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IN THE SUPREME COURT OF THE STATE OF IDAHO

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|-----------------------|---|---------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 46815-2019 |
| Plaintiff-Respondent, |) | |
| |) | Ada County Case No. |
| v. |) | CR01-17-38911 |
| |) | |
| JOHN WILLIAM BOWKER, |) | RESPONDENT'S BRIEF |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

Issue

Has Bowker failed to establish that the district court abused its discretion by revoking his probation?

Bowker Has Failed To Establish That The District Court Abused Its Discretion

In September 2017 in Ada County, an individual reported that he was following a vehicle in which he observed the male driver batter the female passenger. (PSI, p.4.¹) According to the reporting party, the female then left the vehicle. (Id.) A police officer effectuated a traffic stop

on the vehicle and instructed the driver, John Bowker, to hold his hands out of the window to ensure he was not holding a weapon. (PSI, p.4.) After assist units arrived, the officer ordered Bowker to exit the vehicle. (Id.) Bowker did so, but then refused to comply with other officer commands outside of the vehicle. (Id.) Bowker was eventually arrested. (Id.) Bowker admitted to striking the vehicle's former passenger, his wife, multiple times, but asserted that she also hit him. (Id.) Officers located drug paraphernalia in the vehicle, and methamphetamine concealed on Bowker's person at the jail. (PSI, pp.4-5.) Officers also located Bowker's wife, who told them that Bowker hit her on the face and back approximately six or seven times. (PSI, p.5.)

The state charged Bowker with felony domestic battery (Bowker had a prior felony domestic violence conviction), possession of methamphetamine, introducing methamphetamine into a correctional facility, obstructing a police officer, and possession of drug paraphernalia. (R., pp.34-35.) Pursuant to an agreement with the state, Bowker pled guilty to an amended charge of misdemeanor domestic battery, possession of methamphetamine, and obstructing a police officer. (R., pp.40-57.) The state agreed to dismiss the remaining charges, to not pursue the persistent violator sentencing enhancement, and to recommend a unified seven-year sentence with two years fixed and a period of retained jurisdiction for the felony methamphetamine charge. (R., pp.56-57).

After Bowker's guilty pleas, but prior to sentencing, Bowker was arrested for misdemeanor offenses of violating a no-contact order, possession of marijuana, and possession of drug paraphernalia.² (See R., pp.64-66.) The new charges stemmed from a reported

¹ PSI page numbers correspond with the page numbers of the 788-page electronic file "Bowker 46815 psi.pdf."

² Bowker ultimately pled guilty to each of these three charges during the period of retained jurisdiction of his felony methamphetamine case. See Mycourts.gov portal, State v. Bowker, Ada County District Court Case No. CR01-18-05224.

disturbance at a Garden City Motel where Bowker and his wife were arguing about drugs, and where Bowker punched the wall of the motel room. (Id; PSI, p.760-761.) As the result of the new charges, the state recommended a somewhat enhanced sentence on the methamphetamine charge – a unified seven-year sentence with three years fixed, with the state deferring to the court’s discretion regarding whether a rider was still appropriate. (R., pp.67-68.) The district court imposed a unified seven-year sentence with two years fixed and retained jurisdiction on the felony methamphetamine charge, and concurrent jail time on the other two charges. (R., p.68, 76-80.) At the conclusion of the period of retained jurisdiction, the district court suspended Bowker’s felony sentence and placed Bowker on probation for seven years. (R., pp.86-90.)

Just three months later, the state filed a report of probation violation. (R., pp.108-111.) The state alleged that Bowker violated his probation by: (1) failing to move into the Henderson Property transitional house immediately upon his release, and then by getting evicted from the house after he eventually moved in; (2) using methamphetamine periodically since his release; (3) failing to submit to a drug test as instructed; (4) failing to attend required rider aftercare group meetings; and (5) having contact with his wife, the protected party in the underlying domestic battery charge. (Id.)

