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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46309-2018
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2016-4076
v.)	
)	
VERNON ARCHIE DOUGAL,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Vernon Archie Dougal appeals from the district court's order revoking his probation and executing a unified sentence of ten years, with two and one-half years fixed. He asserts that the district court abused its discretion by revoking probation.

Statement of the Facts & Course of Proceedings

In 2016, Mr. Dougal was charged with felony driving under the influence of alcohol, possession of an open container of alcohol in a motor vehicle, leaving the scene of an accident, failure to provide proof of insurance, and driving without privileges. (R., p.67.) He pleaded

guilty to the DUI charge and the district court imposed a unified sentence of ten years, with three years fixed, and the court retained jurisdiction. (R., p.91.) The district court subsequently suspended the sentence and placed Mr. Dougal on probation for a period of seven years. (R., p.97.)

In December 2017, the State filed a motion for probation violation, alleging that Mr. Dougal had violated his probation in the following ways: committing a DUI offense; committing a driving without privileges offense; committing a possession of open container in a vehicle offense; consuming an alcoholic beverage; failing to submit to an alcohol test; failing to pay fines and fees as ordered by the court; and failing to pay restitution. (R., p.119.) Mr. Dougal was subsequently acquitted of the DUI charge at trial. (*See* R., p.162.) However, he did subsequently admit to consuming an alcoholic beverage, failing to submit to an alcohol test, and failing to pay fines, fees, and restitution. (R., p.135.)

The district court revoked Mr. Dougal's probation but reduced the sentence to ten years, with two and one-half years fixed. (R., p.137.) Mr. Dougal appealed. (R., p.141.)

ISSUE

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

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Dougal's 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. Dougal does not challenge his admission 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. Dougal 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).

In this case, Mr. Dougal submits that the district court erred by revoking his probation because his probation was achieving its rehabilitative objective.

At the disposition hearing, the State focused on the alleged new DUI offense, which, as counsel for Mr. Dougal emphasized, had not been proven. (Tr., p.9, Ls.14-21.) Mr. Dougal never admitted to driving, and the State did not attempt to prove in this case in an evidentiary hearing that Mr. Dougal had been driving. (Tr., p.9, Ls.16-21.) As counsel for Mr. Dougal

argued, the alleged crimes in the report of probation violation are not probation violations in this case – Mr. Dougal did not admit to them and he was acquitted at a jury trial. (Tr., p.9, Ls.14-21.) And the State did not seek to prove the violations in this case after the acquittal in the criminal case.

Counsel requested that, based on the probation violations actually at issue in this case, that Mr. Dougal be placed back on probation. (Tr., p.10, Ls.21-25.) Counsel noted that Mr. Dougal was a licensed contractor, and while on probation, “was able to get the roofing business put together that he had been building up since being placed on probation. He completed classes. He hadn’t been missing UA’s.” (Tr., p.10, Ls.9-14.)

According to Mr. Dougal, it had been a year and ten months since his last drink, and he felt like he was making progress; he become complacent and relapsed. (Tr., p.10, Ls.15-20.) He had been living with roommates who would occasionally bring friends home and drink, and so if he was reinstated on probation he would live alone. (Tr., p.11, Ls.1-7.) He had Rising Sun as an option. (Tr. p.11, Ls.6-7.) Further, Mr. Dougal had a three-year-old son who meant the world to him. (Tr., p.11, Ls.8-10.)

Mr. Dougal addressed the district court. (Tr., p.11, Ls.22-25.) He stated that he had been sober for nearly two years but acknowledged that he consumed alcohol in this case. (Tr., p.12, Ls.1-7.) However, Mr. Dougal explained that, regarding the alleged crimes, he did not drive that evening, and another person had driven him. (Tr., p.12, Ls.8-18.) He acknowledged that he was a “jerk” to the arresting officer, but this was because the officer was condescending and Mr. Dougal was convinced that he was going to be arrested for a crime he did not commit. (Tr., p.12, Ls.14-25.) Finally, Mr. Dougal stated,

Your Honor, I can do good on probation out there. I did ten months. I never missed one class. I graduated aftercare. I never failed one UA. I showed up

every single appointment. Even if you look at the probation notes, there's not one bad thing that my PO can say about me. It was that one – you know, all of this strengthens my – well, I've done good. I've done great. And I drank. This stems from – even though I did not commit that crime, it stems from the fact that I drank. That's the bottom line, I drank. If I wouldn't have been drinking, the officer wouldn't have – he smelled alcohol when I was sitting there, and I understand that. And it reinforces my ability in the future that I can't drink. Look what you just went through, and this whole time you weren't even driving and you had to fight for your life in there to prove that. And, you know, it has just been a learning experience for me. I just – I intend, and I pray that I have been punished enough for what I did commit, drinking, you know, and being a jerk.

(Tr., p.13, Ls.4-25.)

In its decision to revoke probation, the district court stated that “there's some respect to be accorded to [the jury's] determination and that I'm certainly not going to make some sort of a, I guess, finding or act on a preconceived notion that is contrary to the jury's notion,” but “by the same token,” the court was concerned about risks and dangers to the community with regard to whether Mr. Dougal could refrain from drinking, and then drinking and driving. (Tr., p.15, Ls.6-25.) The court also acknowledged that it seemed like Mr. Dougal had otherwise been doing well on probation. Mr. Dougal submits that, where the State did not establish a probation violation by committing a DUI, the district court should have focused solely on the admitted violations, rather than having concerns about drinking and driving. And, considering that Mr. Dougal was otherwise performing well on probation, that his one incident of drinking did not justify revoking his probation.

CONCLUSION

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

DATED this 13th day of May, 2019.

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

CERTIFICATE OF SERVICE

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