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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46709-2019
Plaintiff-Respondent,)	
)	MINIDOKA COUNTY NO. CR-2016-154
v.)	
)	
BRADLEY J. ARMSTRONG,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
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STATEMENT OF THE CASE

Nature of the Case

Bradley J. Armstrong appeals from the district court's order revoking his probation and executing his unified sentence of ten years, with six years fixed, for felony driving under the influence. He contends the district court abused its discretion when it revoked his probation because his probation violations were relatively minor, and he had been conditionally admitted to drug court, which would have provided him with the structure he needed in order to succeed in the community.

Statement of Facts and Course of Proceedings

Mr. Armstrong pled guilty to felony driving under the influence, and the district court sentenced him to a unified term of ten years, with six years fixed, and retained jurisdiction. *See State v. Armstrong*, No. 44929, 2017 Unpublished No. 615 (Ct. App. Oct. 6, 2017). After Mr. Armstrong successfully completed a rider program, the district court suspended his sentence and placed him on probation for a period of ten years commencing on January 30, 2017. *See id.* Mr. Armstrong appealed, challenging his sentence as an abuse of discretion, and the Court of Appeals affirmed in an unpublished decision. *See id.*

On August 1, 2017, the State filed a motion to revoke Mr. Armstrong's probation. (R., pp.40-42.) Mr. Armstrong admitted to drinking alcohol and using marijuana, and the district court revoked his probation, executed his underlying sentence, and retained jurisdiction. (R., pp.59-64.) Mr. Armstrong successfully completed a rider program, and the district court suspended his sentence and placed him back on probation for a period of seven years commencing on April 16, 2018. (Conf. Docs., pp.1-11; R., pp.69-71.)

On September 5, 2018, the State filed a motion to revoke Mr. Armstrong's probation. (R., pp.90-92.) Mr. Armstrong admitted to violating probation by consuming alcohol, submitting diluted urine samples, and failing to submit to random drug testing. (R., pp.88-89, 118.) The district court accepted Mr. Armstrong's admissions and found him to be in willful violation of the terms of his probation. (R., p.118.) Prior to the disposition hearing, Mr. Armstrong was determined to be conditionally eligible for drug court. (R., pp.119-25, 131.) The district court nonetheless revoked Mr. Armstrong's probation and executed his original sentence, with credit for 704 days served. The judgment was entered on December 17, 2018, and Mr. Armstrong filed a timely notice of appeal on January 22, 2019. (R., pp.133-36, 143-45.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Armstrong's probation and executed his unified sentence of ten years, with six years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Armstrong's Probation And Executed His Unified Sentence Of Ten Years, With Six Years Fixed

A. Introduction

The district court abused its discretion when it revoked Mr. Armstrong's probation and executed his underlying sentence because probation was achieving the goal of rehabilitating Mr. Armstrong and was consistent with the protection of society. Mr. Armstrong's probation violations were relatively minor, and Mr. Armstrong had been conditionally admitted into drug court at the time of the disposition hearing. The district court should have placed Mr. Armstrong back on probation, with the requirement that he successfully complete drug court.

B. Standard Of Review

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. Upton*, 127 Idaho 274, 275 (Ct. App. 1995); *State v. Beckett*, 122 Idaho 324, 325 (Ct. App. 1992); *State v. Hass*, 114 Idaho 554, 558 (Ct. App. 1998). After a probation violation has been established, the court may order the suspended sentence be executed or, in the alternative, reduce the sentence under Idaho Criminal Rule 35. *Beckett*, 122 Idaho at 325; *State v. Marks*, 116 Idaho 976, 977 (Ct. App. 1989). The court may also order a period of retained jurisdiction. I.C. § 19-2601. A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 325. In reviewing the propriety of a

probation revocation, the focus of the inquiry is the conduct underlying the trial court's decision to revoke probation. *State v. Morgan*, 153 Idaho 618, 621 (Ct. App. 2012). Thus, this Court will consider the elements of the record before the trial court relevant to the revocation of probation issues which are properly made part of the record on appeal. *Id.*

C. The District Court Abused Its Discretion When It Revoked Mr. Armstrong's Probation Because Probation Was Achieving The Goal Of Rehabilitating Mr. Armstrong And Was Consistent With The Protection Of Society

Mr. Armstrong admitted to violating probation by consuming alcohol, submitting diluted urine samples, and failing to submit to random drug testing. (R., pp.88-89, 118.) The district court recognized Mr. Armstrong's violations did not involve driving, which was a significant mitigating factor. (Tr., p.12, Ls.6-9.) The district court could have (and should have) placed Mr. Armstrong back on probation, with the requirement that he successfully complete drug court. Mr. Armstrong had been conditionally accepted into drug court prior to the disposition hearing. (R., pp.119-25, 131.) This would have further aided Mr. Armstrong's recovery while providing sufficient protection to the public.

At the disposition hearing, Mr. Armstrong asked the district court to give him a chance to do drug court. (Tr., p.8, Ls.7-8.) Mr. Armstrong said he believed "a more intense program would be good for [him]." (Tr., p.9, Ls.3-5.) He wanted to be able to discuss his triggers on a weekly basis and have weekly one-on-one sessions. (Tr., p.9, Ls.11-20.) He told the district court that even his probation officer said he believed "something more structured would work for [him]." (Tr., p.9, Ls.21-24.)

Despite the fact that Mr. Armstrong's probation violations were not severe, and despite the fact that Mr. Armstrong was found eligible for, and wanted to participate in, drug court, the

district court simply revoked his probation and executed his underlying sentence, without a reduction. On the record presented, this was an abuse of discretion.

CONCLUSION

Mr. Armstrong respectfully requests that the Court vacate the district court's order revoking his probation and executing his sentence, and remand this case to the district court with instructions to place him back on probation.

DATED this 13th day of June, 2019.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th 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
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E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas