

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. 46185-2018 |
| Plaintiff-Respondent, |) | |
| |) | Ada County Case No. |
| v. |) | CR01-16-34514 |
| |) | |
| DAVID HOWARD STOKES, |) | |
| |) | RESPONDENT’S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

Issue

Has Stokes failed to establish that the district court abused its discretion by revoking his probation?

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

Stokes pled guilty to possession of methamphetamine and, on February 27, 2017, the district court imposed a unified sentence of five years, with one and one-half years fixed, suspended the sentence, and placed him on supervised probation for five years. (R., pp.31-32, 40, 56-61.) Approximately four months later, in June 2017, Stokes was “dropped” from

treatment at Recovery for Life for “lack of attendance.” (R., p.66.) In September 2017, he terminated his employment at Tradesman Staffing without permission, and, by December 2017, Stokes had absconded supervision. (R., pp.63, 65.)

On May 7, 2018, the state filed a motion for probation violation alleging that Stokes had violated the conditions of his probation by failing to maintain full time employment, changing residences without permission, being discharged from treatment at Recovery for Life for failure to attend, failing to attend and/or complete Anger Management, failing to make himself available for supervision, absconding supervision, failing to pay restitution, and failing to pay “fines, fees, funds, surcharges and/or costs as ordered by the Court.” (R., pp.62-64.) Stokes admitted that he violated the conditions of his probation by changing residences without permission, being discharged from treatment at Recovery for Life, absconding supervision, and failing to pay “fines, fees, funds, surcharges and/or costs as ordered by the Court.” (R., p.81.) The district court revoked Stokes’ probation, executed his underlying sentence, and retained jurisdiction. (R., pp.83-85.) Stokes filed a notice of appeal timely from the district court’s order revoking probation. (R., pp.86-88.)

Stokes asserts that the district court abused its discretion by revoking his probation because he understood that his probation violations “were due to [his] mental health issues and not being on his medication” and he “had dealt with the problem.” (Appellant’s brief, pp.2-4.) Stokes 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)).

On appeal, Stokes contends that the district court abused its discretion by revoking his probation because his probation violations “were due to [his] mental health issues and not being on his medication,” and he “informed the court that the issue was straightened out, and that he had a place to live and a place to work.” (Appellant’s brief, p.4.) However, Stokes was perfectly aware – before he was ever placed on probation in this case – of his mental health issues and the need to take his prescribed mental health medication, and of how to access mental health services, as, at the time of sentencing, he had been participating in mental health treatment and medication management through the Terry Reilly Clinic for approximately two years. (PSI, pp.14-15, 40-132.¹) Furthermore, when the district court initially placed Stokes on probation, it imposed specific conditions – to which Stokes agreed – including that Stokes must take all of his prescribed medications, he must reside at the Boise Rescue Mission, and he must maintain full time employment. (R., p.58.) Stokes chose to completely disregard those conditions. He terminated his existing employment at Tradesman Staffing without informing his probation officer and, while he claimed that “[a]t some point ... he had an opportunity to do dishwashing at Elmer’s, although he ... needed some approval from his PO to stay out longer than he had

¹ PSI page numbers correspond with the page numbers of the electronic file “Stokes 46185 psi.pdf.”

permission,” he failed to obtain such approval and instead chose to remain unemployed and to stop taking his prescribed mental health medication. (Tr., p.8, Ls.10-16; R., pp.65-66.) He also chose to not attend treatment at Recovery for Life as instructed, failed to provide any valid contact information to the probation office, moved from his approved residence without permission and without notifying his probation officer, and ultimately removed himself from probation supervision altogether, after which he was at large and unsupervised for at least four months. (R., pp.65-67.) It is hardly surprising that, when subsequently facing the consequences of violating his probation and the possibility that his probation could be revoked, Stokes claimed he was once again willing to abide by his original probation conditions. That he is again taking his mental health medication and can again reside at the Rescue Mission and work – all of which he was doing when he was originally placed on probation in this case – does not demonstrate that Stokes will now abide by the conditions of his probation.

At the disposition hearing, the state addressed Stokes’ failure to accept responsibility for his criminal behavior and his complete disregard for the conditions of probation. (Tr., p.6, L.10 – p.7, L.24.) The district court subsequently articulated its reasons for revoking Stokes’ probation. (Tr., p.9, L.16 – p.11, L.1.) The state submits that Stokes 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. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Stokes' probation.

