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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46054
Plaintiff-Respondent,)	
)	Nez Perce County Case No.
v.)	CR-2016-5989
)	
MATTHEW LEE EVANS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

On August 5, 2016, Evans smoked marijuana and then drove “erratically” through downtown Lewiston, “doing 100 [miles per hour] down Main Street,” “swerving and cutting people off,” and driving “into the oncoming lane of traffic[,] straddling the center lane.” (PSI,

pp.3-4, 45.¹) An officer stopped Evans, noted that Evans was “lethargic with his movements and his eyes were very watery,” and asked Evans for permission to search his vehicle. (PSI, pp.3, 40.) Evans exited his vehicle and consented to a search of the vehicle, inside of which the officer found “several weapons including brass knuckles and several different knives” and a “Marlboro box” containing a capsule of methamphetamine. (PSI, p.41.) Officers also discovered a second Marlboro box – which Evans “had on his person prior to the search of the vehicle” – containing “plastic cellophane wrapped around a small amount of marijuana.” (PSI, pp.41, 44.)

The state charged Evans with possession of methamphetamine. (R., p.85.) Pursuant to a binding Rule 11 plea agreement, Evans pled guilty to possession of methamphetamine and the parties stipulated to probation, with six months in the county jail, and an underlying unified sentence of five years, with two years fixed. (R., pp.96, 99-104.) As part of the plea agreement, Evans waived his right to “appeal any sentence that is imposed in accordance with the agreed upon terms of this agreement and his/her right to seek a sentence modification under I.C.R. 35(b).” (R., pp.101-02.) Consistent with the plea agreement, the district court imposed a unified sentence of five years, with two years fixed, suspended the sentence, and placed Evans on supervised probation for five years. (R., pp.117-22.)

Just three months later, Evans’ probation officer filed a report of violation alleging that Evans had violated the conditions of his probation by committing the new crimes of open container and driving with a suspended driver’s license, possessing and consuming alcohol, and testing positive for alcohol, methamphetamine, and marijuana. (R., pp.134-37.) Evans admitted

¹ PSI page numbers correspond with the page numbers of the electronic file “SC# 46054 State of Idaho v. Matthew Lee Evans-CONFIDENTIAL-Exhibit to the Record.pdf.”

that he violated the conditions of his probation by “possessing and consuming alcohol” and “driving on a suspended license,” and the state withdrew the remaining allegations. (3/14/18 Tr., p.8, L.25 – p.9, L.12; R., p.153.) The district court revoked Evans’ probation and executed his underlying sentence. (R., pp.158-63.) Evans filed a notice of appeal timely from the district court’s order revoking probation. (R., pp.164-70.)

Evans asserts that the district court abused its discretion by revoking his probation in light of his substance abuse, letter of support from an employer, and because he “cooperated with the officer who discovered him” violating his probation and “admitted he relapsed.” (Appellant’s brief, pp.3-4.) Evans 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)).

Evans is not an appropriate candidate for probation, as demonstrated by his ongoing substance abuse and criminal behavior, his unwillingness to abide by the terms of community supervision, his high risk to reoffend, and his failure to rehabilitate or be deterred. Evans – age 29 at the time of sentencing – admitted that his criminal history spans almost two decades. (PSI,

pp.1, 8.) He reported that “his first contact with law enforcement was at the age of 9 or 10,” that he “spent [four] months in Spring Creek Detention Facility” in Colorado when he was “11 or 12” for “running away and theft,” and that he “also spent time at the Martin Hall Juvenile Detention Facility in Moses Lake, Washington.” (PSI, pp.1, 8.) He stated that he was also “on juvenile probation out of Asotin County[,] Washington for ‘[a] long time,’” and that he “receiv[ed] probation violations for skipping school and having methamphetamine in his system.” (PSI, p.8.) At age 18, Evans committed the crimes of felony delivery of a controlled substance and felony “conspiracy to commit controlled substance,” for which he was granted withheld judgments; however, he ““failed within the first month and was sent on a Rider in August of 2006.”” (PSI, p.8.) Evans advised that he “failed the first rider” and was “sent on a second rider. He reported within for [sic] days of being placed back on probation he was arrested and sentenced to [two] years in the Department of Correction[,] where he completed a one year TC Rider.” (PSI, p.8.) Evans has also incurred convictions for minor in possession of alcohol, indecent exposure, burglary, DUI, “unauthorized person to drive” (amended from DWP), three convictions for misdemeanor possession of a controlled substance, and three convictions for possession of drug paraphernalia and, at the time of sentencing for the instant offense, he had new charges pending for possession of a dangerous weapon, reckless endangerment, reckless driving, and driving while suspended. (PSI, pp.5-8.)

