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IN THE SUPREME COURT OF THE STATE OF IDAHO	
STATE OF IDAHO,)
)
Plaintiff-Respondent,)
)
v.)
)
CHAD CURTIS CLARKE,)
)
Defendant-Appellant.)
_____)

NO. 46308-2018
MINIDOKA COUNTY NO. CR-2015-2312
APPELLANT'S BRIEF

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Chad Curtis Clarke pled guilty to possession of methamphetamine. He received a unified sentence of seven years, with three years fixed, and the court placed him on probation. After a probation violation resulting from Mr. Clarke’s expulsion from mental health court, the district court reinstated Mr. Clarke on probation. After another probation violation, the district court revoked Mr. Clarke’s probation. On appeal, Mr. Clarke contends that the district court abused its discretion in revoking his probation.

Statement of the Facts & Course of Proceedings

In the evening on August 13, 2011, Chad Clarke’s car was stopped by an officer who believed his rear taillight was broken. (R., p.17; Presentence Investigation Report (*hereinafter*,

PSI),¹ p.3.) The taillight had been fixed using red tape; however, the bright white light was still visible to the officer, so he stopped the car for an equipment violation. (R., p.17; PSI, p.3.) The officer discovered an arrest warrant for Mr. Clarke, and directed that Mr. Clarke's car be towed. (R., p.17; PSI, p.3.) Prior to towing the car, Mr. Clarke was asked if there was anything illegal in the vehicle. (R., p.17; PSI, p.3.) Mr. Clarke responded in the affirmative and identified a pink container which the officer retrieved and which tested presumptively positive for methamphetamine. (R., pp.17-18; PSI, p.3.) The officer also located a pipe containing residue. (R., p.18.) After Mr. Clarke was transported to the police station, the officer located some baggies and a small scale left behind in the police car. (R., p.18; PSI, p.4.) Mr. Clarke had previously been convicted of forgery and grand theft. (R., p.39.)

Based on these facts, Mr. Clarke was charged with possession of methamphetamine with intent to deliver, possession of drug paraphernalia, and the persistent violator sentencing enhancement. (R., pp.34-41.) Pursuant to a plea agreement, Mr. Clarke pled guilty to possession of methamphetamine and the remaining charges and enhancements were dismissed. (R., pp.49-63.)

The district court had sentenced Mr. Clarke to a unified sentence of seven years, with three years fixed, but placed him on probation for seven years and required him to attend and complete drug court as a term of his probation. (R., pp.77-80.)

One year later, a motion to revoke probation was filed. (R., pp.106-111.) Mr. Clarke was alleged to have violated his probation because he was terminated from drug court for failing to attend sessions and appear for urinalysis appointments. (R., pp.93-97.) Mr. Clarke admitted

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

to violating some of the terms and conditions of his probation and was placed back on probation for four years with a requirement to complete mental health court. (R., pp.132-137.)

After a few months, a report of probation violation was filed which alleged that Mr. Clarke was terminated from mental health court. (R., pp.163-167.) Mr. Clarke admitted he was terminated from mental health court, and the district court reinstated him on probation. (R., pp.176-177, 186-190.)

In 2016, a report of probation violation was filed which alleged that Mr. Clarke failed to report to his probation officer, changed residences without his probation officer's permission,² did not pay his fines, fees, and restitution, did not attend substance abuse treatment, tested positive for illegal substances, and failed to complete drug testing through his treatment provider. (R., pp.194-198.)

Mr. Clarke admitted to violating some of the terms and conditions of his probation. (Tr., p.7, L.16 – p.10, L.2.) At the disposition hearing, the district court revoked Mr. Clarke's probation and declined to *sua sponte* reduce his sentence. (Tr., p.19, Ls.14-17; R., pp.210-213.) Mr. Clarke timely filed a motion to reconsider, which was denied by the court without a hearing. (R., pp.223-224.)

Mr. Clarke filed a Notice of Appeal timely from the Disposition Judgment Probation Violation. (R., pp.214-216, 229-232.) Mr. Clarke contends on appeal that the district court abused its discretion by revoking his probation.

ISSUE

Did the district court abuse its discretion when it revoked Mr. Clarke's probation?

² Mr. Clarke moved without his probation officer's permission because he believed he was in love. (Tr., p.14, L.24 – p.15, L.8.)

