

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

6-20-2019

State v. Decker Appellant's Brief Dckt. 46472

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Decker Appellant's Brief Dckt. 46472" (2019). *Not Reported*. 5650.
https://digitalcommons.law.uidaho.edu/not_reported/5650

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

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,)	NOS. 46472-2018 & 46473-2018
)	
v.)	KOOTENAI COUNTY NOS.
)	CR-2012-5732 & CR-2015-16813
LEO JOSEPH DECKER,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Leo Decker pled guilty to possession of a controlled substance. He received a unified sentence of five years, with two years fixed, but was placed on probation. After Mr. Decker violated the terms of his probation by committing a new crime, possession of methamphetamine with intent to deliver, the district court revoked his probation but retained jurisdiction. For that new crime, the district court sentenced him to seven fixed years, consecutive to the sentence in the earlier case, but retained jurisdiction in this case as well. After a rider, the district court then placed him on probation in both cases. After Mr. Decker violated the terms of his probations, the district court revoked the probations but retained jurisdiction. After a period of retained jurisdiction, the district court suspended his sentences and

placed him back on probation. After Mr. Decker violated the terms of his probation again, the district court revoked the probation but retained jurisdiction. After a period of retained jurisdiction, the district court suspended his sentences and placed him on probation for three years. On appeal, Mr. Decker asserts that the district court abused its discretion by denying his motion for reduction of his sentences. Mr. Decker further contends the district court erred when it revoked his probation in both cases and retained jurisdiction over him. Although Mr. Decker was placed back on probation after a successful period of retained jurisdiction, he nonetheless asserts on appeal that the district court erred in revoking his probation in his cases.

Statement of the Facts & Course of Proceedings

Supreme Court Docket No. 46472-2018 (Kootenai County district court case number CR-2012-5732) (*hereinafter*, the possession case), and Supreme Court Docket No. 46473-2018 (Kootenai County district court case number CR-2015-16813) (*hereinafter*, the intent to deliver case), have been consolidated for all purposes under No. 46472-2018. (R.46472, p.399.)

In 2012, law enforcement was called to the residence of Leo Decker. (R.46472, pp.37-38; 2012 Presentence Investigation Report (*hereinafter*, 2012 PSI),¹ pp.2-3.) Mr. Decker's house was searched, and officers located a substance that tested presumptively positive for methamphetamine and plastic baggies. (R.46472, pp.38-39.) Based on these facts, Mr. Decker was charged by information with one count of possession of methamphetamine with intent to deliver. (R.46472, pp.73-74.)

Pursuant to a plea agreement, Mr. Decker pled guilty to possession of methamphetamine. (R.46472, pp.68, 82, 85.) The district court placed Mr. Decker in drug court without imposing a

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.

sentence. (R.46472, pp.129-130.) Later that year, a report of probation violation was filed which alleged that Mr. Decker violated the drug court waiver and agreement by committing two new crimes, and by testing positive for alcohol. (R.46472, pp.93-99.) Mr. Decker admitted to violating some of the terms and conditions of drug court/probation. (R.46472, pp.128-129.) Thereafter, the district court realized it had never sentenced Mr. Decker, so it ordered a substance abuse evaluation and a PSI, and it set the matter for sentencing. (R.46472, p.129.) The district court sentenced Mr. Decker to a unified term of five years, with two years fixed, but retained jurisdiction for 365 days. (R.46472, pp.133-136.) After a period of retained jurisdiction, the district court placed Mr. Decker on probation for three years. (R.46472, pp.137-141.)

In 2013, a report of probation violation was filed which alleged that Mr. Decker was charged with new crimes,² used methamphetamine, failed to attend random UA drug testing, and failed to submit to a polygraph examination. (R.46472, pp.147-151, 159-160.) Mr. Decker admitted to violating some of the terms and conditions of his probation, and the district court, after a hearing, determined that an additional allegation had been proven. (R.46472, pp.153, 156.) The district court continued Mr. Decker on probation, but required him to serve seven days in custody as a condition of probation. (R.46472, pp.164-166.)

In 2014, Mr. Decker was again accused of violating his probation. (R.46472, pp.170-179.) The State alleged that he violated his probation by being charged with new crimes,³ failing to provide documentation of treatment attendance, using methamphetamine, failing to restart CAPP aftercare, and testing positive for methamphetamine. (R.46472, pp.170-179.) Mr. Decker

² Mr. Decker was arrested for burglary and possession of stolen property in Kootenai County, but that allegation was later withdrawn. (R.46472, pp.147, 155.)

³ Mr. Decker was charged with unlawful possession of a weapon in Shoshone County case number CR-2014-1179, and with three counts of burglary and three counts of possession of stolen property in Kootenai County case number CR-2014-12696. (R.46472, pp.173-174.)

admitted to violating some of the terms and conditions of his probation, some of the allegations were withdrawn, and he was continued on probation for four years. (R.46472, pp.198, 200-201, 203-204.)