Evans has been granted numerous opportunities on community supervision and has been afforded multiple treatment opportunities, all seemingly to no avail, as he has continued to abuse illegal substances and commit crimes. (PSI, pp.8, 13, 22.) Evans’ disregard for the law and the terms of probation persisted while he was on probation in this case, as he chose to violate the law

and the conditions of his probation by driving with a suspended driver's license and using methamphetamine and marijuana. (R., pp.134-36.)

At the disposition hearing for Evans' probation violation, the state addressed Evans' continued substance abuse and criminal offending, his poor performance on probation, his lack of sufficient rehabilitative progress, and his failure to heed the district court's warning that a probation violation would likely result in the revocation of his probation and execution of his underlying sentence. (3/16/18 Tr., p.29, L.5 – p.30, L.9 (Appendix A).) The district court subsequently articulated its reasons for revoking Evans' probation and executing the underlying sentence. (3/16/18 Tr., p.32, L.6 – p.35, L.3 (Appendix B).) The state submits that Evans has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the disposition hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

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

DATED this 16th day of January, 2019.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of January, 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:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 that as a possible resolution as opposed to prison,
2 your Honor. Thank you.

3 THE COURT: Thank you, Mr. Reisenauer.

4 Ms. Dickerson.

5 MS. DICKERSON: Well, your Honor, I noted
6 on the probation violation report to the Court that
7 the Department did not make any recommendations as
8 to what the Court should do with Mr. Evans.
9 Mr. Reisenauer is correct, I looked back at the
10 notes and on 2-28 of '18 in his review before this
11 Court he admitted to the Court that he had a little
12 relapse and was put on a signed agreement with his
13 PO in Washington where he was UA'd every week.

14 However, I don't agree with Mr. Reisenauer
15 that Matthew has been doing well on probation. He
16 has a new law violation of driving without
17 privilege, and he also has been consuming alcohol,
18 and he admitted a marijuana relapse, your Honor.

19 Is prison what will do Matthew any good, I
20 don't know. Your Honor did say the last time when
21 he was finally before the Court on sentencing back
22 in December, your Honor said "I hope you have been
23 truthful and sincere. All I have is your word. If
24 you want to make changes, it's up to you, and I want
25 to provide someone the opportunity to do that. I'm

1 going to put you on probation and you need to
2 respect this opportunity. If you continue to
3 violate the law or use drugs, a rider would be
4 unlikely here. If you violate your probation and
5 come back, I will probably just impose the sentence,
6 so I hope you are sincere. You get to decide. You
7 get to decide if your future includes prison."

8 Given that, your Honor, we will leave it
9 to the Court.

10 THE COURT: Thank you, Ms. Dickerson.

11 Mr. Evans, is there anything you'd like to
12 say at this time?

13 THE DEFENDANT: Yes, your Honor. I know
14 they say the first step in recovery is admitting
15 your wrongdoings, and I will be the first one to
16 tell you I am guilty of drinking. I made a poor
17 decision, there is no justification there.

18 What plays in the back of my head is your
19 last words that if I was to sit in front of you
20 again in cuffs with some violations, that I would go
21 to prison. That's always been in the back of my
22 head. I did see you on the 28th of February and I
23 did admit.

24 I didn't have no course or I didn't have
25 my POs over in Washington tell me to admit to

APPENDIX B

1 made a poor decision, I can only ask for leniency on
2 the poor decision that I made. I just hope that you
3 decide to give me maybe a half a chance to prove
4 that I will follow through with what I am saying.