DATED this 4th day of April, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of April, 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:

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

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | 5 |
| <p>1 COURTROOM OF THE DISTRICT COURT 2 FOURTH JUDICIAL DISTRICT 3 ADA COUNTY COURTHOUSE 4 ADA COUNTY, BOISE, IDAHO 5 MONDAY, JULY 2, 2018 6 * * * * *</p> <p>7 THE COURT: State versus David Stokes. 8 What is the status on this case? 9 MR. MARX: Your Honor, Mr. Stokes will admit 10 allegations 2, 3, 6, and 7, open recommendation at 11 the time of disposition. 12 THE COURT: All right. Is that what you 13 want to do, Mr. Stokes? 14 THE DEFENDANT: Yes, ma'am. 15 THE COURT: Now, you realize you are giving 16 up your right to have a hearing where the state 17 would have to prove these allegations? 18 THE DEFENDANT: Yes, ma'am. 19 THE COURT: And you understand that you 20 could lose probation and have a prison sentence 21 imposed? 22 THE DEFENDANT: Yes, ma'am. 23 THE COURT: Have you talked this over with 24 your lawyer? 25 THE DEFENDANT: Yes, ma'am.</p> | <p>1 MS. KOSTEKA: No, Your Honor. 2 THE COURT: Okay. Well, I would set it for 3 July 18th at 3:00. 4 MR. MARX: Thank you, Your Honor. 5 MS. KOSTEKA: Thank you. 6 (Proceedings concluded at 3:00 p.m.) 7 /// 8 /// 9 /// 10 /// 11 /// 12 /// 13 /// 14 /// 15 /// 16 /// 17 /// 18 /// 19 /// 20 /// 21 /// 22 /// 23 /// 24 /// 25 ///</p> |
| 4 | 6 |
| <p>1 THE COURT: Have you had enough time to talk 2 to him? 3 THE DEFENDANT: Yes, ma'am. 4 THE COURT: And you are making these 5 admissions freely and voluntarily? 6 THE DEFENDANT: Yes, ma'am. 7 THE COURT: So did you fail to get 8 permission from your probation officer before 9 moving in January 2018? 10 THE DEFENDANT: Yes, ma'am. 11 THE COURT: Did you fail to attend or 12 successfully complete substance abuse treatment at 13 Recovery For Life? 14 THE DEFENDANT: Yes, ma'am. 15 THE COURT: Did you absconded from 16 supervision? 17 THE DEFENDANT: Yes, ma'am. 18 THE COURT: Did you fail to pay fines, fees, 19 or costs? 20 THE DEFENDANT: Yes, ma'am. 21 THE COURT: Okay. Well, I'll accept the 22 admissions. I'll -- does either side wish to have 23 anything supplemented? 24 MR. MARX: No additional evaluations, 25 Your Honor.</p> | <p>1 COURTROOM OF THE DISTRICT COURT 2 FOURTH JUDICIAL DISTRICT 3 ADA COUNTY COURTHOUSE 4 ADA COUNTY, BOISE, IDAHO 5 WEDNESDAY, JULY 18, 2018 6 * * * * *</p> <p>7 THE COURT: All right. I'll take up 8 State versus David Stokes. 9 Comments by the state. 10 MR. FERGUSON: Your Honor, I'll keep this 11 brief. Your Honor, during the presentence 12 investigation in this case when the defendant was 13 originally sentenced, they made a guarded 14 recommendation for probation at that time. 15 There were some things that were 16 somewhat concerning. First and foremost was kind 17 of the fact that he denied any drug use and blamed 18 a lot of the behavior and issues that he had going 19 on on the victim in the matter. So that gave the 20 state some significant this concerns. 21 Looking at the reported violation and 22 behaviors that he has admitted to violating his 23 probation by participating in, the state has no 24 confidence that he would necessarily follow 25 through with any order of the Court regarding</p> |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;">7</p> <p>1 probation at this time.</p> <p>2 The state is asking for a period of</p> <p>3 retained jurisdiction. Quite frankly, probation</p> <p>4 didn't have any contact with him from between</p> <p>5 December and April of 2018, and probably longer.</p> <p>6 That's just when they specifically mention it in</p> <p>7 their reported violation.</p> <p>8 They mention that they hadn't had any</p> <p>9 contact with him since December. And, apparently,</p> <p>10 he hadn't worked for the employer that he said he</p> <p>11 had been working for since before that in either</p> <p>12 September or October. So the state is very</p> <p>13 concerned with the fact that the defendant doesn't</p> <p>14 seem to be following through with his requirements</p> <p>15 on probation.</p> <p>16 The presentence did initially have some</p> <p>17 concerns about probation in the first place for</p> <p>18 this defendant, and so the state is asking for a</p> <p>19 period of retained jurisdiction. Ultimately, the</p> <p>20 state believes that this would hopefully get him</p> <p>21 on a better path and give him a chance -- a better</p> <p>22 chance at success, that when he ultimately comes</p> <p>23 back, hopefully he will be ready for probation at</p> <p>24 that time.</p> <p>25 THE COURT: Okay.</p> | <p style="text-align: center;">9</p> <p>1 He is requesting the Court place him</p> <p>2 back on probation. He feels like if he has that</p> <p>3 opportunity, he can be successful.