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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46035
)	
v.)	ADA COUNTY NO. CR-FE-2015-15971
)	
JAMES EDWARD WHITMORE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

James Edward Whitmore appeals from the district court's order revoking probation. He asserts the district court abused its discretion when it revoked his probation and executed his five-year sentence.

Statement of the Facts & Course of Proceedings

In October of 2015, law enforcement went to Mr. Whitmore's residence to speak with him regarding an alleged domestic battery incident. (Presentence Report (PSI), p.3.)¹ Upon arrival, officers discovered two marijuana plants, a small amount of marijuana, and drug

¹ All citations to the PSI refer to the 496-page electronic document that contains the original PSI in addition to more recent sealed documents.

paraphernalia. (PSI, p.3.) Subsequently, Mr. Whitmore was charged with one count of manufacturing a controlled substance, and two misdemeanor counts. (R., pp.24-25.) Pursuant to a plea agreement, Mr. Whitmore agreed to plead guilty to one count of manufacturing a controlled substance and one misdemeanor count of domestic battery in another case. (R., p.32.) In exchange, the State agreed to dismiss the other charges in this case and recommend that the district court retain jurisdiction with an underlying sentence of five years, with two years fixed. (R., p.32.) Thereafter, the district court imposed a sentence of five years, with one year fixed, and retained jurisdiction. (R., pp.48-49; Tr., p.27, Ls.7-11.)

After Mr. Whitmore successfully completed a rider program, the district court suspended his sentence and placed him on probation for five years in October of 2016. (R., p.82.) In January of 2018, the State alleged Mr. Whitmore had violated the conditions of his probation. (R., pp.100-03.) Mr. Whitmore later admitted he violated his probation by smoking heroin, attempting to falsify his urinalysis results, failing to attend a domestic violence course, and failing to obtain permission before changing his residence. (Tr., p.11, L.4 – p.15, L.18.)

At the disposition hearing, the State recommended that the district court execute the underlying sentence. (Tr., p.31, L.8 – p.34, L.4.) Mr. Whitmore's counsel requested that the district court reinstate probation. (Tr., p.34, L.15 – p.36, L.13.) The district court revoked probation and executed the underlying sentence. (Tr., p.37, Ls.13-21; R., pp.115-16.) Mr. Whitmore then filed a timely notice of appeal. (R., pp.121-22.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Whitmore's probation and executed his underlying sentence of five years, with one year fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Whitmore's Probation And Executed His Underlying Sentence Of Five Years, With One Year Fixed

The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. This Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines "whether the defendant violated the terms of his probation." *Id.* Second, "[i]f it is determined that the defendant has in fact violated the terms of his probation," the Court examines "what should be the consequences of that violation." *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Whitmore does not challenge his admissions to violating his probation. "[W]hen a probationer admits a direct violation of his probation agreement, no further inquiry into the question is required." *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Whitmore submits the district court abused its discretion by revoking his probation after those admissions.

"After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court." *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). Appellate courts conduct a multi-tiered inquiry when an exercise of discretion is reviewed on appeal. The court considers: "Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

“The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision.” *State v. Mummert*, 98 Idaho 452, 454 (1977). “In determining whether to revoke probation a court must consider whether probation is meeting the objective of rehabilitation while also providing adequate protection for society.” *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant’s conduct before and during probation. *Roy*, 113 Idaho at 392.

In this case, Mr. Whitmore submits that the district court abused its discretion by revoking his probation because his probation was achieving its rehabilitative objective while providing protection for society. As his counsel pointed out at the disposition hearing, Mr. Whitmore was successful on probation for a long time; he completed the rider aftercare program, and he expressed interest in completing another program. (Tr., p.34, Ls.18-23.) He was also gainfully employed and attending 12-step meetings with one of his bosses until he hurt his hand in June of 2017 and was given opioid pain medication and then relapsed. (Tr., p.35, Ls.1-9; PSI, p.410.) Mr. Whitmore’s counsel also explained that Mr. Whitmore did not attend the court-ordered domestic violence classes because he was struggling financially, and he was working and trying to take care of a new baby. (Tr., p.35, Ls.12-18.)

Counsel also submitted several letters of support for Mr. Whitmore, which the district court considered.² (Tr., p.30, L.13 – p.31, L.1, p.34, Ls.12-14.) Mr. Whitmore’s wife wrote a letter to the court in which she stated that Mr. Whitmore “did exceptionally well” after completing his rider. (Augmentation, p.2.) She explained that Mr. Whitmore was very excited about the birth of their first child, had been a “loving devoted father,” and she needed his support

² Those letters are not currently a part of the record on appeal. Undersigned counsel contacted the district court clerk regarding the letters, and the court issued an order correcting the information in the presentence report and attached the letters to the order. As such, a motion to augment the record with those letters is filed contemporaneously with this appellant’s brief.

to raise their child. (Augmentation, pp.2-3.) She also stated Mr. Whitmore had been “an outstanding stepfather” to her oldest son, who was 10. (Augmentation, p.3.)

Mr. Whitmore’s former boss also submitted a letter. (Augmentation, p.4.) He stated that Mr. Whitmore had “always done a great job,” and it was unfortunate that Mr. Whitmore had to be laid off due to a lack of work. (Augmentation, p.4.) He wrote that he had employed many people who had been “trying to put their lives back together,” and he had always thought highly of Mr. Whitmore. (Augmentation, p.4.) He also noted that he had attended “recovery meetings” with Mr. Whitmore on most of the days they worked together. (Augmentation, p.4.)

This information shows that Mr. Whitmore was motivated to become a productive member of society, and his setbacks on probation were attributable to his issues with substance abuse. Indeed, the GAIN-I Recommendation and Referral Summary prepared prior to the disposition hearing indicated that Mr. Whitmore was diagnosed with a severe cannabis use disorder, a severe stimulant disorder, and a severe opioid use disorder. (PSI, pp.413-14.) But even though he had these personal struggles with drug abuse, he was not a danger to society as a whole, and he was trying to support his family. In light of these facts, the district court abused its discretion by revoking Mr. Whitmore’s probation and executing his five-year sentence because it did not reach its decision to revoke his probation through an exercise of reason. The district court should have reinstated his probation and given him a chance to aggressively pursue recovery and take care of his family.

CONCLUSION

Mr. Whitmore respectfully requests that this Court vacate the district court's order revoking his probation and remand his case for a new disposition hearing.

DATED this 5th day of December, 2018.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HISEBY CERTIFY that on this 5th day of December, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

RPA/eas