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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45939
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR-2014-10447
)	
DAVID LLOYD ALTES, SR.,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

On September 30, 2014, while Altes was on probation for felony possession of a controlled substance, officers searched his residence and found two baggies of methamphetamine in Altes' backpack, a blue container of methamphetamine "in his possession," "baggies with a

burnt crystal substance” and “multiple glass pipes with residue” in a “black zipper case,” \$504.00 in cash on Altes’ bed, \$50.00 in cash and glass pipes with burnt residue on the living room table, a “lampstand that had a metal tray with a bong, two glass pipes, and some crystal residue on it,” and a “black case ... with two syringes, several baggies, and a small spoon inside of it. There were two digital scales, baggies with insulin syringes, small zip lock baggies, and vinyl tubes which had been transformed into pipes also located in the residence.” (R., pp.17-18; PSI, pp.10-11, 13.¹) “The gross weight of the methamphetamine found in the baggies and in the blue container Altes had in his possession was 47.9 grams.” (R., p.18.)

The state charged Altes with possession of methamphetamine, with a persistent violator enhancement. (R., pp.35-38.) Pursuant to a plea agreement, Altes pled guilty to possession of methamphetamine, the state dismissed the persistent violator enhancement, the parties stipulated to “a sentence of 3 years fixed plus 4 years indeterminate for a total of 7 years with a retained jurisdiction,” and Altes waived his right to “appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court,” unless the district court exceeded the three-year determinate portion of the stipulated sentencing recommendation or the “retained jurisdiction recommendation.” (R., pp.46, 58.) Consistent with the plea agreement, the district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.68-73.) Following the period of retained jurisdiction, on September 11, 2015, the district court suspended Altes’ sentence and placed him on supervised probation for three years. (R., pp.77-82.)

¹ PSI page numbers correspond with the page numbers of the electronic file “Supreme Court No. 45939 David Lloyd Altes Sr. Confidential Documents.pdf.”

On June 30, 2017, the state filed a motion for probation violation alleging that Altes had violated the conditions of his probation by committing the new crime of possession of methamphetamine, testing positive for methamphetamine (later amended to failing to provide a sufficient urine sample for drug testing (10/20/17 Tr., p.17, L.25 – p.18, L.6)), and failing to show proof of completing his community service hours (R., pp.86-87). Altes admitted the allegations and the district court revoked his probation and executed the underlying sentence. (R., pp.107, 118-22.) Altes filed a notice of appeal timely from the district court's order revoking probation. (R., pp.123-27.)

Altes asserts that the district court abused its discretion by revoking his probation in light of his support from others, employment, and claim that he “remained sober for almost two years” while on probation. (Appellant's brief, pp.3-5.) Altes 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)).

Contrary to Altes' assertions on appeal, the record supports the district court's determination that Altes was no longer a suitable candidate for probation, particularly in light of his ongoing criminal offending, unwillingness to abide by the conditions of community supervision, and failure to rehabilitate or be deterred. Altes' criminal record dates back to 1991 and includes at least seven prior felony convictions, 18 misdemeanor convictions, and numerous probation violations. (PSI, pp.6-12.) He has been using illegal drugs for more than 30 years, and has continued to abuse illegal substances and commit crimes despite multiple prior legal sanctions and treatment opportunities, including self-help groups, Cognitive Self Change, Breaking Barriers, inpatient and outpatient substance abuse treatment, Drug Court, the retained jurisdiction program, and rehabilitative programming "while in prison." (PSI, pp.2, 6-13, 19-21, 28, 31-32, 34-35, 43, 57, 100; R., p.94.)

Altes was placed on his first rider following a probation violation in 2007; he "completed New Directions programming at the North Idaho Correctional Institution and Moral Reconciliation Therapy (MRT) while in the community." (PSI, pp.10, 12 (parenthetical notation original).) In 2011, he was convicted of felony possession of a controlled substance and was placed in Drug Court, during which he participated in "Early Recovery Treatment"; however, he was expelled from Drug Court for violations and was "remanded back to District Court on 12/29/2011 after he was charged with Conspiracy to Commit Child Custody Interference." (PSI, pp.10-13, 21.)

