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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46746-2019
)	
v.)	BONNER COUNTY NO. CR-2014-986
)	
MARTIN MAXWELL HACKETT,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Martin Hackett appeals from the district court's order revoking his probation. The district court abused its discretion by revoking Mr. Hackett's probation and executing his underlying sentence because his probation was achieving its rehabilitative purpose.

Statement of Facts and Course of Proceedings

In 2014, Mr. Hackett pled guilty to felony eluding a police officer and misdemeanor driving without privileges. (R., pp.58-69.) The court sentenced him to a total term of three years, with one of those years fixed, but suspended the sentence and placed him on probation. (R., pp.78-81.)

In March 2016, Mr. Hackett admitted to violating his probation by being convicted of battery and by drinking alcohol, and the district court continued him on probation. (R., pp.112–40, 197–201.) In October 2016, he admitted to violating his probation a second time by failing to appear to serve two days of discretionary jail time, by not living at his approved residence, and by testing positive for methamphetamine. (R., pp.215–17, 242–43.) The court executed Mr. Hackett’s underlying sentence and retained jurisdiction, but later placed Mr. Hackett back on probation after a successful rider. (R., pp.242–43, 246–48, 256, 259–63.) In April 2018, Mr. Hackett admitted to violating his probation a third time by committing the crime of criminal mischief. (R., pp.277–79, 307.) The court again continued him on probation. (R., pp.307, 312–14.)

In September 2018, the State filed the probation violation allegations at issue in this appeal. (R., pp.318–34.) Mr. Hackett admitted to violating his probation by being convicted of violating a no contact order, by being charged with resisting arrest and driving without a license, (which charges had been dismissed), by not attending a scheduled meeting with his probation officer, and by contacting a woman his probation officer had ordered him not to contact. (R., pp.319–20, 358–59; Tr., p.6, L.1–p.8, L.22.)

At the disposition hearing, the State asked that the court execute Mr. Hackett’s underlying sentence. (Tr., p.27, L.17–p.28, L.12.) Defense counsel noted that Mr. Hackett had missed his meeting with his probation officer because he was incarcerated in Washington, that he had already served sixty days in Washington for the no contact order conviction, and that his probation officer had recommended a retained jurisdiction. (Tr., p.28, L.16–p.29, L.23.) Defense counsel also informed the court that Mr. Hackett had lined up a job and a place to live, and thus asked that the court continue him on probation. (Tr., p.29, Ls.11–17.) Finally,

Mr. Hackett told the court: “I would ask for one more chance rather than imposing my sentence. I know that no-contact order violations are serious and I understand that, Your Honor. And that’s all. I would like to ask for one more chance, I know I can do it.” (Tr., p.30, Ls.6–11.) Taking into account the history of Mr. Hackett’s probation violations and that Mr. Hackett had already served more than the year of fixed time that his underlying sentence required, the court revoked Mr. Hackett’s probation and executed his underlying sentence.¹ (R., pp.369–70, 373; Tr., p.30, L.12–p.31, L.12, p.33, L.9–p.34, L.7.)

Mr. Hackett timely appealed. (R., pp.378–79.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Hackett’s probation?

ARGUMENT

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

Whether willfully violating a condition of probation justifies revoking a defendant’s probation “is a question addressed to the judge’s sound discretion.” *State v. Adams*, 115 Idaho 1053, 1054 (Ct. App. 1989). However, “a judge cannot revoke probation arbitrarily.” *Id.* at 1055. It may revoke probation “if the judge reasonably concludes from the defendant’s conduct that probation is not achieving its rehabilitative purpose.” *Id.*

The appellate court “defers to the trial court’s decision” unless it abused its discretion. *Id.* That inquiry asks whether the district 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

¹ Mr. Hackett has since been placed on parole.

the exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018). This Court must consider the entire record, including the defendant’s conduct before and during probation, *State v. Chapman*, 111 Idaho 149, 153–54 (1986), and must take into consideration the four goals of sentencing: the protection of society, deterrence, rehabilitation, and retribution, *State v. Pierce*, 150 Idaho 1, 5–6 (2010).

Although Mr. Hackett did not perfectly comply with the terms of his probation, probation was achieving its rehabilitative purpose and thus the district court abused its discretion by executing his sentence because it did not reach its decision by an exercise of reason. *See Adams*, 115 Idaho at 1055; *Lunneborg*, 163 Idaho at 863. As Mr. Hackett acknowledged at his disposition hearing, his no contact order violation was serious. (Tr., p.30, Ls.6–11.) While recognizing as much, Mr. Hackett was still making progress on probation. Notably, he continued to abstain from using drugs despite having struggled with addiction earlier on in his term of probation, he had arranged a place to live in Post Falls, and he had a job waiting for him. (R., pp.215–17, 242–43; PSI, pp.15–16, 30; Tr., p.29, Ls.11–17.) The district court therefore should have continued Mr. Hackett on probation because it was achieving its rehabilitative purpose.

CONCLUSION

Mr. Hackett respectfully requests that this Court order that he be placed back on probation.

DATED this 1st day of October, 2019.

/s/ Maya P. Waldron
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 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

MPW/eas