</p> <p>4 THE COURT: Mr. Stokes, your comments.</p> <p>5 THE DEFENDANT: Well, ma'am. I -- I just --</p> <p>6 if you could reinstate my probation, I would be</p> <p>7 forever grateful.</p> <p>8 I'd got an opportunity to take a job at</p> <p>9 Elmer's, and I've got my medication straightened</p> <p>10 out and everything else. And I -- I would just be</p> <p>11 very grateful if you would reinstate my probation.</p> <p>12 THE COURT: Is there legal cause why we</p> <p>13 should not proceed?</p> <p>14 MR. MARX: No, Your Honor.</p> <p>15 MR. FERGUSON: No, Your Honor.</p> <p>16 THE COURT: Well, the situation is that I</p> <p>17 did give you a chance at probation when I put you</p> <p>18 on probation in February 2017.</p> <p>19 Then, the information -- well, first,</p> <p>20 you specifically admitted to failing to get</p> <p>21 permission from your probation officer before</p> <p>22 changing residences in January, failing to</p> <p>23 complete substance abuse treatment when required</p> <p>24 by the probation officer, and got kicked out</p> <p>25 because you didn't go. And then you admitted to</p> |
| <p style="text-align: center;">8</p> <p>1 Comments?</p> <p>2 MR. MARX: Your Honor, Mr. Stokes is</p> <p>3 requesting the Court place him back on probation.</p> <p>4 He indicates that if he were to be released, he</p> <p>5 would reside at the Mission, work on getting his</p> <p>6 disability payments where they need to be, get</p> <p>7 medication at Terry Riley through the homeless</p> <p>8 grant, and weekly check-ins with his probation</p> <p>9 officer.</p> <p>10 At some point, he indicates he had an</p> <p>11 opportunity to do dishwashing at Elmer's,</p> <p>12 although, he had to -- needed some approval from</p> <p>13 his PO to stay out longer than he had permission.</p> <p>14 Ultimately, he got depressed and stopped taking</p> <p>15 his medicine, that led to not staying in contact</p> <p>16 with his probation officer.</p> <p>17 Really, the issue that he has had is</p> <p>18 dealing with his mental health and addressing</p> <p>19 those particular points. A rider, perhaps, would</p> <p>20 work on those and get him keyed in on some of</p> <p>21 those issues he needs to address. But,</p> <p>22 ultimately, it's going to come down to Mr. Stokes</p> <p>23 being successful in the community, and being able</p> <p>24 to handle finding his medications where he needs</p> <p>25 to, and addressing those things.</p> | <p style="text-align: center;">10</p> <p>1 absconding from supervision.</p> <p>2 Basically, I gave you a chance at</p> <p>3 probation. You did not follow through with your</p> <p>4 probation. Your probation officer said in the</p> <p>5 reported violation that he had tried a number of</p> <p>6 emails and phone calls, and you never returned</p> <p>7 those messages. And that when the probation</p> <p>8 officer tried to track down your employment, the</p> <p>9 probation officer was told you hadn't been there</p> <p>10 since the prior September.</p> <p>11 And now the probation officer actually</p> <p>12 made quite a few efforts to follow-up on</p> <p>13 everything, and that did not happen, and</p> <p>14 eventually the probation officer couldn't find you</p> <p>15 at all. So I think that the concerns that the</p> <p>16 presentence investigator outlined in the original</p> <p>17 presentence report have proven to be accurate and</p> <p>18 real concerns.</p> <p>19 So I'm going to revoke probation,</p> <p>20 impose sentence, and retain jurisdiction because</p> <p>21 maybe with some more skills and assistance, you</p> <p>22 can get things moving in a better direction. But,</p> <p>23 frankly, this kind of performance on probation</p> <p>24 doesn't give me any confidence that if I put you</p> <p>25 on probation again, that the same thing wouldn't</p> |

1 happen.
2 Now, you do have 42 days in which to
3 appeal, but I'm going to retain jurisdiction in
4 this case.

5 (Proceedings concluded at 3:10 p.m.)

6 ///
7 ///
8 ///
9 ///
10 ///
11 ///
12 ///
13 ///
14 ///
15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///

REPORTER'S CERTIFICATE

STATE OF IDAHO }
COUNTY OF ADA } SS

I, ROXANNE K. PATCHELL, Official Court Reporter, Ada County, State of Idaho hereby certify:

That I am the reporter who took the proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

That the foregoing reporter's transcript contains a full, true, and accurate record of the proceedings had in the above and foregoing cause, which was heard in Boise, Idaho

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2018.

Roxanne K. Patchell, RPR, CSR

Roxanne K. Patchell, RPR, CSR
Idaho CSR Number 733
California CSR Number 12057