In 2012, while his probation violation and the new charge were pending, Altes again committed the felony offense of possession of a controlled substance. (PSI, pp.11, 13.) He was ultimately found in violation of his probation in the 2011 felony possession of a controlled substance case and was convicted of both of the new felony offenses (conspiracy to commit custodial interference and the 2012 felony possession of a controlled substance), and was placed

in the retained jurisdiction program in all three cases, during which he completed the CAPP Matrix program. (PSI, pp.11, 13, 32.) Following his second rider, Altes was again placed on probation and he subsequently completed Matrix Aftercare through Preferred Child and Family Services. (PSI, pp.11, 13, 21, 32.)

Altes was still on felony supervision when he committed the instant possession of methamphetamine offense in 2014. (PSI, p.13.) He told the presentence investigator that he had “not used illegal drugs since 2012,” stating that he was “involved” with methamphetamine in the instant offense because he was “selling drugs in order to make some money” and he had “people in his home who were packaging drugs for sale.” (PSI, pp.13, 20, 25.) The presentence investigator determined that Altes presents a high risk to reoffend and recommended imprisonment, noting that Altes “has a total of seven prior felony convictions and he has been on supervision for the majority of the time since 1991. He has a poor supervision history and continues to engage in criminal behavior despite past sanctions.” (PSI, pp.24, 26.) The district court instead granted Altes the opportunity of a third rider, during which Altes completed additional substance abuse programming, Career Bridge One, and Pre-release classes before he was once again placed on probation in late 2015. (R., pp.77-82; PSI, p.100.)

While he was on probation in this case, Altes was required to submit to random drug testing and participate in “NDA/CAPP Aftercare.” (R., p.89.) He was also “placed on a curfew in an attempt to curtail any illegal activities.” (R., p.89.) Despite this, Altes yet again committed the new crime of possession of methamphetamine while he was on probation, resulting in his fifth conviction for felony possession of a controlled substance and his ninth overall felony conviction. (R., pp.87-88; PSI, pp.6-12; 3/6/18 Tr., p.13, Ls.14-17.) Altes’ continued criminal

offending and unwillingness to abide by the terms of community supervision demonstrate his failure to rehabilitate and his continued danger to society.

At the probation violation disposition hearing, the state argued:

Reviewing some of these letters and the PSI, it's evident that the defendant is the kind of person that works very hard at his job and his employment. Unfortunately, he's applied himself equally diligently to his criminal activities. He's got an extensive felony history that goes back to 1991, numerous felony convictions. Just in the recent years, the defendant has had the benefit of three retained jurisdictions, two opportunities at drug court.

At this point in time, Your Honor, it's the State's position that we've exhausted the options for community supervision. And at this point we have nothing left but to impose a prison sentence.

(3/6/18 Tr., p.7, L.14 – p.8, L.1.) The district court likewise stated, “I have considered all the factors set forth in Idaho Code 19-2521, and I agree that the -- really the system has exhausted its resources to handle you on the outside.” (3/6/18 Tr., p.15, Ls.4-7.)

The district court considered all of the relevant information and reasonably concluded that Altes was no longer a viable candidate for community supervision. The district court's decision to revoke Altes' probation and execute his underlying sentence was appropriate in light of Altes' ongoing criminal offending, his refusal to comply with the conditions of community supervision, his failure to rehabilitate or be deterred despite numerous prior legal sanctions and treatment opportunities, and the risk he poses to society. Given any reasonable view of the facts, Altes has failed to establish an abuse of discretion.

Conclusion

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

DATED this 21st day of February, 2019.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of February, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

REED P. ANDERSON
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/s/ Lori A. Fleming
LORI A. FLEMING
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