

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46153
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2011-8463
)	
STERLING WILLIAM ANDERSON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Anderson failed to establish that the district court abused its discretion by revoking his probation and executing a reduced, unified sentence of seven years, with two years fixed, imposed following his guilty plea to felony DUI?

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

In 2011, Anderson pled guilty to felony DUI and the district court imposed a unified sentence of eight years, with three years fixed, and retained jurisdiction. (R., pp.110-16.) After a period of retained jurisdiction the district court placed Anderson on probation for four years. (R., pp.124-32.) In May 2015, Anderson's probation officer filed a report of violation alleging

that Anderson had violated the conditions of his probation by absconding, being discharged from treatment, and failing to pay the cost of supervision. (R., pp.133-34.) Anderson admitted to having violated his probation as alleged, and the district court revoked his probation, executed his sentence, and retained jurisdiction a second time. (R., pp.147-54.) Following another period of retained jurisdiction the district court placed Anderson on probation for four years. (R., pp.157-60.)

Approximately four months later, in September 2016, Anderson's probation officer filed a progress report advising the court that Anderson had checked in at his probation officer's office on July 7, 2016, but that he had not had any contact with his probation officer since that time. (R., p.161.) Anderson was subsequently placed on a Performance Action Plan that required him to enter the SHARE program, secure full-time employment, and find a suitable residence. (R., p.165.) Less than six months later, Anderson's probation officer filed a report of probation violation alleging that Anderson had violated the conditions of his probation by absconding and by being discharged from the SHARE program. (R., pp.172-73.) Anderson admitted to having violated his probation as alleged, and the district court revoked his probation and executed a reduced sentence of seven years, with two years fixed. (R., pp.185-88.) Anderson filed a notice of appeal timely from the district court's order revoking probation and executing his reduced, underlying sentence. (R., pp.189-91.)

Anderson asserts that the district court abused its discretion by revoking his probation in light of his support from family and friends, medical health issues, the fact that he "acknowledged that he relapsed," and because wanted back into the SHARE program. (Appellant's brief, pp.2-4.) Anderson 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)).

Anderson is not a viable candidate for probation in light of his refusal to abide by the conditions of community supervision, failure to report to his probation officer, and failure to rehabilitate despite multiple opportunities to do so. Anderson’s extensive criminal record includes multiple DUI convictions and charges, and he reported that, while on probation in a previous case in 2006, he violated his probation by consuming alcohol. (PSI, pp.4-9.¹) Anderson also reported that he does not think he has an alcohol problem, stated, “I know I can quit if I want to,” and indicated a belief that he only needed to attend AA meetings and obtain a sponsor to stay sober. (PSI, p.14.) However, Anderson has failed to remain sober despite participating in two retained jurisdiction programs, and despite being afforded the opportunity to participate in treatment programs within the community. (6/11/18 Tr., p.9, L.22 – p.10, L.3.)

¹ PSI page numbers correspond with the page numbers of the electronic file “CONFIDENTIAL CERTIFICATE OF EXHIBITS STERLING ANDERSON 46153.pdf”

Anderson's medical issues and support from family and friends do not outweigh his continued refusal to abide by the terms of community supervision and failure to rehabilitate.

At the disposition hearing, the district court reasonably concluded that Anderson was no longer a suitable candidate for probation and that rehabilitation while in the community was not working. (6/11/18 Tr., p.11, L.22 – p.13, L.3.) The state submits that Anderson 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 Anderson's probation and executing his reduced underlying sentence.

DATED this 12th day of February, 2019.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th 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:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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

APPENDIX A

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1 So, sir, do you admit or deny that you
2 violated your probation by not reporting to your
3 probation officer as directed?
4 THE DEFENDANT: I admit.
5 THE COURT: Okay. You were also to
6 undertake counseling and treatment as recommended
7 by your probation officer, and it's alleged that
8 on January 6th of 2016, you were discharged from
9 the SHARE Program for poor attendance.
10 So, sir, do you admit or deny that you
11 violated your probation by not completing counseling
12 as required?
13 THE DEFENDANT: I admit.
14 THE COURT: All right, sir. I'll accept
15 your admissions as being knowingly and voluntarily
16 given and we can proceed to disposition if
17 that's what everybody wants to do; is that
18 correct?
19 MR. ANDREW: It is, Your Honor.
20 THE COURT: All right. So, Mr. Stoddard,
21 I'll turn the time to you.
22 MR. STODDARD: So this is a 2011 case.
23 In terms of what the State can provide a defendant,
24 I think he has pretty much checked all of those
25 boxes. I see two Riders, SHARE Program, and just

