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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46815-2019
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-38911
v.)	
)	
JOHN WILLIAM BOWKER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

John Bowker pleaded guilty to possession of methamphetamine, misdemeanor domestic battery, and misdemeanor resisting or obstructing an officer. On the felony, the district court sentenced Mr. Bowker to a unified term of seven years, with two years fixed, and retained jurisdiction. After successfully completing his rider, Mr. Bowker was placed on probation; however, a few months later he was found to have violated the terms of his probation and the district court revoked probation. Mr. Bowker asserts the district court abused its discretion by revoking his probation, in light of the mitigating factors that exist in his case.

Statement of the Facts & Course of Proceedings

The State filed an amended complaint alleging Mr. Bowker committed the crimes of felony domestic violence, possession of methamphetamine, attempting to introduce major contraband into a correctional facility, resisting or obstructing an officer, and possession of drug paraphernalia. (R., pp.25-27.) Mr. Bowker waived his right to a preliminary hearing, was bound over into the district court, and an information was filed charging him with the above crimes. (R., pp.28-31, 34-35.) Pursuant to a plea agreement, Mr. Bowker pleaded guilty to possession of methamphetamine, an amended charge of misdemeanor domestic battery, and resisting or obstructing an officer, and he was free to argue for any sentence; in exchange, the State agreed to dismiss the remaining charges, to not seek a persistent violator enhancement, and to recommend a unified sentence of seven years, with two years fixed, with the district court retaining jurisdiction. (R., pp.40-57.) Mr. Bowker was sentenced to a unified term of seven years, with two years fixed, and the district court retained jurisdiction.¹ (R., pp.67-68, 76-80.)

After a successful rider, the district court placed Mr. Bowker on probation. (R, pp.84-90; PSI, pp.764-74.)² Three months later, the State filed a motion for probation violation alleging that Mr. Bowker violated the terms of his probation by failing to obtain permission prior to changing residences, twice using methamphetamine, failing to submit a urine sample, failing to complete Rider Aftercare treatment, failing to abide by his supervising officer's request to not associate with his wife, failing to pay fines, fees, and court costs, and failing to pay restitution.

¹ The district court sentenced Mr. Bowker to a total of 270 days in jail for the misdemeanor convictions, to run concurrently with the sentence imposed for the possession of methamphetamine conviction. (R., pp.76-80.)

² Citations to the Presentence Investigation Report and its attached materials will use the designation "PSI," and will include the page numbers associated with the 788-page electronic file containing those documents.

(R., pp.105-12.) Mr. Bowker denied the allegations and an evidentiary hearing was held on the State's allegations. (R., pp.114-19.) At the conclusion of the hearing, the district court found there was sufficient evidence to support the allegations that Mr. Bowker failed to obtain permission prior to changing residences and that he twice used methamphetamine, but the court found insufficient evidence to support the other allegations. (R., pp.118-19; Tr., p.10, L.7 – p.72, L.5.)

During the disposition hearing, the State requested the court revoke probation, and Mr. Bowker asked the court to give him another chance to successfully complete probation, while requiring him to serve 90 days in jail as a sanction for his violations. (Tr., p.77, Ls.13-24; p.81, Ls.21-25.) The district court revoked Mr. Bowker's probation and executed the previously imposed unified sentence of seven years, with two years fixed. (R., pp.120-23; Tr., p.87, Ls.15-17.) Mr. Bowker filed a timely Notice of Appeal from the order revoking his probation. (R., pp.124-26.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Bowker's probation, in light of the mitigating factors that exist in this case?

ARGUMENT

In Light Of The Mitigating Factors That Exist In This Case, The District Court Abused Its Discretion When It Revoked Mr. Bowker's Probation

Upon finding that a probationer has willfully violated one or more terms of probation, the decision on whether or not to revoke probation is left to the sound discretion of the district court. That discretionary decision is reviewed on appeal under the well-established abuse of discretion standard. The governing criteria or objectives of criminal punishment are: (1) protection of

society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Mr. Bowker's criminal behavior stems largely from a combination of his mental health problems and drug addictions. Although he has had a long history of substance use, Mr. Bowker recognizes that methamphetamine "took over entirely at the age of 38." (PSI, pp.16, 750.) At the time he committed the crimes involved in the present appeal, Mr. Bowker had been using methamphetamine intravenously on a daily basis. (PSI, p.17.) Mr. Bowker was under the influence of methamphetamine and bath salts when he committed his crimes. (PSI, p.750.) Prior to his initial sentencing hearing, Mr. Bowker expressed a desire to get treatment through Drug Court. (PSI, p.18.)

Mr. Bowker's mental health problems no doubt contribute to his drug use. He described himself as "Mr. Bipolar," and recognized that he has impulse control problems. (PSI, p.746.) Over the years, Mr. Bowker has been diagnosed with bipolar disorder, schizoaffective disorder, and attention deficit disorder. (PSI, pp.21, 746.) His mental health issues have led to past suicide attempts. (PSI, pp.21-22.) Although once estranged from her son, Mr. Bowker's mother, Carol Bowker, informed the PSI writer that she hopes the district court would show compassion towards Mr. Bowker, because he has a good heart but just needs to take a different path in life. (PSI, pp.11-12.)

Mr. Bowker expressed to the district court that he felt "horrible, beyond all comprehension," for his actions in this case. (PSI, p.5.) Idaho courts recognize that drug addiction and mental health issues, coupled with the desire for treatment, in addition to family support and remorse for one's actions, are all mitigating factors that should counsel a district court to impose a lesser sentence. *See State v. Nice*, 103 Idaho 89 (1982); *State v. Shideler*, 103

Idaho 593 (1982); *Hollon v. State*, 132 Idaho 573 (1999); *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991). In light of the mitigating factors that exist in this case, as well as the relatively minor nature of the violations the district court found Mr. Bowker willfully committed, Mr. Bowker asserts that the district court abused its discretion by revoking his probation.

CONCLUSION

Mr. Bowker respectfully requests that this Court vacate the order revoking his probation and remand his case to the district court with instructions that he be placed on probation, or for whatever other relief this Court deems appropriate.

DATED this 29th day of July, 2019.

/s/ Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of July, 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

JCP/eas