

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. 46308-2018
Plaintiff-Respondent,)	
)	Minidoka County Case No.
v.)	CR-2015-2312
)	
CHAD CURTIS CLARKE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Clarke failed to establish that the district court abused its discretion by revoking his probation and executing his underlying unified sentence of seven years, with three years fixed, imposed following his guilty plea to possession of methamphetamine?

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

Clarke pled guilty to possession of methamphetamine and, in October 2015, the district court imposed a unified sentence of seven years, with three years fixed, but suspended the sentence and placed Clarke on probation for seven years on the condition that Clarke complete

drug court. (R., pp.77-80.) In January 2016, the state filed a motion to revoke Clarke's based on a drug court termination report filed by the drug court coordinator stating that Clarke violated the conditions of drug court by failing to appear for treatment nine times, failing to appear for drug court three times, failing to appear for urinalysis testing eight times, and failing to pay drug court fees. (R., pp.106-11.) Clarke admitted to having violated the terms of his probation by being terminated from drug court, and the district court revoked his probation, but "re-suspend[ed]" the sentence for four years and, as a special condition of probation, ordered Clarke to complete Mental Health Court. (R., pp.132-37.)

In May 2016, the state filed a second motion to revoke Clarke's probation because Clarke had been terminated from Mental Health Court for failing to attend treatment sessions, failing to keep scheduled appointments, failing to attend Mental Health Court sessions, and filling the same prescription at two different pharmacies. (R., pp.160-67.) Clarke admitted to having violated the terms of his probation by being terminated from mental health court, and the district court reinstated hi on probation. (R., pp.176-77, 188-90.)

In November 2016, the state filed a third motion to revoke Clarke's probation, alleging that Clarke had violated his probation by failing to report to his probation officer, changing residences without permission, testing positive for methamphetamine, failing to submit to drug testing, failing to attend treatment, failing to pay costs, fees, fines, and restitution, failing to pay cost of supervision, and absconding supervision. (R., pp.191-98.) A year and a half later, Clarke admitted to having violated the conditions of his probation as alleged. (R., pp.207-08.) The district court subsequently revoked Clarke's probation and executed his underlying sentence. (R., pp.210-13.) Clarke filed a notice of appeal timely from the district court's order revoking probation. (R., pp.214-16.)

Clarke asserts that the district court abused its discretion by revoking his probation in light of his mental health issues, support from his mother, the fact that he did not commit any new crimes while absconding supervision, and his “rehabilitative potential and his insight into the issues that initially brought him before the district court.” (Appellant’s brief, pp.4-6.) Clarke 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)).

Contrary to Clarke’s assertions on appeal, the record supports the district court’s determination that Clarke was no longer a suitable candidate for probation, particularly in light of his unwillingness to abide by the conditions of community supervision and failure to rehabilitate or be deterred. Clarke’s criminal record includes nine juvenile adjudications, 11 misdemeanor convictions, and three prior felony convictions. (PSI, pp.5-12.¹) In this case,

¹ PSI page numbers correspond with the page numbers of the electronic file “Appeal Volume 1 - Confidential Documents.pdf.”

Clarke was afforded multiple opportunities to succeed on probation, but he continued to choose to violate the terms of his release, including by failing to attend treatment programs, using illegal substances, and removing himself from probation supervision. (R., pp.77-80, 134-37, 188-90.)

Clarke's substance abuse began when he tried marijuana at the age of six, and he admitted that he has continued to use marijuana daily. (PSI, pp.18-19.) Clarke also reported that he uses methamphetamine daily and has done so since he was 18 years of age. (PSI, pp.18-19.) Clarke admitted that he has problems with substance abuse and that he has been unable to achieve any prolonged period of sobriety, stating, "I do good on staying cleane and soner or latter I use agen." (PSI, p.19 (verbatim).) Clarke also reported that he has been diagnosed with schizophrenia and bipolar disorder and takes medication for these mental health issues. (PSI, pp.16-18.) However, he does not believe that he needs mental health treatment, and only believes that counseling would be beneficial for him because it "never harts [hurts] anyone." (PSI, p.17.) Clarke's mental health issues are exacerbated by his drug use, and he admits that "hell breaks loose" when he is off of his medications. (PSI, p.17.) Clarke has had previous treatment opportunities both for substance abuse and for his mental health issues, but he has failed to rehabilitate. (PSI, pp.17-19.)

Clarke contends that he is a suitable candidate for probation in light of support from his mother and the fact that he did not commit any crimes while he absconded for 18 months. (Appellant's brief, pp.5-6.) However, his mother's support in this case has failed to deter Clarke from continually violating the conditions of his probation. (R., pp.122, 173.) Additionally, Clarke's decision to abscond, no matter the reason, prevents authorities from ensuring that probation is serving its intended function. In no way can probation meet the goals of protecting the community and rehabilitation if the probationer chooses to remove himself from probation

supervision. See State v. Sandoval, 92 Idaho 853, 860, 452 P.2d 350, 357 (1969) (citing State v. Oylar, 92 Idaho 43, 436 P.2d 706 (1968)) (emphasis added) (purpose of probation is to give the offender “an opportunity to be rehabilitated *under proper control and supervision*”). Clarke was fully aware that absconding supervision was in violation of the conditions of his probation, and he was not deterred by the knowledge that his sentence could be imposed. His decision to abscond and to once again disregard his legal obligations is a continuation of his pattern of criminal conduct and demonstrates his failure to rehabilitate and his continued risk to the community.

The district court considered all of the relevant information and reasonably concluded that Clarke was no longer a viable candidate for community supervision. The district court’s decision to revoke Clarke’s probation and execute his underlying sentence was appropriate in light of Clarke’s refusal to comply with the conditions of community supervision and his failure to rehabilitate or be deterred despite numerous prior legal sanctions and treatment opportunities. Given any reasonable view of the facts, Clarke has failed to establish an abuse of discretion.

Conclusion

The state respectfully requests this Court to affirm the district court’s order revoking probation and executing Clarke’ underlying sentence.

DATED this 10th day of April, 2019.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of April, 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:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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