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1 messed up. I admit that.
2 THE COURT: How come you took off?
3 THE DEFENDANT: I think I was relapsing.
4 I was relapsing back into the alcohol.
5 And I have kind of got family support
6 now, which I haven't for a long time. My employer
7 has stuck with me for a long time, and he is
8 sticking with me now.
9 THE COURT: All right. Anything else?
10 MR. ANDREW: No, Your Honor.
11 THE COURT: Anything else, Mr. Anderson?
12 THE DEFENDANT: No, Your Honor.
13 THE COURT: All right. Any legal reason
14 we shouldn't proceed to disposition, Mr. Andrew?
15 MR. ANDREW: No, Your Honor.
16 THE COURT: Mr. Anderson, any legal reason
17 we shouldn't proceed to disposition?
18 THE DEFENDANT: No, Your Honor.
19 THE COURT: All right. Remember, you have
20 forty-two days in which to appeal any decision the
21 Court makes here.
22 Mr. Anderson, I have to consider whether
23 or not probation is achieving the goals of
24 rehabilitation, and in this sense protecting
25 society, protecting the community.

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1 seems like probation is just not working out for
2 him, so the State would simply ask that you impose
3 the sentence.
4 THE COURT: All right, Mr. Stoddard.
5 Thank you.
6 Mr. Andrew?
7 MR. ANDREW: Thank you, Your Honor.
8 Sterling is asking the Court to consider
9 placing him back out on probation. He has been
10 working, and I think it's the same job he has
11 been working for several years, was injured
12 shortly before he went into jail, so he has
13 been experiencing a lot of pain up through his
14 arm, down his side, and into his hip. So he would
15 like the opportunity to go get medical care for
16 that. He has been trying to get that at the
17 jail without any luck, so he has been sitting in
18 jail since he was arrested.
19 I would ask the Court to take that as
20 a sanction and place him back out on probation.
21 THE COURT: All right. Mr. Anderson,
22 anything you want to tell me, sir?
23 THE DEFENDANT: Your Honor, I have still
24 got my job. I would like to get back into the
25 SHARE Program. I'd like to get -- you know, I

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1 Obviously, Mr. Stoddard points out --
2 and I know that we have given you lots of
3 opportunity. We have really tried hard in this
4 case to give you opportunities to be successful.
5 There has just been these bumps along the way and
6 continues to be that way. I think at some point
7 in time, though, I have to say, well, we have
8 tried everything we can. Community supervision
9 isn't working for the goals of rehabilitation
10 for you and that it's best just simply to have
11 you finish your sentence and have you move on
12 with life.
13 And so considering protection of society,
14 punishment, deterrence, and rehabilitation, the fact
15 that there have been numerous opportunities at
16 probation and rehabilitation through the community
17 and through corrections, I'm going to revoke
18 your probation, impose that underlying sentence,
19 three years fixed, five years indeterminate, and
20 give you credit for all time served; however,
21 I'm going to modify the sentence to reflect two
22 years fixed, five years indeterminate, and give
23 you credit for all time served on that. So I'm
24 taking a year off of that fixed portion or giving
25 you credit off the two years that you have already

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1 served; okay?
2 I want you to do well. I hope you get
3 off and get on with life; okay?
4 THE DEFENDANT: I understand. Thank you.
5 THE COURT: Wish you the very best,
6 Mr. Anderson. Take care.
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11 (CONCLUSION OF PROCEEDINGS HELD 6/11/2018.)
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1 CERTIFIED COURT REPORTER'S CERTIFICATE
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3
4 I, STEPHANIE DAVIS, Certified Shorthand Reporter,
5 Official Court Reporter in the Sixth Judicial
6 District, State of Idaho, do hereby certify that the
7 foregoing transcript, consisting of Pages 1 to 13,
8 inclusive, is a true and accurate record of the
9 proceedings had on the dates and at the times
10 indicated herein as stenographically reported by me
11 to the best of my ability and contains all evidence,
12 objections of counsel and rulings of the Court, all
13 testimony of witnesses, and all matters to which the
14 same relate.
15
16 IN WITNESS WHEREOF, I have hereunto set my hand
17 this 19th day of August, 2018.
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21
22 STEPHANIE D. DAVIS, Official Reporter
23 Idaho CSR No. 594
24 Calif CSR No. 9767
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