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Clarke's Probation

Mr. Clarke asserts that the district court abused its discretion when it revoked his probation and executed his original sentence of seven years, with three years fixed. He asserts that his probation violations did not justify revoking probation, especially in light of the goals of rehabilitation and the fact that the protection of society could be best served by his continued supervision under the probation department.

There are generally two questions that must be determined by the district court in addressing allegations of probation violations: first, the court must determine whether the defendant actually violated the terms and conditions of his probation; and second, if a violation of probation has been found, the trial court must then decide the appropriate remedy for the violation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). “The determination of whether a probation violation has been established is separate from the decision of what consequence, if any, to impose for the violation.” *Id.* (quoting *State v. Thompson*, 140 Idaho 796, 799 (2004)). Once a probation violation has been found, the district court must determine whether it is of such seriousness as to warrant revoking probation. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). The district court must decide whether probation is achieving the goal of rehabilitation and whether probation is consistent with the protection of society. *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). If a knowing and intentional probation violation has been proved, a district court's decision to revoke probation will be reviewed for an abuse of discretion. I.C. § 20-222; *Leach*, 135 Idaho at 529.

In reviewing a trial court's decision for an abuse of discretion, the relevant inquiry regards four factors:

Whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Lunneborg v. My Fun Life, 163 Idaho 856, 863 (2018).

Only if the trial court determines that alternatives to imprisonment are not adequate in a particular situation to meet the state's legitimate interest in punishment, deterrence, or the protection of society, may the court imprison a probationer who has made sufficient, genuine efforts to obey the terms of the probation order. *State v. Lafferty*, 125 Idaho 378, 382 (Ct. App. 1994). Mr. Clarke asserts that the district court abused its discretion by failing to reach its decision to revoke his probation by the exercise of reason.

Here, Mr. Clarke showed good insight into his addiction issues and his criminal thinking—he knows that when he stops taking his mental health medications, he is more likely to relapse and use illegal drugs. (PSI, pp.19, 89.) Mr. Clarke can be rehabilitated and be a productive member of society. Mr. Clarke asserts that the district court abused its discretion in finding that his probation violations justified revocation in light of his rehabilitative potential and his insight into the issues that initially brought him before the district court.

One factor supporting Mr. Clarke's rehabilitative potential is the fact that he has support from his family. (PSI, pp.31-32.) Mr. Clarke's family is important to him. (PSI, p.20.) Mr. Clarke has the support of his mother, who wrote a letter to the court to show her support for her son. (PSI, pp.13, 31-32, 105; Tr., p.16, Ls.5-16.) She told the district court that when Mr. Clarke was taking his mental health medications and not using illegal drugs, he did well in the community. (PSI, p.31.) *See State v. Shideler*, 103 Idaho 593, 594-595 (1982) (reducing

sentence of defendant who had the support of his family and employer in his rehabilitation efforts).

Mr. Clarke has received SSI disability for most of his life due to his mental and physical conditions. (PSI, p.16.) Mr. Clarke has been diagnosed with Schizophrenia, Bipolar Disorder, Crohn's disease, and Tourette's Syndrome. (PSI, pp.16-17, 105, 109.) Mr. Clarke hears voices that say mean and derogatory things to him, and he sees shadow people. (PSI, pp.107-108.) When Mr. Clarke is not taking his mental health medications, he is more likely to use illegal drugs. (PSI, p.19.) Mr. Clarke is addicted to methamphetamine and marijuana, and he uses them to "feel normal." (PSI, pp.19, 106, 108.) However, Mr. Clarke recognizes that his "self medication" actually made his mental health symptoms worse. (PSI, p.106.) Mr. Clarke was able to maintain a nine-year period of sobriety, and wants to be sober. (PSI, pp.19-20.)

Notably, Mr. Clarke did not commit any new crimes for the eighteen months he was absent from the State of Idaho. (Tr., p.14, Ls.17-18.) Mr. Clarke was on his way back to Idaho to turn himself in when he was stopped and arrested in Nebraska. (Tr., p.14, Ls.18-23.) Further, Mr. Clarke's probation officer recommended a retained jurisdiction. (Tr., p.4, Ls.20-25; p.14, Ls.6-7.)

In light of all of the mitigating evidence that was presented to the district court that demonstrates Mr. Clarke's significant rehabilitative potential, the district court abused its discretion when revoked Mr. Clarke's probation.

CONCLUSION

Mr. Clarke respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new probation violation hearing.

DATED this 13th day of March, 2019.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March, 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

SJC/eas