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### State v. Clarke Respondent's Brief Dckt. 46390

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LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46390-2018
Plaintiff-Respondent,	)	
	)	Cassia County Case No. CR-2015-6470
v.	)	
	)	
CHAD CURTIS CLARKE,	)	RESPONDENT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

Has Chad Curtis Clarke failed to show that the district court abused its sentencing discretion when it revoked his probation and executed his sentence of seven years with two years determinate, imposed upon his conviction for burglary?

ARGUMENT

Clarke Has Failed Show That The District Court Abused Its Sentencing Discretion

A. Introduction

Clarke stole a generator from a shop. (R., pp. 14-15.) The state charged him with burglary and petit theft. (R., pp. 24-25.) He pled guilty to burglary pursuant to a plea agreement. (R., pp. 42-45.) The district court imposed a sentence of seven years with two years determinate,

concurrent with a sentence from Minidoka County,<sup>1</sup> but suspended execution of the sentence and placed Clarke on probation for two years. (R., pp. 45, 49-51.)

A little over a month later, the state filed for revocation of the probation. (R., pp. 54-61.) The basis for the revocation was that Clarke was discharged from mental health court for failure to attend. (R., pp. 57-61.) Clarke admitted the violation and the district court continued probation. (R., pp. 73-76.) Part of the district court's consideration was that Clarke had been placed on probation in the Minidoka County case. (R., p. 73.)

Less than three months later the state filed a motion to revoke probation because Clarke had absconded after testing positive for methamphetamine use. (R., pp. 77-84.) He was at large for about 17 months. (R., pp. 77 (probation violation filed November 10, 2016), 85 (arraigned on probation violation on June 29, 2018).) Noting that the Minidoka County sentence had been imposed, Clarke admitted violating his probation by absconding. (R., p. 88; Tr., p. 4, Ls. 7-16; p. 8, Ls. 14-19.) When the defense was asked for its recommendation, defense counsel stated, "Your Honor, given the disposition in Minidoka County, we would simply ask that Mr. Clarke receive credit for time served, which I believe was 171 days." (Tr., p. 10, Ls. 14-17.)

The district court concluded "imposition of a sentence is appropriate at this time," revoked probation, granted the time served, and concluded that the sentence as imposed was reasonable without reduction. (Tr., p. 10, L. 23 – p. 11, L. 18; R., pp. 89-90.) The district court also noted that suspending the sentence or retaining jurisdiction while Clarke was serving the concurrent Minidoka sentence "doesn't make sense." (Tr., p. 11, Ls. 9-12.)

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<sup>1</sup> The PSI from the Minidoka case is included in the record. (PSI.) That case was for possession of methamphetamine totaling 23.8 grams, pled down from possession with intent to distribute. (PSI, pp. 3-4.) It is currently on appeal in Docket No. 46308-2018.

Clarke filed a motion to reconsider seeking a reduction of sentence and a timely appeal. (R., pp. 92-96.) The district court denied the motion to reconsider. (R., pp. 103-06.)

On appeal Clarke argues that the district court abused its discretion because “his probation violations did not justify revoking probation.” (Appellant’s brief, pp. 3-6.) Clarke has failed to show that the district court abused its discretion.

B. Standard Of Review

“Review of a probation revocation proceeding involves a two-step analysis. First, it is determined whether the terms of probation have been violated. If they have, it is then determined whether the violation justifies revocation of the probation.” State v. Garner, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017) (citations omitted). “A court's finding that a [probation] violation has been proved will be upheld on appeal if there is substantial evidence in the record to support the finding.” State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003). ““Once a probation violation has been proven, the decision of whether to revoke probation is within the sound discretion of the court.”” State v. Le Veque, 164 Idaho 110, \_\_\_, 426 P.3d 461, 464 (2018) (quoting State v. Rose, 144 Idaho 762, 765, 171 P.3d 253, 256 (2007)). “When a trial court’s discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine whether the lower court correctly perceived the issue as one of discretion, acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it, and reached its decision by an exercise of reason.” State v. Clausen, 163 Idaho 180, 182, 408 P.3d 935, 937 (Ct. App. 2017).

C. Clarke Has Shown No Abuse Of The District Court's Discretion

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; State v. Beckett, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); State v. Adams, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); State v. Hass, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. State v. Upton, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); Beckett, 122 Idaho at 325, 834 P.2d at 327; Hass, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under I.C.R. 35 to reduce the sentence. Beckett, 122 Idaho at 325, 834 P.2d at 327; State v. Marks, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). The court may also order a period of retained jurisdiction. I.C. § 19-2601.

The record shows no abuse of discretion by the district court. Clarke has a significant criminal record, including numerous misdemeanors and three prior felonies (forgery and two grand thefts) with a poor record of probation and parole resulting in him topping out his sentences. (PSI, pp. 5-10.) His performance on probation in this instant case and Minidoka cases, having absconded for almost a year and one-half, also supports the district court's exercise of discretion. The record supports the district court's decision to revoke probation.

Clarke argues the district court "abused its discretion by failing to reach its decision to revoke [the] probation by the exercise of reason." (Appellant's brief, p. 4.) Citing the PSI, he asserts he "showed good insight into his addiction issues and his criminal thinking," had "support from his family," and uses methamphetamine to self-medicate his numerous mental health issues.

(Appellant’s brief, pp. 5-6.) The PSI was prepared in 2015, however. (PSI, p. 1.) These factors no doubt played a role in the district court placing Clarke on probation in the first instance, and in allowing him to remain on probation after his first violation. Tellingly absent from Clarke’s argument is information from after the 2015 PSI until the 2018 probation revocation. That Clarke could not go even three months without violating his probation, and that he absconded for a year and a half, shows probation was not accomplishing rehabilitation nor protecting the community.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 23rd day of April, 2019.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd 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](mailto:documents@sapd.state.id.us)

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General