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### State v. Stokes Appellant's Brief Dckt. 46185

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46185-2018
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR01-16-34514
v.	)	
	)	
DAVID HOWARD STOKES,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

David Howard Stokes appeals from the district court's order revoking his probation and retaining jurisdiction. He asserts that the district court abused its discretion by revoking his probation.

Statement of the Facts & Course of Proceedings

In 2016, Mr. Stokes was charged with possession of a controlled substance, methamphetamine, and misdemeanor domestic violence. (R., p.31.) He pleaded guilty to possession of a controlled substance and the district court imposed a unified sentence of five

years, with one and one-half years fixed, and the court suspended the sentence and placed Mr. Stokes on probation. (R., p.56.)

Fourteen months later, the State filed a motion for a bench warrant, alleging that Mr. Stokes had violated his probation. (R., p.62.) Mr. Stokes subsequently admitted to four probation violations: 1) failing to obtain permission before changing residences; 2) failing to attend or successfully complete substance abuse treatment; 3) absconding from probation; and 4) failing to pay fines and fees as ordered by the court. (R., pp.81, 63.)

The district court revoked Mr. Stokes' probation and retained jurisdiction. (R., p.83.) Mr. Stokes appealed. (R., p.86.) 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. Stokes' probation?

### ARGUMENT

#### The District Court Abused Its Discretion When It Revoked Mr. Stokes' Probation

The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The 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. Stokes does not challenge his admissions to violating his probation. “When a probationer admits to a direct violation of her probation agreement, no further inquiry into the question is required.” *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Stokes submits that the district court abused its discretion by revoking his probation.

“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). “A judge cannot revoke probation arbitrarily,” however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). “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. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

At the disposition hearing, counsel requested that Mr. Stokes be put back on probation. (Tr., p.8, Ls.2-3.) Mr. Stokes indicated that he would reside at the Mission, work on getting disability payments, get medication at the Terry Reilly clinic through a homeless grant, and would do weekly check-ins with his probation officer. (Tr., p.8, Ls.2-9.) Mr. Stokes had an employment opportunity to do dishwashing at Elmer’s, though he needed approval from his probation officer to stay out longer than he had permission. (Tr., p.8, Ls.10-15.) Ultimately, what led to the probation violations in this case was that Mr. Stokes “got depressed and stopped taking his medicine, that led to not staying in contact with his probation officer.” (Tr., p.8, Ls.14-16.) Counsel summed the case as follows:

Really, the issue that he has had is dealing with his mental health and addressing those particular points. A rider, perhaps, would work on those and get him keyed in on some of those issues he needs to address. But, ultimately, it's going to come down to Mr. Stokes being successful in the community, and being able to handle finding his medications where he needs to, and addressing those things.

(Tr., p.8, Ls.17-25.) With regard to his mental health, Mr. Stokes had indicated that he was diagnosed with bipolar mania in 2015 and was taking medication for bipolar mania and for depression. (Presentence Investigation Report (*hereinafter*, PSI), p.15.) He had participated at in counseling once at Terry Reilly for "meds management mostly." (PSI, p.15.) He believed that he would benefit from mental health counseling. (PSI, p.15.)

Mr. Stokes addressed the district court, stating, "I just – if you could reinstate my probation, I would be forever grateful. I've got an opportunity to take a job at Elmer's, and I've got my medication straightened out and everything else. And I – I would just be very grateful if you would reinstate my probation." (Tr., p.9, Ls.5-11.)

The probation violations in this case were due to Mr. Stokes' mental health issues and not being on his medication. He informed the court that the issue was straightened out, and that he had a place to live and a place to work. Considering that Mr. Stokes understood the issue that caused him to violate his probation and had dealt with the problem, Mr. Stokes respectfully submits that the district court abused its discretion by revoking probation and retaining jurisdiction.

CONCLUSION

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

DATED this 8<sup>th</sup> day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8<sup>th</sup> day of March, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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

JMC/eas