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

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
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. 46390-2018
)	
v.)	CASSIA COUNTY NO. CR-2015-6470
)	
CHAD CURTIS CLARKE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Chad Curtis Clarke pled guilty to burglary. He received a unified sentence of seven years, with two years fixed, and the court placed him on probation for four years. 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 early morning hours of June 26, 2015, a dairy farm's surveillance camera recorded a man later identified as Chad Clarke entering the dairy's unlocked shop building and taking a generator. (R., p.14.) The owner of the generator told law enforcement that it would cost \$999.99 to replace the generator. (R., p.14.) Based on these facts, Mr. Clarke was charged by Information with burglary and petit theft. (R., pp.24-25.) Pursuant to a plea agreement, Mr. Clarke pled guilty to burglary. (R., pp.34-45.) In exchange, the petit theft charge was dismissed, and the State agreed to recommend a sentence of seven years, with two years fixed, and probation. (R., pp.34-45.) The plea agreement was conditioned on Mr. Clarke being accepted into mental health court. (R., p.36.)

Mr. Clarke was sentenced to seven years, with two years fixed, but the sentence was suspended and he was placed on probation for four years. (R., pp.49-52.) As a condition of probation, Mr. Clarke was required to complete mental health court. (R., pp.50.)

In May of 2016, a report of probation violation was filed. (R., pp.57-59.) Mr. Clarke was alleged to have violated his probation because he was terminated from mental health court for failing to attend sessions. (R., pp.57-61.) Mr. Clarke admitted to violating some of the terms and conditions of his probation and was placed back on probation. (R., pp.73-76.)

In November of 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, 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.80-85.)

Mr. Clarke admitted to failing to check in with his probation officer/absconding, and the remaining allegations were dismissed, pursuant to an agreement. (8/21/18 Tr., p.6, Ls.5-18; p.8, L.14 – p.9, L.14.) The district court revoked Mr. Clarke’s probation.¹ (8/21/18 Tr., p.11, Ls.9-18; R., pp.89-91.) Mr. Clarke timely filed a motion to reconsider, which was denied by the court without a hearing. (R., pp.92-93, 103-106.) Mr. Clarke filed a timely Notice of Appeal timely from the Order Revoking Probation. (R., pp.94-96.) 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?

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 two years fixed, by failing to reach its decision through an exercise of reason. 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.*

¹ Mr. Clarke’s probation in Minidoka County had been revoked the previous day in case number CR-2015-2312. (8/21/19 Tr., p.4, Ls.7-11.)

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. (Presentence Investigation Report (*hereinafter*, PSI),² 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, 94.) 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, Depression, Bipolar Disorder, Crohn’s disease, and Tourette’s Syndrome. (PSI, pp.16-17, 81, 88, 90-91, 94, 97.) When Mr. Clarke is not taking his mental health medications, he is more likely to use illegal drugs. (PSI, pp.19, 89.) Mr. Clarke is addicted to methamphetamine and marijuana, and he uses them to self-medicate. (PSI, pp.19, 88-89.) However, Mr. Clarke recognizes that he needs to stay on his prescribed medication to avoid falling back into using illegal drugs to cope with his

² 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.

physical (Crohn's) and mental health issues. (PSI, pp.90, 96.) Mr. Clarke was able to maintain a nine-year period of sobriety, and wants to be sober. (PSI, pp.19-20.)

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 instead of retaining jurisdiction.

CONCLUSION

Mr. Clarke respectfully requests that this Court place him back on probation. Alternatively, he requests that his case be remanded with an order that the district court retain jurisdiction.

DATED this 26th 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 26th 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