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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45872
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-2017-11128
	)	
RICHARD DAVID ADAM, II,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Adam failed to establish that the district court abused its discretion by revoking his probation and executing his underlying unified sentence of 10 years, with two years fixed, imposed following his guilty plea to burglary?

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

Adam pled guilty to burglary and, in August of 2017, the district court imposed a unified sentence of 10 years, with two years fixed, and suspended the sentence. (R., pp.60-65.) In December of 2017, the state filed a motion for bench warrant for probation violation, alleging

that Adam had violated the conditions of his probation by failing to report to his supervising officer on five separate occasions, changing residences without permission, using a co-worker's Norco, using methamphetamine, failing to attend and/or complete Rider Aftercare treatment, failing to report for mandatory drug testing, absconding, and failing to pay fines, fees funds, surcharges and/or costs as ordered by the Court. (R., pp.66-73) Adam subsequently admitted that he violated the conditions of his probation by absconding. (R., p.100; Tr., p.4, Ls.3-6.) The district court revoked Adam's probation, and executed his underlying sentence. (R., pp.105-07.) Adam filed a notice of appeal timely from the district court's order revoking probation and executing his underlying sentence. (R., pp.108-10.)

Adam asserts that the district court abused its discretion by revoking his probation, rather than considering him for placement in drug court, in light of his substance abuse issues, "potential for rehabilitation," and "the circumstances surrounding his violation." (Appellant's brief, pp.3-5.) Adam 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)).

Adam has clearly demonstrated that he is not a viable candidate for community supervision. Adam's criminal history is extensive, and includes multiple charges, two misdemeanor convictions, and four felony convictions: theft (amended from burglary), robbery, malicious injury to property, and possession of a controlled substance. (PSI, pp.34-37, 359.<sup>1</sup>) Adam had also recently completed a retained jurisdiction program in another case when he was sentenced in this case. (PSI, p.359; Tr., p.12, Ls.17-18.)

Adam claims that he has rehabilitation potential because he recently completed a rider; however, a review of the record shows that, while serving his rider, Adam amassed five verbal warnings, seven written warnings, and had an "emergency situation" when he talked to another offender about how he could escape from NICI. (PSI, pp.361-62.) Adam's case manager reported, "I am concerned that the positive changes he [Adam] has made are less than sincere and that it is likely that he will return to this behavior because it is easy, lucrative, and he fantasizes about it," and "I am concerned that structured environment of NICI has a clear path to success and Mr. Adam's fear of program removal was the main component of his change." (PSI, pp.362, 365.) While Adam did complete his retained jurisdiction program, his "success" was marred by disciplinary issues and concerns that he did not internalize his programming. (Appellant's brief, p.5; PSI, pp.362, 365.) These concerns were certainly valid, as within a few weeks of being placed on probation in this case, Adam was alleged to have been violating the terms of his probation by failing to report to his probation officer, using methamphetamine, and failing to attend Rider Aftercare treatment. (R., pp.69-72.) Finally, while the loss of support

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "Adam 45872 psi.pdf."

rom his child's mother is unfortunate, it does not outweigh the seriousness of the offense or Adam's failure to rehabilitate while in the community.

At the disposition hearing the district court articulated its reasons for revoking Adam's probation. (Tr., p.12, L.4 – p.13, L.7.) The state submits that Adam 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 Adam's probation and executing his underlying sentence.

DATED this 26th day of October, 2018.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of October, 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:

KIMBERLY A. COSTER  
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

11

1 would always have access to my kid, so I was  
2 looking at her as a family member. I don't have  
3 any family, so she was my support structure. And  
4 when she didn't want to help me through, I just  
5 started to just threw my cards in, so to speak,  
6 and ask just gave up.  
7 And I realize I shouldn't have done  
8 that. And I realize I made a huge mistake which  
9 will more than likely cost me valuable time of my  
10 life, somewhere I don't want to be, but I have to  
11 choose. I have to live with the decisions I make,  
12 and I have to choose my battles, and all of that  
13 stuff.  
14 So there's no excuse for what I did. I  
15 just don't want to do that anymore. I don't want  
16 to get out of prison and be hooked on drugs. I  
17 don't want to be on drugs period. I have a lot of  
18 positives going for me. I have a job whenever I  
19 get out. I was starting my own business like my  
20 PO was suggesting me to do.  
21 I have a fair understanding of  
22 electronics and things of that nature. I can  
23 offer the community a great deal. That's all I  
24 have.  
25 THE COURT: Is there legal cause why we

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1 should not proceed?  
2 MR. WHITE: No, Your Honor.  
3 MR. MARX: No, Your Honor.  
4 THE COURT: Well, I put you on probation on  
5 August 30, 2017. You started using and failing to  
6 report by September 14th. You tested positive for  
7 methamphetamine and were put on a stand-down at  
8 sober living facility.  
9 You failed to successfully complete the  
10 rider aftercare program because you didn't go to  
11 the treatment programs. You failed to report to  
12 mandatory drug tests ordered by this Court. I  
13 mean, it's just -- this, with your past record, I  
14 don't see how that this is a feasible option.  
15 You don't show up and the fundamental  
16 requirement for an -- even an intensive outpatient  
17 program -- is a person who shows up. And you  
18 had -- you had just come off a north Idaho rider.  
19 You had clean time. There is every reason to be  
20 able to expect a person who is coming in off a  
21 rider to be able to maintain clean time and follow  
22 through.  
23 I don't really see this as an option  
24 with your extensive prior record and absconding  
25 almost immediately and not following through,

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1 particularly in line of your prior record. I  
2 don't see that it's workable.  
3 I'm going to revoke probation and  
4 impose sentence. You get credit for time served.  
5 But I don't see a person who doesn't show up  
6 within 2 weeks of being put on probation is a good  
7 risk for the drug court programs.  
8 THE DEFENDANT: Okay. Thank you.  
9 (Proceeding concluded at 5:50 p.m.)  
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1 REPORTER'S CERTIFICATE

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3 STATE OF IDAHO )  
4 COUNTY OF ADA ) SS

5

6 I, ROXANNE K. PATCHELL, Official Court  
7 Reporter, Ada County, State of Idaho hereby  
8 certify:  
9 That I am the reporter who took the  
10 proceedings had in the above-entitled action in  
11 machine shorthand and thereafter the same was  
12 reduced into typewriting under my direct  
13 supervision; and  
14 That the foregoing reporter's transcript  
15 contains a full, true, and accurate record of the  
16 proceedings had in the above and foregoing cause,  
17 which was heard in Boise, Idaho  
18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand this 4th of May, 2018.  
20  
21  
22 *Roxanne K. Patchell, RPR, CSR*  
23 Roxanne K. Patchell, RPR, CSR  
24 Idaho CSR Number 733  
25 California CSR Number 12057