After an evidentiary hearing, the district court found that Bowker willfully violated his probation by not residing as required at the Henderson transitional residence, by using methamphetamine, and by having contact with this wife. (1/22/19 Tr., p.68, L.21 – p.72, L.5.) The court found that the state presented insufficient evidence to support the other allegations. (Id.) At the disposition hearing, the court followed the recommendation of the state and probation officer (2/12/19 Tr., p.77, Ls.10-12), revoked Bowker’s probation, and imposed the original underlying sentence (R., pp.121-123; 2/12/19 Tr., p.84, L.23 – p.88, L.3). Bowker

timely appealed. (R., pp.124-126.) On appeal, Bowker contends that the district court abused its discretion by revoking his probation and not giving him another opportunity on probation. (Appellant's brief, pp.3-5.)

“Probation is a matter left to the sound discretion of the court.” I.C. § 19-2601(4). The decision whether to revoke a defendant's probation for a violation is within the discretion of the district court. State v. Garner, 161 Idaho 708, 710, 390 P.3d 434, 436 (2017) (quoting State v. Knutsen, 138 Idaho 918, 923, 71 P.3d 1065, 1070 (Ct. App. 2003)). 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. Cornelison, 154 Idaho 793, 797, 302 P.3d 1066, 1070 (Ct. App. 2013) (citations omitted). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. Id. at 798, 302 P.3d at 1071 (citing State v. Beckett, 122 Idaho 324, 326, 834 P.2d 326, 328 (Ct. App. 1992)).

A review of the record in this case demonstrates that the district court properly exercised its discretion in concluding that Bowker was no longer an appropriate candidate for probation. The court expressly recognized its discretion and reasonably decided to revoke Bowker's probation in light of Bowker's previous criminal history and documented inability to comply with the terms of probation. (2/12/19 Tr., p.84, L.23 – p.88, L.3.)

The district court's determination is justified by Bowker's significant criminal history and consistent failures to abide by the terms of community supervision. Bowker has prior felony convictions for grand theft and domestic violence. (PSI, pp.8-9.) In both instances, Bowker received the opportunity for a retained jurisdiction, then violated probation, was reinstated on probation, and then violated probation again before finally having his probation revoked and

sentences imposed. (Id.) Bowker also has prior misdemeanor convictions for driving under the influence, driving without privileges, battery, and violation of a no-contact order. (PSI, pp.6-8.) Bowker has struggled to comply with the terms of probation even on these misdemeanor cases – the PSI reflects at least 3 misdemeanor probation violations. (PSI, pp.7-9.)

However, it is Bowker's felony criminal history that demonstrates not only that he is unable to abide by the terms of community supervision, but that he is a significant danger to the community. Bowker committed grand theft by stealing jewelry, a credit card, and other property from his parents while they were on vacation, and by opening and utilizing numerous lines of credit in their names. (PSI, pp.296-298.) The investigation surrounding Bowker's theft was extensive and is thoroughly documented the underlying presentence investigation report. (PSI, pp.321-481.) At the time of the drafting of the presentence investigation report in that case, the total theft was estimated to be in excess of \$20,000. (PSI, p.298.) Bowker's next felony involved domestic violence committed in the presence of children. (PSI, pp.9.) Bowker hit and kicked his then-wife and then threw her on the ground in an intersection, resulting in medical treatment and numerous injuries. (PSI, pp.581-646.)

In light of the opportunities Bowker already has had on community supervision, it was not unreasonable for the court to provide him one fewer opportunity than he received in his two prior felony cases, particularly in light of his history of victimizing others. Indeed, the court explained that if this were Bowker's first felony offense, it would likely have given him another opportunity on probation. (2/12/19 Tr., p.87, Ls.13-14.) However, since it was his third felony offense and third time through the process of riders and probation, it was unwilling to do so. (2/12/19 Tr., p.87, Ls.14-15.) The court also expressed a concern that, considering that Bowker immediately violated his probation upon release by failing to report to the Henderson transitional

residence, Bowker may have had no intention to follow the terms of probation, contrary to the assertions he made to the court at the rider review hearing. (2/12/19 Tr., p.86, L.19 – p.87, L.12.)

The district court considered all of the relevant information and reasonably concluded that Bowker was no longer a viable candidate for community supervision. The district court's decision to revoke Bowker's probation and execute his underlying sentence was appropriate in light of Bowker's criminal history, multiple opportunities to succeed on community supervision, and the probation violations that he committed in this case. Given any reasonable view of the facts, Bowker has failed to establish an abuse of discretion.

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Bowker's probation.

DATED this 11th day of October, 2019.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of October, 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:

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