In late 2014, Mr. Decker was again accused of violating his probation. (R.46472, pp.205-219.) The State alleged that he violated his probation by failing to show up for random drug testing, failing to provide documentation of treatment attendance, failing to attend CAPP aftercare, failing to attend treatment, failing to report to his probation officer when requested, and testing positive for methamphetamine. (R.46472, pp.205-219.) Mr. Decker admitted to violating some of the terms and conditions of his probation, and the district court revoked probation but retained jurisdiction. (R.46472, pp.238-242.) After a period of retained jurisdiction, Mr. Decker was continued on probation for three years. (R.46472, pp.243-249.)

In 2015, Mr. Decker was again accused of violating his probation. (R.46472, pp.258-260.) The State alleged that he violated his probation by being charged with new crimes,⁴ and by using (and testing positive for) methamphetamine. (R.46472, pp.258-260.) As part of a global resolution of both the probation violation in his possession case (46472-2018) and the new intent to deliver case (46473-2018), Mr. Decker pled guilty to an amended charge of possession of

⁴ Mr. Decker was charged with two misdemeanors—driving without privileges and possessing marijuana—in Kootenai County case number CR-2015-13725. (R.46472, pp.84-85.) In an addendum to the probation violation report, Mr. Decker was alleged to have committed the crime of possession of a controlled substance with intent to deliver in Kootenai County case number CR-2015-16813. (R.46472, pp.294-297.) In that case, Mr. Decker was stopped and the vehicle he was driving was searched. (2016 PSI, p.2.) Law enforcement found a canister under the vehicle containing several bags of methamphetamine. (2016 PSI, p.3.) The vehicle had been borrowed and belonged to a friend who was on parole at the time. (2016 PSI, pp.3-4; R.46472, p.323.)

methamphetamine and, after some of the probation violation allegations were withdrawn, admitted to violating some of the terms and conditions of his probation.⁵ (R.46472, pp.298-299.)

In the intent to deliver case, Mr. Decker was sentenced to seven fixed years, but the district court retained jurisdiction. (R.46472, pp.302, 305-308.) The sentence was ordered to be served consecutively to Mr. Decker's possession case. (R.46472, pp.302, 306.) In the possession case, the district court revoked Mr. Decker's probation but retained jurisdiction for up to 365 days. (R.46472, pp.302, 306.) After a period of retained jurisdiction, Mr. Decker was placed on probation for three years. (R.46472, pp.309-315.)

In 2017, Mr. Decker was accused of violating his probation. (R.46472, pp.322-345.) The State alleged that he violated his probation by testing positive for methamphetamine, admitting to using methamphetamine, failing to show up for random drug testing, failing to attend treatment, and associating with persons without the approval of his probation officer. (R.46472, pp.322-345.) Mr. Decker admitted to violating some of the terms and conditions of his probation, and the district court revoked probation but retained jurisdiction. (R.46472, pp.346-350.) After a period of retained jurisdiction, the district court continued Mr. Decker on probation for four years. (R.46472, pp.355-362.)

In 2018, the State alleged that Mr. Decker violated his probation by being charged with a new crime and being suspected of selling methamphetamine,⁶ using methamphetamine, testing positive for methamphetamine, and failing to report for random drug testing. (R.46472, pp.368-378.) Mr. Decker admitted to violating the terms and conditions of his probation by testing

⁵ As part of the plea agreement, the charges in Mr. Decker's misdemeanor case were dismissed. (R.46472, pp.298, 305.)

⁶ Mr. Decker was charged with possession of drug paraphernalia in Kootenai County case number CR28-18-8800. (R.46472, pp.368.) The probation violation report also alleged that Mr. Decker told his probation officer that he sold "zones" of methamphetamine. (R.46472, p.368.)

positive for methamphetamine and using methamphetamine, but denied that he was selling methamphetamine. (R.46472, p.379.)

At the evidentiary hearing, the remaining allegation was withdrawn. (Tr., p.4, L.18 – p.5, L.6; R.46472, pp.379-380.) A few minutes later, the State’s witness arrived, the remaining allegation was reinstated (over defense counsel’s objection), and an evidentiary hearing was held. (Tr., p.9, L.14 – p.11, L.6; R.46472, p.381.) The district court found that the State had proved that Mr. Decker told his probation officer that he was selling methamphetamine by a preponderance of the evidence.⁷ (Tr., p.35, Ls.22-25; p.37, Ls.6-10.) The State recommended imposition, but did not oppose the district court modifying the sentences to run them concurrent.⁸ (Tr., p.6, Ls.2-10.) Mr. Decker’s counsel asked the court to modify the fixed portion of his sentence on the possession case, and to consider putting Mr. Decker back on probation, or imposing local jail time with work release, or a retained jurisdiction. (Tr., p.8, Ls.20-24; p.46, Ls.19-21; p.43, Ls.12-25.) The district court revoked Mr. Decker’s probation, but retained jurisdiction for up to 365 days. (Tr., p.47, Ls.7-12; R.46472, pp.387-389.) After a period of retained jurisdiction, the district court placed Mr. Decker on probation for three years. (Aug, pp.5-9.) The district court did not reduce Mr. Decker’s sentence(s) at the disposition hearing or at the rider review hearing. (*See* Tr.; Aug., pp.5-9.) Mr. Decker filed a timely Notice of Appeal. (R.46472, pp.390-393.)

