

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

1-15-2019

### State v. Anderson Appellant's Brief Dckt. 46153

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Anderson Appellant's Brief Dckt. 46153" (2019). *Not Reported*. 5297.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/5297](https://digitalcommons.law.uidaho.edu/not_reported/5297)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

JUSTIN M. CURTIS  
Deputy State Appellate Public Defender  
I.S.B. #6406  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46153-2018
	)	
v.	)	BANNOCK COUNTY NO. CR-2011-8463
	)	
STERLING WILLIAM ANDERSON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Sterling William Anderson appeals from the district court's order revoking his probation and executing a unified sentence of seven years, with two years fixed, for felony DUI. He asserts that the district court abused its discretion by revoking probation.

Statement of the Facts & Course of Proceedings

In 2011, Mr. Anderson was charged with felony DUI, I.C. § 18-8004; 18-8005(5). (R., p.65.) He pleaded guilty and the district court imposed a unified sentence of eight years, with three years fixed, and the court retained jurisdiction. (R., p.110.) Following the period of

retained jurisdiction, the district court suspended the sentence and placed Mr. Anderson on probation. (R., p.124.)

Approximately three years later, the State filed a report of probation violation and in January, 2016, Mr. Anderson admitted to violating the terms of his probation. (R., p.141.) The district court revoked Mr. Anderson's probation but again retained jurisdiction. (R., p.147.) Following the second period of retained jurisdiction, the district court again suspended the sentence and placed Mr. Anderson on probation. (R., p.157.)

In March, 2017, the State filed a report of probation violation, alleging that Mr. Anderson had failed to report to the probation office for two months and had been discharged from the Share Program for poor attendance. (R., p.172.) Mr. Anderson admitted to violating the terms of his probation and the district court revoked his probation and executed a modified sentence of seven years, with two years fixed. (R., p.185.) Mr. Anderson appealed. (R., p.189.) He asserts that the district court abused its discretion by revoking his probation.

### ISSUE

Did the district court abuse its discretion when it revoked Mr. Anderson's probation and executed a modified sentence of seven years, with two years fixed?

### ARGUMENT

#### The District Court Abused Its Discretion When It Revoked Mr. Anderson's Probation And Executed A Modified Sentence Of Seven Years, With Two Years 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.*

A district court’s decision to revoke probation will not be overturned on appeal absent a showing that the court abused its discretion. *Id.* In reviewing the court’s discretionary decision, this Court conducts an inquiry to determine whether the court correctly perceived the issue as one of discretion, acted within the boundaries of such discretion and consistently with the applicable legal standards, and reached its decision by an exercise of reason. *Id.* at 105-06. Mr. Anderson submits that the district court’s decision to revoke probation was unreasonable and therefore an abuse of discretion.

At the disposition proceeding, counsel for Mr. Anderson stated,

[Mr. Anderson] is asking the Court to consider placing him back on probation. He has been working, and I think it’s the same job he has been working for several years, was injured shortly before he went into jail, so he has been experiencing a lot of pain up through his arm, down his side, and into his hip. So he would like the opportunity to go get medical care of that. He has been trying to get that at the jail without any luck, so he has been sitting in jail since he was arrested.

I would ask the Court to take that as a sanction and place him back out on probation.

(Tr., p.10, Ls.7-20.) Further, Mr. Anderson addressed the court, stating,

Your Honor, I have still got my job. I would like to get back into the Share Program. I’d like to get – you, know, I messed up. I admit that.

[...]

I think I was relapsing. I was relapsing back into the alcohol.

And I have kind of got family support now, which I haven’t had for a long time. My employer has stuck with me for a long time, and he is sticking with me now.

(Tr., p.10, L.23 – p.11, L.8.)

Considering that Mr. Anderson had the support of his family and his employer, acknowledged that he had relapsed, wanted back into the Share Program, and wanted to obtain medical treatment for his injury, Mr. Anderson submits that the district court abused its discretion by revoking his probation.

CONCLUSION

Mr. Anderson respectfully requests that the district court's order revoking probation be reversed and his case remanded for further proceedings.

DATED this 15<sup>th</sup> day of January, 2019.

/s/ Justin M. Curtis  
JUSTIN M. CURTIS  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of January, 2019, 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

JMC/eas