5 That's all I have to say, your Honor.

6 THE COURT: Well, Mr. Evans, as I have
7 talked about, I went back and took me awhile before
8 I was willing to agree to the terms of the plea
9 agreement that you made, and I told you at
10 sentencing that I hoped that you were committed at
11 that point in time to try to make some changes and
12 that what you were reporting to me was accurate.
13 Honesty is certainly important, Mr. Evans, but there
14 comes a time when results are important too. And at
15 some point in time you need to stop violating the
16 law and stop putting yourself in front of courts. I
17 gave this a try, and I told you what the
18 consequences were going to be and what those
19 consequences were likely to be. That's an unusual
20 thing for me to do, Mr. Evans. I don't -- I don't
21 often make those kinds of statements because I'm
22 always going to consider what someone has done when
23 they are placed on probation, I'm always going to
24 consider what kind of performance I have received,
25 but I have to look at this and see that you came

1 before me for a couple of reviews. The last one was
2 February 28th, so that's Wednesday morning, and then
3 Thursday night is when this incidence occurs.

4 And it's more than just relapse, it was
5 driving that vehicle involved here too. I think the
6 threat that I see you presenting, Mr. Evans, is
7 always going to be related to controlled substances
8 use and driving, those are the things that I think
9 are the most things that cause you to present a
10 threat to society, but I do have to recognize here
11 the threat that was contained here by that use of
12 alcohol and driving that vehicle to where you were
13 found. And I don't know what attracted people's
14 attention, but I know that you were contacted by
15 people from the sheriff's office. I kind of looked
16 through those reports and, you know, you did have a
17 knife and you made some movements that could have
18 subjected yourself to a great deal of harm and put
19 those officers in a situation where they had to
20 consider that possibility with you. And fortunately
21 they resisted and that didn't happen, but that was a
22 risk you presented there.

23 I look back at the time of the sentencing,
24 of course, I had the retained jurisdiction
25 recommendation but I didn't think it was entirely

1 appropriate given your history. I made the decision
2 at that point in time I was going to give you an
3 opportunity at probation, I went with the parties'
4 agreement. You had your probation transferred to
5 Washington and you seemed to be making some positive
6 steps with your employment.

7 But mostly I think, Mr. Evans, that what I
8 discussed with you at that time was my hope that you
9 were sincere in wanting to make some positive
10 changes, and I informed you of what the likely
11 consequences would be if you were not able to make
12 those changes. I needed positive performance from
13 you and this was violated in less than ninety days
14 after you were given that opportunity at probation,
15 so what that's proved to me is that you can't do
16 probation in your current situation.

17 As I have said, this is something more
18 than just relapse in my estimation and presented a
19 risk to society that I think is too great at this
20 point in time. So I find myself in agreement with
21 myself, Mr. Evans, that I really think most
22 appropriate thing that I can do is live up to what I
23 told you I was going to do at the time of the
24 sentencing, I think that is appropriate given your
25 conduct. I wish that had -- the efforts that have

1 been made through treatment program had been
2 successful, but ultimately that was on you,
3 Mr. Evans.

4 On your admission to violating the terms
5 and conditions of your probation in this matter,
6 Mr. Evans, I find that you are in violation of that
7 probation, and the sentence that I had previously
8 suspended in this matter of not less than two and
9 not more than five years in the custody of Idaho
10 State Board of Corrections, that sentence previously
11 suspended is now revoked and imposed in this matter,
12 and you are remanded to the custody of Nez Perce
13 County Sheriff's Office for transfer to the
14 Department of Corrections.

15 In this matter one of the terms and
16 conditions of the probation previously imposed was a
17 period of time to be served in the Nez Perce County
18 Sheriff jail, that sentence along with the time
19 served following this arrest on the probation
20 violation are both going to be credited towards the
21 minimum period of confinement on Mr. Evans'
22 sentence.

23 Anything else, Mr. Reisenauer?

24 MR. REISENAUER: No, your Honor.

25 THE COURT: Ms. Dickerson?