order and the effect that his crime has had on her, including having to make a career change as a massage therapist so that the pictures that he shared would not “entice unwanted sexual advances from unwanted clients.” (2/16/18 Tr., p.15, L.13 – p.17, L.8.) Cecil’s ex-wife, Merriann Cecil, also submitted a written statement detailing Cecil’s harassment. She stated:

Nathan has put me in fear of my well-being physically, mentally and emotionally, not just for myself, but for my kids. I live in constant fear. I have had bad anxiety stress and depression because of what he’s done.

....

On January 2<sup>nd</sup>, 2018, the same day he was in court pleading guilty to the probation violation and saying he understood his probation violation could be revoked, he violated the protection order again by somehow getting my new cell phone number and calling me. When I didn’t answer, he started to harass my parents calling them multiple times for days. He recently sent another letter to my parents’ address where he thought I was living. In that letter he continues to threaten me about my child and is still trying to control me.

(2/16/18 Tr., p.19, L.1 – p.20, L.16 (internal quotation marks omitted).) Cecil has clearly failed to rehabilitate despite having received rehabilitative treatment and legal sanctions. His continued refusal to abide by the district court’s no contact orders demonstrates his continued danger to society.

At the disposition hearing, the state recommended that the district court revoke Cecil’s probation and execute the underlying sentence, arguing:

So what you have here, Your Honor, is somebody who will not stop contacting these victims. They have a right, as part of this case, to be free from that contact as ordered by Judge Reardon. And I don’t care how much contact he was able to make or what he thinks his intentions were in reaching out to them. They have a right to that peace of mind.

And it’s sending a message to these women, Your Honor, that if he is not going to abide by this no-contact order when he’s behind bars, what peace of mind do they have that he’s going to abide by it if he’s out in the community. They don’t have any.

(2/16/18 Tr., p.23, Ls.2-15.) The district court subsequently set forth its reasons for revoking Cecil's probation and retaining jurisdiction. (2/16/18 Tr., p.30, L.24 – p.31, L.25.) The state submits that Cecil 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 part of its argument on appeal. (Appendix A.)

Conclusion

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

DATED this 23rd day of August, 2018.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of August, 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:

LARA E. ANDERSON  
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

<p style="text-align: center;">29</p> <p>1 I've found an amazing program, as Marco  2 stated, in the Celebrate Recovery program that's  3 based in a church close to my home as well as the  4 church that I've enjoyed going to. When I'm going  5 to church, I'm definitely a different man, a  6 better man, which I'll not only be better for  7 myself, but better for my family. As it says in  8 Proverbs 23:12, "Apply your heart to instruction  9 and your ears for words of knowledge."  10 I have been in contact with several  11 places of employment, which -- and will be working  12 several jobs so I can not only support my family,  13 but myself. This will allow me to pay my child  14 support on time, play catch-up with that, as well  15 as keep up with my costs of supervision, my court  16 costs and my restitution.  17 I've started the process of enrolling  18 in college so I can further my education in fields  19 that will hold my interest as well as allow for  20 growth and potential in myself.  21 I also found hobbies, recreational  22 activities and sports I can use to fill any spare  23 time I may have to help me in a positive way.  24 That way I'm no longer a threat to anybody around  25 me.</p> <p style="text-align: center;">31</p> <p>1 into a long, detailed account of what I think  2 ought to be done and what they can do and string  3 it out.  4 This is clearly an egregious situation.  5 And I have no intention of putting the defendant  6 back on probation. I am going to revoke probation  7 and order that the defendant serve his prison  8 sentence. I think when you look at the various  9 considerations that are given in Idaho, especially  10 in the case of State versus Toohill, clearly the  11 defendant deserves to be in prison.  12 With that in mind, I also recognize  13 that I was not the person -- I was not the judge  14 who handled this case in the first place. If I  15 were, I would just say go to prison and that's it.  16 However, I think that due to the fact  17 that this was originally Judge Reardon's case,  18 that he should have the final say. So I am going  19 to retain jurisdiction for him to make the final  20 determination on whether or not he should be  21 placed back on probation.  22 If it were up to me, I'd say no, but I  23 think he should be given this one final chance to  24 -- or Judge Reardon should be given a final chance  25 to make that determination.</p>	<p style="text-align: center;">30</p> <p>1 I, again want to express how deeply  2 remorseful I am for my crimes. I only wish to  3 make amends so everyone involved can move forward  4 in recovery and put all of this in their past and  5 learn from everything that has happened.  6 I know from my experience, I'm just  7 going stir crazy and that is why I violated my  8 probation. And knowing this, I am positive the  9 retained jurisdiction and/or prison time is not a  10 good, informed rehabilitation for myself. Not  11 only that, if I am sentenced to do that, it will  12 just put my life in danger.  13 I ask and pray that if given a chance  14 to use the tools that I've learned outside of  15 incarceration and be reinstated on probation, I  16 know I will no longer be stir crazy and I can be a  17 productive and valued part of society and a valued  18 part of the community.  19 Thank you.  20 THE COURT: Is there any legal cause why  21 probation should not be revoked?  22 MR. DEANGELO: No, Your Honor.  23 MS. SLAVEN: No.  24 THE COURT: Ordinarily when I sentence  25 somebody, in order to revoke probation, I don't go</p> <p style="text-align: center;">32</p> <p>1 If I understand it, from the  2 information before the Court, you're entitled to  3 214 days credit for time served toward the fixed  4 portion of the sentence. If you're dissatisfied  5 with the Court's decision, you have the right to  6 appeal to the Supreme Court within 42 days. If  7 you want to appeal and can't afford a lawyer, one  8 can be appointed for you at state expense.  9 One final thing. The quickest way for  10 you to get a bad recommendation from the  11 Department of Correction is to do anything to get  12 in touch with the people who are victims in this  13 case. Do you understand that?  14 THE DEFENDANT: Yes, I do, Your Honor.  15 THE COURT: Have you got any questions about  16 it?  17 THE DEFENDANT: No, I don't, Your Honor.  18  19  20  21  22  23  24  25</p>
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