⁷ The district court stated that it found the probation officer’s testimony more credible than Mr. Decker’s testimony. (Tr., p.43, Ls.6-9.)

⁸ Apparently there was some off the record discussion among the parties and the district court regarding modification of the sentences, the district court said the possession case was “the sentence I was talking about modifying,” and the prosecutor told the court he was not opposed to a modification of the sentences to “run[] them concurrent.” (Tr., p.6, Ls.7-10; p.46, Ls.14-18.)

ISSUES

- I. Did the district court abuse its discretion when it denied Mr. Decker's motion to reduce his sentences?
- II. Did the district court abuse its discretion when it revoked Mr. Decker's probation?

ARGUMENT

I.

The District Court Abused Its Discretion When It Denied Mr. Decker's Motion To Reduce His Sentences

Mr. Decker asserts that the district court abused its discretion when it denied his motion to reduce his sentences.

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).

Mr. Decker asserts that the district court abused its discretion by failing to reach its decision to deny his motion to reduce his sentences by the exercise of reason, where the bases for the violations were being remedied and monitored through the supervision of his probation officer. (Tr., p.45, L.17 – p.46, L.11.) Further, in light of the fact that Mr. Decker had been on probation for such a lengthy period of time in the 2012 possession case, the district court should have reduced the fixed portion of his sentence. Mr. Decker asserts that by not reducing his sentences, the district court abused its discretion by failing to reach its decision by the exercise of reason.

Here, Mr. Decker showed good insight into his addiction issues and his criminal thinking—he reached out to his probation officer when he started using methamphetamine. (Tr., p.45, L.10 – p.46, L.13.) Just prior to his arrest on the violations, Mr. Decker had been complimented by his probation officer for having clean UAs. (Tr., p.45, Ls.17-25.) Mr. Decker was honest with his probation officer and was able to get the help he needed—when Mr. Decker was “slipping up” he was able to get back on track. (Tr., p.45, L.10 – p.46, L.2.) Mr. Decker had attended nearly all of his meetings with his probation officer and was about to graduate from his three-month long aftercare treatment program. (Tr., p.45, Ls.14-16; p.46, Ls.1-10.) He was not trying to abscond his probation. (Tr., p.46, Ls.10-11.)

Further, Mr. Decker’s family, including his young daughter, were present in the courtroom at his evidentiary/disposition hearing to support him. (Tr., p.46, Ls.11-13.)

Mr. Decker asserts that the district court abused its discretion in denying his motion to reduce his sentences. In light of all of the evidence that was presented to the district court that demonstrates Mr. Decker’s good relationship with his probation officer, his family support, and his progress on probation, the district court abused its discretion by failing to reach its decision by the exercise of reason when it failed to reduce his sentences.

II.

The District Court Abused Its Discretion When It Revoked Mr. Decker’s Probation

Mindful that Mr. Decker was placed back on probation after a period of retained jurisdiction, he asserts that the district court erred by revoking his probation but retaining jurisdiction.

In light of Mr. Decker’s good relationship with his probation officer, his family support, and his progress on probation, *infra*, his probation violations did not justify revoking probation.

In a probation revocation proceeding, the district court addresses three issues: First, was a condition of probation violated? Second, does the violation justify revocation? Finally, if probation is revoked, what prison sentence should be imposed? *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). As to the first issue before the district court, Mr. Decker concedes that he violated conditions of his probation, as he admitted he had done so. (R.46472, p.379.)

When a defendant violates any of the terms of probation, the decision to revoke probation rests within the sound discretion of the district court. *State v. Jones*, 123 Idaho 315, 318 (Ct. App. 1993). Although mindful of the fact that he has since been returned to probation, such that his claim is now moot, Mr. Decker asserts that the district court abused its discretion in finding that his probation violations justified revocation. 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. Phillips*, 113 Idaho 176, 177 (Ct. App. 1987). Mr. Decker asserts that his continued probation would achieve the goals of his rehabilitation and the protection of society.

Mr. Decker's violation of relapsing on methamphetamine was relatively minor, and did not justify revoking his probation. Mr. Decker asserts that in light of his good relationship with his probation officer, his family support, and his progress on probation, the district court abused its discretion by failing to reach its decision by the exercise of reason when it revoked his probation instead of continuing him on probation.

CONCLUSION

Mr. Decker 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 hearing on his motion to modify his sentences. Mindful of the fact that he is already on probation, Mr. Decker respectfully requests that this Court continue him on probation.

DATED this 20th day of June, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 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